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Colorado General Assembly

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MEMORANDUM

TO: Peter Simmons and Laura Palmer
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 12, 2024
SUBJECT: Proposed initiative measure 2023-2024 #137, concerning determination of property taxes

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 amendments to the Colorado constitution and to the Colorado Revised Statutes appear to be:

1. To require that, for purposes of property taxation pursuant to section 3 of article X of the Colorado constitution, the actual value of all residential real property "shall equal the amount of the property's most recent sale";

2. To eliminate the requirement in section 3 (1)(a) of article X of the Colorado constitution that "the actual value of residential real property shall be determined solely by consideration of the cost approach and market approach to appraisal";
3. To clarify that the requirement for the actual value of all residential real property to equal the amount of the property's most recent sale does not change the applicability of the homestead exemption for qualifying seniors and qualifying disabled veterans set forth in section 3.5 of article X of the Colorado constitution;
4. To enact a new section 39-1-102.5 that defines "residential real property" and "sale" for purposes of section 3 of article X of the Colorado constitution and sections 39-1-103 and 39-1-104, including by adding an additional, different definition of "residential real property" than the definition set forth in section 3 (1)(b) of article X of the Colorado constitution or the definition set forth in section 39-1-102 (14.5);
5. To require that, for purposes of property taxation pursuant to section 39-1-103, the actual value for residential real property "shall equal the amount of the property's most recent sale";
6. To eliminate the requirement in section 39-1-103 (5)(a) that, "The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal" and to eliminate the related provision in section 39-1-103 (5)(a) that states: "A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal";
7. To provide that, "if a residential real property suffers a decline in value," the taxpayer-owner may "protest the actual value of the property in accordance with section 39-5-121 (1)(a)(I) or may appeal the actual value of the property in accordance with section 39-5-122 (2) "; and that, if such protest or appeal "results in an actual value that is less than the value of the real property's most recent sale or reappraisal," then the property must be reappraised as having an actual value equal to the amount of the property's most recent sale in accordance with section 4 of the proposed initiative, which adds new language in section 39-1-104 (10.2)(f), until the property is sold again;
8. To require that, "if an assessor determines that the county has suffered a sustained economic downturn," the assessor must conduct a countywide reappraisal and that, "if the reappraisal results in an actual value that is less than the value of the real property's most recent sale or reappraisal," then the

property must be reappraised as having an actual value equal to the amount of the property's most recent sale in accordance with section 4 of the proposed initiative, which adds new language in section 39-1-104 (10.2) (f), until the property is sold again;

9. To require that, for purposes of valuation for assessment of residential real property pursuant to section 39-1-104 beginning with the property tax year commencing January 1, 2023, the actual value of residential real property shall be equal to the amount of the property's most recent sale;
10. To set the assessment rate for residential real estate at 6.7% and require approval of 51% of the registered voters of the state to increase that assessment rate; and
11. To set the mill rate for residential real estate in a taxing district at the mill rate in the district as of January 1, 2020, and require approval of 51% of the registered voters of the taxing district to increase that mill rate.

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. The following comments and questions relate to section 1 of the proposed initiative that amends section 3 (1)(a) of article X of the Colorado constitution:
 - a. How is the requirement that the actual value of residential real property equal the amount of the property's most recent sale consistent with the requirement in section 3 (1)(a) of article X of the Colorado constitution for determination of actual value "under general laws, which shall . . . secure just and equalized valuations for assessments of all real and personal property"?
 - b. Consider whether the requirements in section 3 of article X of the Colorado constitution for equality and uniformity in taxation can be met by the proposed requirement that the actual value of residential real property be based on each property's individual sale history, which sale history would include variations in individual buyer and seller

circumstances, general economic circumstances at the local, state, and national level, and housing market fluctuations, among other factors;

- c. How is the requirement that the actual value of residential real property equal the amount of the property's most recent sale consistent with the requirement in section 20 (8)(c) of article X of the Colorado constitution that: "Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal."?
 - d. Consider whether the requirement for the actual value of residential real property to be determined solely by consideration of the market approach to appraisal, pursuant to section 20 (8)(c) of article X of the Colorado constitution and section 39-1-103 (5)(a) and (8), may be more consistent with the requirement in section 3 (1)(a) of article X of the Colorado constitution for equality and uniformity in taxation (*See, e.g.*, § 39-1-103 (8)(b)-(d) which stipulates that use of comparative sales in market approach to appraisal requires at least 30 typical, negotiated sales, screened and verified by an assessor);
 - e. Consider whether the requirement that the actual value of residential real property equal the amount of the property's most recent sale may constitute "a tax policy change directly causing a net tax revenue gain to any district" which would require voter approval in each such district pursuant to section 20 (4)(a) of article X of the Colorado constitution; and
 - f. Is the new, final sentence of section 3 (1)(a) of article X of the Colorado constitution, found on section 1 on page 1 of the proposed initiative, intended to reference only a subset of the exemptions set forth in section 3.5 of article X of the Colorado constitution, i.e. "the homestead exemption for qualifying seniors and qualifying disabled veterans"? If not, consider broadening the language in the proposed initiative to refer more generally to the exemptions set forth in section 3.5 of article X of the Colorado constitution.
3. The following comments and questions relate to section 2 of the proposed initiative that adds section 39-1-102.5 (additional definitions) and defines "residential real property" and "sale":

