

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Steven Ward and Suzanne Taheri  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 27, 2024  
**SUBJECT:** Proposed initiative measure #259, concerning voter approval of legislation with a negative effect on the gross domestic product of the state.

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 Revised Statutes** appear to be to:

1. Require voter approval of any legislation with a projected negative economic impact to the state's "gross domestic product" ("GDP") greater than \$100 million during the first five fiscal years after the legislation's enactment;

2. Allow any person, within five days of the passage of such legislation, to submit to the chief economist of the General Assembly an economic impact statement utilizing dynamic modeling to determine the legislation's impact on the state's GDP;
3. Require the state chief economist to review any submitted economic impact statement to determine whether the statement accurately models the impacts of the legislation and determine the validity of its assumptions;
4. Provide that the district court has jurisdiction to hear a challenge regarding the state chief economist's determination about the qualification of an economic impact statement, and
5. Require the director of legislative council to certify the ballot content to the secretary of state.

## **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. Subsection (1) of the proposed initiative requires that "any legislation with a projected negative economic impact to the state [GDP] of over \$100 million in the first five fiscal years must be approved at a statewide general election." This provision of subsection (1) raises the following questions:
  - a. What does the term "legislation" mean? Does it include all legislation that has been enacted by the General Assembly, and then either signed by the Governor or allowed to become law without the Governor's signature?
  - b. Does "legislation" include initiated measures? Will proponents of initiated measures be required to use the ballot language prescribed in subsection (1) of the proposed initiative when an initiated measure is anticipated to have a negative economic impact of over \$100 million in the first five fiscal years? Is an initiated measure required to have an economic impact statement if it is projected to have a negative economic impact to the state GDP of over \$100 million in the first five fiscal years?

- c. What is “state gross domestic product”? Is this the same as the estimated value of current-dollar gross domestic product by the state published by the U.S. Bureau of Economic Analysis?
- d. Legislation that accelerates inflation would increase current-dollar gross domestic product, while legislation that decelerates inflation would reduce current-dollar gross domestic product. Have the proponents considered this effect?
- e. Is the economic impact measured as an amount that is net of negative and positive economic impacts or is the calculation based only on the negative impact?
- f. The U.S. Bureau of Economic Analysis estimates state gross domestic product on a calendar year basis, annual basis, and quarterly basis. There is no estimate of state gross domestic product that is produced on a state fiscal year basis. How will an economist determine the amount by which legislation will increase or decrease state gross domestic product on a state fiscal year basis when there is no baseline estimate to which the effects of legislation may be compared?
- g. Legislation may be enacted in one fiscal year but become effective in another fiscal year. Legislation may also be effective in one fiscal year but is applicable in yet another fiscal year. When do the "first five fiscal years" begin?
- h. There is no published projection of state gross domestic product for five future state fiscal years. What baseline amount should be assumed when calculating increases or decreases in state gross domestic product?
- i. Assume that state gross domestic product is expected to increase over the next five fiscal years. If legislation reduces the amount by which state gross domestic product is expected to increase, rather than causing an expectation that gross state domestic product decrease over the five-year period, does the voter approval requirement in the measure apply? Is the ballot language accurate in this case?
- j. If legislation is expected to decrease state gross domestic product in the first two years by \$100 million in each year and increase state gross domestic product in the next three years by \$100 million in each year, does the voter approval requirement in the measure apply? Is the ballot language accurate in this case?

3. Subsection (1) of the proposed initiative requires legislation with an impact to state GDP of over \$100 million to be approved at a "statewide general election." Subsection (6) requires the legislation to be adopted at the "next regular biennial election." Is the intent to reference the same type of election? If so, consider using the same terminology throughout the proposed initiative.
4. What does "must be approved" mean in subsection (1) of the proposed initiative? What if a majority of voters vote against the referred legislation?
5. Subsection (1) of the proposed initiative requires the ballot title for the measures referred to the people to be set as "Shall the state economy be reduced [full dollar amount for the first five fiscal years] in its first five years by the adoption of [insert bill title]? To what does "its" refer?
6. Is the bill title to be inserted the full-form ballot title, including any trailer or trailers?
7. Subsection (2) of the proposed initiative provides that legislation passed "simultaneously or within the five preceding years that relate to a single or similar subject shall be aggregated in calculating the applicability of this section." Subsection (2) raises the following questions:
  - a. What does it mean to pass legislation "simultaneously"?

