

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Marla F. Benavidez and Iesha Wood
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 22, 2023
SUBJECT: Proposed initiative measure 2023-2024 #10, concerning power of taxation

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.

Purposes

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

1. To repeal amendment XVI to the United States constitution; and
2. To allow the imposition of a flat income tax in the state of Colorado.

Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative. All other text should be below this clause.
2. 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?
3. As an amendment to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is that your intention?
4. The proposed initiative amends section 17 of Article X of the Colorado constitution. Section 17 of Article X is currently in the Colorado constitution. Is it your intention to repeal all of the current section 17 of Article X and replace it with the language of the proposed initiative?
5. The proposed initiative contains subsection (6) twice. Did you mean to add a subsection (10) after proposed subsection (9) instead of a second subsection (6)?
6. Throughout the measure, some words are printed in all capital letters. Do the proponents intend for this capitalization to have legal significance? Or is the capitalization just for rhetorical emphasis?
7. How do you propose that state law should amend federal law?
8. The state income tax, established in Title 39, Article 22, of the Colorado Revised Statutes, is imposed on federal taxable income as modified by state law.
 - a. If the federal income tax is no longer in effect, to what income will the state income tax apply?
 - b. Article X, Section 20 (8)(a) of the Colorado Constitution provides that a new state definition shall not apply before the next tax year. If the current definition of taxable income no longer applies as of the measure's effective date, will the state be able to impose and collect an income tax during the 2024 and 2025 tax years?

9. Have the proponents considered any fiscal or other impacts on state government that may result from the enactment of the proposed initiative? Have the proponents considered the impact to revenue posed by proposed subsection (4)? Have the proponents considered the impact to revenue posed by the second proposed subsection (6)?
10. The effective date is December 31, 2023, but the measure would not appear on the ballot until 2024. Would you consider changing the effective date?
11. How should Colorado citizens approach income tax payments to the federal government on and after December 31, 2023?
12. Section 5(e) refers to "Amendment XVII", while the remainder of the initiative focuses on "Amendment "16". Consider changing "XVII" in section (5)(e) to "16" or "XVI".
13. What is the meaning of the phrase "union dues" as the term is used in proposed subsection (3)?
14. What is the meaning of the phrase "all other persons" in the second to last sentence of proposed subsection (3)(a)?
15. What is the meaning of the word "convention" as it is used in proposed subsection (5)?
16. What is the meaning of the word "plan" as it is used in proposed subsection (5)(g)?
17. What is the meaning of the word "reimburse" as it is used in proposed second subsection (6)?

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. When amending the Colorado constitution, it is standard drafting practice to show the section or article being amended and use strikes and small caps to indicate deletions or additions to the existing language.

2. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** section XXX as follows:

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS or regular type] to show the language being added to and ~~strike type~~ to show language being removed from the Colorado constitution.
4. 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.
5. When referencing the section that you are currently in, the section number does not need to be referenced. For all other article and section divisions, the number or letter of what you are referencing should be specified for every level of the reference. For example:
 - a. This section;
 - b. This article XXX;
 - c. Article XIX of the Colorado constitution;
 - d. Section 20 of article X of the Colorado constitution;
 - e. Section 20 (3)(b) of the Colorado constitution; or
 - f. Subsection (5)(b)(II) of section 9 of article XVIII of the Colorado constitution.
6. The following is the standard drafting language used for creating a definition: "As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means (the definition for the term)...". [For use with a single definition].
7. Subsection (5) has a duplicate (e). Consider relettering so that the subsection includes (5)(a) through (5)(j).

8. In subsection (9), consider adding the phrase "Amendment 16" before "Interferes" so that the sentence is complete. Consider adding quotation marks after "excises" in section 5(f) of the proposed initiative.