- a. Consider whether it is necessary to add a new section 39-1-102.5, when section 39-1-102 already provides definitions for terms used in articles 1 to 13 of title 39 related to property taxation;
- b. How is the proposed definition of "residential real property" in section 2 of the proposed initiative intended to interact with:
 - i. The definition of residential real property set forth in section 3 (1)(b) of article X of the Colorado constitution, which incorporates "all residential dwelling units and the land, as defined by law, on which such units are located, and mobile home parks";
 - ii. The definition of "residential real property" set forth in section 39-1-102 (14.5), which incorporates the definitions of "residential land" set forth in section 39-1-102 (14.4) and "residential improvements" set forth in section 39-1-102 (14.3);
 - iii. The definition of "residential real property" set forth in section 39-1-104.3 (1);
 - iv. The definition of "manufactured home" set forth in section 39-1-102 (7.8);
 - v. The definition of "condominium unit" set forth in section 39-1-102 (5.5)(c)(I);
 - vi. The definition of "multi-family residential real property" set forth in section 39-1-104.2 (1)(a);
 - vii. The Colorado Common Interest Ownership Act set forth in section 38-33.3-101 et seq., including the definition of "condominium" set forth in section 38-33.3-103 (9) and the definition of "cooperative" set forth in section 38-33.3-103 (10);
 - viii. The requirement in section 39-1-103 (10) that "common property or common elements within a common interest community . . . shall be appraised and valued pursuant to the provisions of section 38-33.3-105"; and
 - ix. The requirement in section 39-1-103 (10.7) that "land used for a nursing home and any improvements affixed to that land" be classified and assessed as residential real property.

- c. Consider whether the proposed definition of "residential real property" in section 2 of the proposed initiative should use a different term of art than "residential real property," which term is already defined in a different manner in section 3 (1)(b) of article X of the Colorado constitution and section 39-1-102 (14.5);
- d. Consider whether the proposed definition of "residential real property" in section 2 excludes existing, legally-recognized forms of residential real property including mobile homes, modular homes, tiny homes, and nursing homes, which are included in the existing definition of "residential real property" pursuant to section 39-1-102 as "residential improvements";
- e. Consider whether it is necessary to include the phrase "used as a residence" throughout new section 39-1-102.5 (1), as this use is part of the existing definitions for the listed terms; if the phrase is kept in the proposed initiative, it should be used consistently throughout section 39-1-102.5 (1);
- f. How is the proposed definition of "sale" in section 2 of the proposed initiative intended to be applied? What authority will make the determination that a particular sale meets the requirements for a sale "(1) in the ordinary course of business for full and adequate consideration" and that the transactions is "(a) bona fide, (b) at arm's length, and (c) free from any donative intent"?
- g. Consider whether terms used in the proposed definition of "sale" in section 2 of the proposed initiative also need to be defined, including:
 - i. Ordinary course of business;
 - ii. Full and adequate consideration;
 - iii. Bona fide;
 - iv. At arm's length;
 - v. Free from donative intent; and
 - vi. Spouse.
- h. Consider whether it is necessary or appropriate to define "sale," which has a generally understood meaning in the real property context and is used throughout articles 1 through 13 of title 39 without being defined;