Do several measures need to be passed, signed, or become effective at the exact same time?
  - b. When does the "five preceding years" begin? Does it begin when the legislation is passed, signed, or becomes effective? Is the intent for the examination period to be retroactive to before January 1, 2025?
  - c. What does it mean for legislation to "relate to a single subject"?
  - d. How will it be determined whether legislation has a "single" or "similar" subject?
  - e. Is it contemplated that more than one piece of legislation will be considered in the five-year examination period?
  - f. If the General Assembly enacts a bill that will have a negative economic impact of \$50 million in the first five fiscal years, it would not be subject to the requirements of the proposed initiative. If the General Assembly enacts another bill the next year that relates to a similar subject and that also will have a negative economic impact of \$50 million in the first five

fiscal years, what is the status of the first bill? Would the second bill be subject to the requirements of the proposed initiative?

8. Subsection (3) of the proposed initiative provides that a person may submit an economic impact statement within five days of "passage of legislation". This provision of subsection (3) raises the following questions:
  - a. What does "passage" mean? Does it mean when both houses of the General Assembly have adopted the legislation, when the Governor signs the legislation, or upon expiration of the petition period?
  - b. How would this provision apply to legislation that the Governor does not sign?
  - c. What does "legislation" mean? Is it any legislation subject to the economic impact statement?
  - d. When is "within (five) days of the passage of legislation"?
9. At the time when legislation is being considered, the General Assembly will not know whether the voter approval requirement applies. For example, legislation considered during an odd-numbered year could implicate the budget for the fiscal year that begins on July 1 of the odd-numbered year; however, application of the voter approval requirement could cause the legislation not to take effect until sometime during the fiscal year that begins on July 1 of the immediately subsequent even-numbered year. This could cause the budget not to be balanced for the fiscal year that begins on July 1 of the odd-numbered year in cases where the legislation is being relied upon to balance the budget. Have the proponents considered this potential consequence of the proposed initiative?
10. Does the measure apply to the long bill and the school finance act? What happens if these constitutionally-required legislative items do not take effect before commencement of the fiscal year for which they apply? What happens if the long bill or the school finance act are not approved by the voters?
11. The General Assembly does not have a chief economist independent of the chief economist of the Legislative Council Staff. Is the intent to reference the chief economist of the Legislative Council Staff? Regardless, consider using consistent terminology in subsections (3), (5), and (7) of the proposed initiative.
12. May the chief economist designate someone else to review economic impact statements for compliance with the requirements in the proposed initiative?

13. Subsection (3)(a) of the proposed initiative provides that a "qualifying economic impact statement must utilize dynamic modeling." Subsection (3)(a) raises the following questions:
- a. What is "dynamic modeling"?
  - b. Commercially available dynamic models are often proprietary. How would the chief economist verify that an economic impact statement uses dynamic modeling, if the model itself cannot be provided because it is proprietary?
  - c. Is there a difference between an "economic impact statement," as referenced in subsections (3) and (3)(b) of the proposed initiative, and a "qualifying economic impact statement", referenced in subsection (3)(a)? If not, consider using consistent terminology.
  - d. States that have used dynamic modeling to estimate the economic impacts of legislation have found that policy changes generally result in smaller dynamic impacts than expected. This may be because dynamic models used to estimate the effects of a program fail to capture opportunity costs, i.e., the way in which money used for a program would otherwise be used in the program's absence. The proposed initiative does not include any requirement that a dynamic model account for opportunity costs, out-of-state leakages, or other common sources of estimation error. Is it the proponents' intent that the analyses submitted pursuant to subsection (3)(a) of the proposed initiative be evaluated for methodological soundness or flaws?
  - e. Commercially available dynamic models are complex and rely on the correct calibration of hundreds or thousands of assumptions in order to produce accurate results. Does the proposed initiative allow for anyone to ensure that the model is correctly calibrated? If it is determined that the model is calibrated incorrectly, does the economic impact statement still satisfy the qualifications in the proposed initiative?
14. Subsection (3)(b) of the proposed initiative provides that "If no person submits an economic impact statement within [five] days of passage of legislation, then this section shall not take effect until approved by the people." Subsection (3)(b) raises the following questions:
- a. Which section would not become effective until approved by the people?

