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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Michael Fields
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 2, 2021
SUBJECT: Proposed initiative measure 2021-2022 #26, concerning Property Tax Assessment Rate Reduction and Voter-Approved Revenue Change

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2021-2022 #26 to #28.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To reduce the property tax assessment rate for nonresidential property, other than producing mines and lands or leaseholds producing oil or gas, from 29% to 26.4%;
2. To reduce the property tax residential assessment rate from 7.15% to 6.5%; and
3. To allow the state to temporarily retain and spend up to \$25 million to offset lost revenue resulting for a reduction in property tax and to reimburse local governments for fire protection.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. At what election do you intend for this measure to be referred to the voters?
3. The following questions and comments relate to section 1 of the proposed initiative:
 - a. Is the measure to be referred to voters at the 2021 odd-numbered year election? If so, the proposed initiative will eliminate the valuation for assessment for the property tax year commencing on January 1, 2021.
 - i. What is the nonresidential assessment rate for the property tax year commencing on January 1, 2021?
 - ii. On what basis would an assessor be able to apply the 29% assessment rate for nonresidential property for the property tax year 2021, which as of the effective date of the measure would have yet to be collected?
 - iii. The absence of an assessment rate for nonresidential property may violate article X, section 3 (1)(b) of the Colorado Constitution, which requires that "all other taxable property shall be valued for assessment."
 - iv. In the absence of an assessment rate established in law, it is unclear whether property will be assessed at 100% or 0% of its actual value. The former would dramatically increase taxes, while the latter would eliminate the property tax on nonresidential property for a year, and either of these impacts would certainly

be a major purpose of the measure, although perhaps an unintended one.

- b. To avoid any potential issues and unintended consequences, you should consider clearly identifying the last property tax year that the 29% assessment rate applies and the first year that the new assessment rate applies. This typically involves having one sentence or provision that applies for the last year that will be taxed under current law and another sentence or provision that includes the tax change, as opposed to simply amending the current law. For an example in a different context, see section 39-3-112 (3)(c)(II)(B) and (3)(c)(II)(B.5), Colorado Revised Statutes, and section 39-1-104.2 (3), Colorado Revised Statutes.
4. The following question and comments relate to section 2 of the proposed initiative:
 - a. What is the residential assessment rate for the property tax year commencing on January 1, 2021?
 - b. If you intend the measure to be referred to voters at the 2021 odd-numbered year election, then section 2 seems to have the same problem as section 1. Namely, there is no residential assessment rate in law for the property tax year commencing on January 1, 2021.
 - c. To avoid a gap in the property tax years' residential assessment rates, you could continue the pattern in section 39-1-104.2 (3), Colorado Revised Statutes, which would be to specify the property tax years for which the residential assessment rate of 7.15% applies under subsection (3)(q) and create a new subsection (3)(r) to establish when the residential assessment rate of 6.5% applies.
5. If the proposed initiative is approved by voters, then restoring the assessment rates, or otherwise increasing the rates, would appear to require prior voter approval under article X, section 20 (4)(a) of the Colorado Constitution. Is that your intent?
6. The proposed initiative does not reduce the assessment rates for producing mines and lands or leaseholds producing oil or gas. Is that your intent?
7. All other things being equal, the reduction in the assessment rates will directly reduce local property tax revenue, which will lead to a reduction in local government services. Is that your intent?

8. Under the formula for financing K-12 public education, if school district revenues are reduced, the state must correspondingly increase its share to maintain total funding. This increase in state funding would likely be from the general fund, which in turn would reduce money available for general state services. Is that your intent?
9. The following questions and comments relate to section 3 of the proposed initiative:
 - a. The word "dollars" should be added after "25 million".
 - b. The state is authorized to retain and spend billions of dollars annually. What legal effect does allowing the state to "retain and spend" \$25 million have? Is this supposed to be in addition to the revenue that the state may otherwise retain and spend under article X, section 20 of the Colorado Constitution? If so, you might consider clarifying your intent.
 - c. Is the state's ability to retain up to \$25 million contingent on it using the money for the stated purposes?
 - d. Does the ability to retain and spend include the fiscal year commencing on July 1, 2027, or does until mean prior to that date?
 - e. What types of changes would constitute "lost revenue resulting from a reduction in property tax"?
 - f. Are lower assessed values a "reduction in property tax"?
 - g. In the context of a decrease in assessment rates, all governments will have lost revenue. Are all governments eligible for a grant under this provision?
 - h. Could the state give all this money to school districts?
 - i. Is the division of fire prevention and control the appropriate division to reimburse local governments for lost revenue resulting from a reduction in property tax?
 - j. What types of local governments are eligible for the fire protection reimbursement grants?
 - k. What does "fire protection" include?
 - l. What revenue is being credited to the general fund?
 - m. Is there any required allocation for the different types of grants?

- n. How does \$25 million compare to the revenue lost by assessment rate reductions?
- o. Does the measure provide sufficient standards for the division to exercise its authority and thereby not constitute an improper delegation of power under article III of the Colorado Constitution?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 1 of the proposed initiative and be in bold-face type.
2. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
4. Since the appearance of numbers doesn't change within the small caps code, when a number is added or changed, it is standard drafting practice to use another method to show the reader what the change is. The best way to show the change is to strike language before and/or after where the new number will be located, then add it back in with the new number in its correct location.
5. In section 3:

- a. "Offsetting" should be spelled as a single word rather than hyphenated as "off-setting."
- b. Insert "the" before "fiscal year."
- c. Insert a comma after "2022".