4. The following comments and questions relate to section 3 of the proposed initiative that amends and adds provisions to section 39-1-103:
 - a. Consider whether the new language added to section 39-1-103 (5)(a), in section 3 on page 1 of the proposed initiative, is necessary or effective since the statutory language being modified by the proposed amendment expressly does not apply to residential real property";
 - b. Consider whether and how the proposed requirement to use the "most recent sale" amount for residential real property interacts with the requirements in section 39-1-103 (9) regarding valuation of improvements used as residential dwelling units;
 - c. Consider whether new language added to section 39-1-103 (15), in section 3 on page 2 of the proposed initiative, inadvertently omits "residential" before "real property" and "if" before "appealed";
 - d. What does a "decline in value" mean in new section 39-1-103 (15.5)(a)? Consider adding a definition.
 - e. Consider whether new section 39-1-103 (15.5)(a) requires a corresponding amendment to section 39-5-122 (2) to allow for appeal in case of a "decline in value," as the current language in section 39-5-122 (2) only allows an appeal if a taxpayer is of the opinion that the taxpayer's "property has been valued too high, has been valued twice, or is exempt by law from taxation or that property has been erroneously assessed to such person";
 - f. Consider whether new section 39-1-103 (15.5)(b) is missing the term "residential" between "all" and "real properties";
 - g. What does "sustained economic downturn" mean in new section 39-1-103 (15.5)(b)? Consider adding a definition.
 - h. Consider clarifying that in both new section 39-1-103 (15.5)(a) and (b) the requirement for reappraisal pursuant to section 39-1-104 (10.2) is intended to specifically incorporate new section 39-1-104 (10.2)(f), which is added in section 4 of the proposed initiative at the bottom of page 3, meaning the "reappraised value" under either subsection (15.5)(a) or (b) must equal the most recent sale amount.

- i. Consider whether and how new section 39-1-103 (15.6) conflicts with existing sections 39-1-104 (1)(a), 39-1-104.3, or 39-1-104.4 with regards to the assessment rate for residential real property;
 - j. Consider whether and how new section 39-1-103 (15.7) conflicts with existing sections 39-1-111.5 and 22-54-106 regarding mill levy rates; and
 - k. Consider whether and how new sections 39-1-103 (15.6) and (15.7) interact with the requirements of section 20 of article X of the Colorado constitution and related statutory provisions in title 1 and title 24.
- 5. Regarding section 5 of the proposed initiative, the amending clause suggests that the proposed initiative amends section 39-5-121 (1)(b)(I) and (1.2); however, the substance of section 5 is identical to existing law, except that "definition" is missing from the headnote and "for" is missing after "valuation" and before "the first year" in the first sentence of section 39-5-121 (1)(b)(I). Consider revising section 5 to reflect intended changes to section 39-5-121 (1)(b)(I) and (1.2) or deleting section 5 because no changes are intended as part of the proposed initiative.
- 6. The following comments and questions relate to the proposed initiative as a whole:
 - a. When is the new requirement that the actual value of residential real property equal the amount of the property's most recent sale intended to take effect in terms of property tax years? Only section 4 of the proposed initiative, on the bottom of page 3, includes a reference to "beginning with the property tax year commencing January 1, 2023".
 - i. Consider adding this same effective date language to sections 1 and 3 of the proposed initiative.
 - ii. Consider whether this effective date language is consistent with section 6 of the proposed initiative which provides that the proposed initiative would take effect after the 2024 election.
 - b. Consider whether the proposed initiative can achieve its intended purpose absent amendments to the following constitutional and statutory provisions related to the valuation of residential real property for purposes of property taxation:
 - i. Section 20 (8)(c) of article X of the Colorado constitution;
 - ii. Section 39-1-102 (Definitions);

- iii. Section 39-1-104.2 (Residential real property – valuation for assessment – legislative declaration – definitions);
 - iv. Section 39-1-104.3 (Partial real property tax reductions – residential property – definitions – repeal);
 - v. Section 39-1-104.4 (Adjustment of residential rate);
 - vi. Section 39-1-105.5 (Reappraisal ordered based on valuation for assessment study – state school finance payments);
 - vii. Section 39-1-111.5 (Temporary property tax credits and temporary mill levy rate reductions);
 - viii. Section 22-54-106 (Local and state shares of district total program – legislative declaration – repeal);
 - ix. Section 39-5-122 (Taxpayer's remedies to correct errors); and
 - x. Section 39-8-108 (Decision – review – opportunity to submit case to arbitration).
7. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments, including school districts, in terms of a reduction in property tax revenue? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the reductions in revenue that might result from the proposed initiative to be recovered?

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 constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **amend** section 3 (1)(a) to article X as follows":
 - a. Revise all amending clauses to bold type "**amend**" or "**add**";