- b. As written, the proposed initiative appears to state that the section it creates in statute, section 24-77-108.5, C.R.S., would not become effective. This appears to be a technical error.
  - c. Is it the proponents' intent that if an economic impact statement is not submitted for a newly enacted law, that the law will automatically be subject to a vote of the people to be effective, regardless of the economic impact of the law?
  - d. May anyone, including the General Assembly or Legislative Council Staff, submit an economic impact statement?
  - e. What is the meaning of "approved"? Is the approval requirement a simple majority of voters?
  - f. When does "passage of legislation" occur?
  - g. Does the proposed initiative require that an economic impact statement be filed for every bill in order for the bill to become law, or is there a trigger to determine when the economic impact statement is required for a newly enacted law?
15. Subsection (4) of the proposed initiative requires the analysis in an economic impact statement to be conducted by an "economist." This provision of subsection (4) raises the following questions:
- a. Who is an "economist" for purposes of the proposed initiative?
  - b. Who determines whether a person is an "economist" for purposes of the proposed initiative?
16. Subsection (4) of the proposed initiative requires an "expert in the field" to validate the economist's analysis in the economic impact statement.
- a. What is the "field" in which the expert must have experience?
    - i. Is expertise in economics required?
    - ii. Is expertise in the subject matter of the legislation required?
  - b. What are the qualifications of an "expert" for purposes of the proposed initiative?
  - c. What happens if the expert and the economist reach different conclusions about the impact to the state's GDP? Which conclusion takes precedence?

- d. Who determines whether a person is an "expert in the field"?
  - e. Will the expert have access to the dynamic model used to prepare the economic impact statement? If not, how will the expert be able to verify its methodological soundness?
  - f. What happens if multiple "experts in the field" attempt to validate or invalidate an economic impact statement?
  - g. When must an expert validate the economic impact statement after passage of the legislation?
  - h. What happens if an economic impact statement is invalidated?
  - i. Who is responsible for having the economic impact statement validated by an "expert in the field"?
  - j. Who is notified when an "expert in the field" validates or does not validate an economic impact statement?
17. Subsection (5) provides that the state's chief economist shall review the economic impact statements for compliance with subsections (3) and (4) of the proposed initiative. Subsection (5) raises the following questions:
- a. Is it correct to interpret proposed subsection (5) as requiring the chief economist to determine that any economic impact statement is qualified regardless of its methodological value, bias, or conclusions if: it was submitted within 5 days of the passage of the legislation; it utilizes dynamic modeling; it includes the effect on state GDP; it was performed by an economist; and the assumptions used were reviewed and the methodological soundness validated by an expert in the field?
  - b. What if the chief economist believes that the modeling or assumptions used in preparing the economic impact statement are not methodologically sound or otherwise disagrees with the finding in the analysis?
  - c. What if the economic impact statement is determined to be not qualified by the state's chief economist?
  - d. The language contemplates the possibility of multiple economic impact statements. What guidance does the state's chief economist have about how to resolve discrepancies between impact statements for the same legislation?



