

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Scott Wasserman and Ed Ramey
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 27, 2024
SUBJECT: Proposed initiative measure 2023-2024 #260 concerning supplemental luxury residential real property tax.

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.

An earlier version of this proposed initiative, proposed initiative 2023-2024 #96, was the subject of a memorandum dated November 7, 2023. Proposed initiative 2023-2024 #96 was discussed at a public meeting on November 9, 2023. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To exempt from any otherwise applicable statewide limitation upon the amount or growth of property tax revenue any statewide and state-administered property tax levy that is imposed for the primary purpose of assisting local taxing authorities and communities in addressing inequities in the availability or distribution of local property tax revenue as the result of the imposition of any statewide limitation upon the amount or growth of property tax revenue;
2. To remove the prohibition in section 20 (8)(a) of article X of the Colorado constitution on the imposition of any new state real property tax;
3. To impose a supplemental state property tax on luxury residential real property for any property tax year commencing on or after January 1, 2027, in which statewide property tax revenue has been reduced by any statewide limitation on property tax revenue growth in an amount sufficient to offset the reduction in revenue;
4. To require revenue received by local taxing authorities from the supplemental state property tax on luxury residential real property to be forwarded to the state and to allow the state to collect, retain, deposit, and spend that revenue as a voter-approved revenue change; and
5. To require that revenue from the state property tax on luxury residential real property be redistributed by the state to and made available for expenditure by political subdivisions for the purpose of replacing and backfilling revenue lost to local communities as a result of the imposition of any statewide limitations upon the amount or growth in amount of statewide or local property tax revenue.

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 questions are concerning the definition of "apartment property" in Section 4 of the proposed initiative:
 - a. What type of property do proponents intend to be considered "apartment property"? Could a single family home that is primarily leased or rented by the owner or owners to third parties for residential use be apartment property? If so, do the proponents see any potential confusion that could be caused by using the word "apartment"?
 - b. Does the language "other than multi-family residential real property" effectively preclude any multi-family types of property, i.e. duplexes, triplexes, or multi-structures of four or more units, from being "apartment property"?
 - c. The proposed initiative states that "apartment property" is "primarily leased or rented by the owner or owners to third parties for residential use."
 - i. What do the proponents mean by the term "primarily"? Is there a length of time that quantifies as "primarily"?
 - ii. Do the proponents intend for properties that are leased or rented for short-term stays to be "apartment property"?
 - iii. Do the proponents intend for properties that are leased or rented on a long-term basis to be "apartment property"?
3. In Section 5 of the proposed initiative, the phrase "local taxing authority" and "political subdivisions of the state" appear to be used interchangeably. Is that the proponents' intent? If the terms are interchangeable, would the proponents consider using only one instead of the other?

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. 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.). The word "Section" should be in all-capital letters. For example:

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

2. For purposes of the statutory portions of this 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."
3. The period after "(1)(e)" in Section 2 should be removed.
4. In sections 2 and 3 of the proposed initiative, the section headnotes for, respectively section 3 of Article X and section 20 of article X, should be added following the amending clause. For example, section 2 should look like this:

SECTION 2. In the constitution of the state of Colorado, section 3 of article X, **add** (1)(e) as follows:

Section 3. Uniform taxation - exemptions. (1)(e) [new text]

5. Although subsection headnotes are shown in bold type, subsection numbers should not be bolded. In Section 4, subsections (1) and (2) should conform to these guidelines as follows:

(1) **Definitions.**

(2) **Supplemental luxury residential real property tax.**

6. The amending clause in Section 5 should read:
In Colorado Revised Statutes, **amend** 39-1-112 as follows:
7. "Department of Local Affairs," as it appears in subsection (4) of Section 5, does not need to be initial-capitalized.