- b. Revise the amending clause for section 1 to reflect that the amendment only pertains to section 3 (1)(a) of article X of the Colorado constitution;
 - c. Revise the amending clause for section 3 to include the addition of new subsection (15.7) to section 39-1-103; and
 - d. Revise the amending clause for section 4 to reference the amendment to (10.2)(a) and the addition of new subsection (10.2) (f) to section 39-1-104.
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.
- a. Add stricken type in section 1 on page 1 of the proposed initiative to reflect proposed striking of the following language: "However, the actual value of residential real property shall be determined solely by the consideration of the cost approach and market approach to appraisal" from section 3 (1)(a) of article X of the Colorado constitution;
 - b. Add stricken type in section 3 on page 2 of the proposed initiative to reflect proposed striking of the following language in section 39-1-103 (5)(a): "be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal.";
 - c. Add stricken type in section 2 on page 2 of the proposed initiative to reflect the proposed striking of the final sentence, including subparagraphs (I)-(V) of existing section 39-1-103 (5); or, if there is no intent to strike this existing language, add it to the proposed initiative as it appears in existing law;
 - d. Add stricken type in section 2 on page 2 of the proposed initiative to reflect proposed striking of the word "for" from existing section 39-1-103 (15), second sentence, between "taxable property" and "the first year"; or, if there is no intent to strike this existing language, add it to the proposed initiative as it appears in existing law;
 - e. Add stricken type in section 4 on page 3 to show that "subsection" is to be stricken and replaced by "SUBSECTIONS" in the proposed initiative; and

- f. Add small caps and stricken type in section 5 on page 4 of the proposed initiative to reflect proposed addition and striking of some or all of the existing language in section 39-5-121, if additions or deletions are intended to be made by section 5 of the proposed initiative.
3. For purposes of the statutory portion of the proposed initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
 - a. Consider whether, in section 3 on page 2, in new section 39-1-103 (15.5)(b), the word "will" should be changed to "shall" with regards to the assessor's duty to conduct a countywide reappraisal.
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. The following internal cross-references appear to be incorrect and should be changed as follows:
 - a. In the new language at the end of section 1 of the proposed initiative, the cross-reference to "this subsection (1)(a) of article X" should be changed to "this section 3 (1)(a) of article X";
 - b. In the new language at the beginning of section 2 of the proposed initiative, the cross-reference to "sections 3, 103, and 104" should be changed to "section 3 of article X of the Colorado constitution and sections 39-1-103 and 39-1-104"; also consider whether definitions should apply to other sections in title 39 that pertain to the valuation of residential real property, including those listed above in the Substantive Comments section, paragraph 6.b.;
 - c. In section 2 on page 2, the cross-reference to "this paragraph (a)" is incorrect; it should be changed to reflect the existing statutory language, which reads "this subsection (5)(a)";

- d. In the new section 39-1-103 (15.5) (a), the cross-reference to "section 39-5-121 (1)(a)(I)" is incorrect; it should be changed to "section 39-5-121 (1)(b)";
 - e. In the new section 39-1-103 (15.5) (c), the cross-references to (15) (a) and (15)(b) should be changed to (15.5)(a) and (15.5)(b);
 - f. In section 4, the cross-reference to (10.2) (c) at the beginning of section 39-1-104 (10.2) (a) should be changed to (10.2)(f); and
 - g. In section 6, the cross-reference to "subsection (4) of section 1 of article V of the Colorado constitution" should be changed to "section 1 (4) of article V of the Colorado constitution."
6. To ensure consistency in language, consider changing:
- a. References in section 3 on the top of page 3, in new sections 39-1-103 (15.6) and (15.7), from "residential real estate" to "residential real property";
 - b. Language in section 3 of the proposed initiative regarding new actual value requirement to match the language from section 1 of the proposed initiative (i.e. "Except that the actual value of residential real property shall equal the amount of the property's most recent sale.") as follows:
 - i. Section 3, page 1, change language in section 39-1-103 (5)(a) to: "except that the actual value of residential real property shall equal the amount of the property's most recent sale";
 - ii. Section 3, page 2, change language in section 39-1-103 (15) to: "except that the actual value of residential real property shall equal the amount of the property's most recent sale";
 - iii. Section 3, page 2, change language in section 39-1-103 (15.5)(a) to: "If the protest or appeal results in an actual value that is less than the amount of the property's most recent sale"; and
 - iv. Section 3, page 2, change language in section 39-1-103 (15.5)(b) to: "If the reappraisal results in an actual value that is less than the amount of the property's most recent sale".
7. It is standard drafting practice to omit existing statutory language that is not being amended. The following existing language should be omitted:

- a. In section 4 on page 3, subsections (10.2)(b)-(e); note that, if subsection (10.2)(d) remains in the proposed initiative it contains two misspellings that need to be corrected:
 - i. "one-and-onehalf-year" should be changed to "one-and-one-half year"; and
 - ii. "datagathering" should be changed to "data-gathering".
 - b. All of section 5 on page 4, unless corrected to include proposed changes to existing statutory language.
8. It is standard drafting practice to put quotation marks around defined terms in a definitions section or subsection.
- a. In section 2 on page 1 of the proposed initiative, the term residential real property in new section 39-1-102.5 should appear in quotation marks.