- e. If one economic impact statement anticipates a \$200 million decrease in state GDP, and three more economic impact statements each anticipate a \$200 million increase in state GDP, does the voter approval requirement apply? Will the ballot question in subsection (1) of the proposed initiative be accurate in this case?
18. Legislation very often includes an effective date clause. If, for example, a bill passes during the 2025 session and includes a July 1, 2025, effective date, can the proposed initiative stop the legislation from taking effect on that date, even if an economic impact statement is later submitted that determines that the bill would reduce state GDP by at least \$100 million? If so, how does this work legally? Why does the proposed initiative supersede a bill's effective date clause?
19. Subsection (7) of the proposed initiative provides that "within three days of the determination of the state chief economist any interested party not satisfied with the determination may file a challenge in the district court." Subsection (5) of the proposed initiative provides that the state's chief economist is charged with determining whether an economic impact statement complies with subsections (3) and (4) of the proposed initiative. These provisions of subsection (7) raise the following questions:
- a. Is the intent to provide a cause of action to challenge the state chief economist's determination of whether the statement complies with these subsections?
  - b. If a person disagrees with the amount of GDP impact, may that be challenged?
  - c. What is the difference between an "interested party" and an uninterested party?
  - d. Who may be a "party" to the challenge?
  - e. Who may be a defendant in the challenge?
  - f. How would one win a challenge and what are the consequences?
20. Subsection (7) of the proposed initiative requires the court to "conduct a summary proceeding on the record" which "shall be concluded within ten days of the commencement" of the proceedings. These provisions of subsection (7) raise the following questions:
- a. What is a "summary proceeding on the record"?

- b. What must a plaintiff prove?
  - c. What is the standard of proof for a plaintiff?
  - d. What elements or standards must a court employ to issue a decision?
  - e. What remedy may a court impose?
  - f. Does a plaintiff or defendant have the right to appeal the district court's decision?
  - g. What if the court has not made a determination within ten days of commencement of the proceedings?
21. Subsection (8) of the proposed initiative provides that "upon the expiration of any challenge in the district court, the director of legislative council shall certify the ballot content to the secretary of state." Subsection (8) raises the following questions:
- a. When does a challenge in the district court "expire"?
  - b. What if an economic impact statement is not challenged in district court? May the ballot content be certified?
  - c. What is included in the ballot content? What does certification of the ballot content entail?
  - d. The proposed initiative references the "director of the legislative council". Is the intent to reference the director of research of the legislative council?
22. Subsection (9) of the proposed initiative provides that "This section shall not apply to referred measures." The proposed initiative also provides that legislation with an economic impact of more than \$100 million to the state's GDP must be referred to the people for approval. What is a "referred measure" in the context of the proposed initiative?
23. Article V, section (1) of the Colorado constitution provides that the legislative power is vested in the legislative branch. The proposed initiative would limit the legislature's power because enacted legislation with a negative economic impact of more than \$100 million would not become law until a vote of the people. However, the proposed initiative would be a statutory change, not a constitutional change. How would a statutory requirement supersede the constitutional process for lawmaking?

24. Can legislation exempt itself from the voter approval requirement in the proposed initiative?

## **Technical Comments**

1. 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.
2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs.
  - a. The following is a basic example of the organization of provisions of the Colorado Revised Statutes:  
**X-X-XXXX. Headnote.** (1) Subsection.  
  
(a) Paragraph  
  
(I) Subparagraph  
  
(A) Sub-subparagraph  
  
(B) Sub-subparagraph  
  
(II) Subparagraph  
  
(b) Paragraph  
  
(2) Subsection  
  
(3) Subsection
  - b. In terms of this organization, the proponents should consider the following organizational adjustments:
    - i. (3) should be (3)(a), and the current (a) and (b) should be relettered to (b) and (c) respectively;
3. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
4. For purposes of this statutory 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." Consider reviewing each use of "shall" and "must" in the proposed initiative to ensure that they comply with the statutory definitions of those terms.

5. It is standard drafting practice to use commas to connect two independent clauses connected by a conjunction. As such, the proponents should consider:
  - a. Whether both uses of "and" in subsection (4) of the proposed initiative are conjunctions.