

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 #261 concerning the use of state revenues in excess of the limitation upon state fiscal year spending to supplement or backfill local taxing authorities for a reduction in property tax revenue due to a statewide limitation or restriction upon the amount or growth of property tax revenue.

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 purpose of the proposed amendment to the **Colorado Revised Statutes** appears to be:

1. To authorize the state to retain and spend as a voter-approved revenue change state revenues in excess of the limitation upon state fiscal year spending in a year in which the amount of local property tax revenue has been reduced by imposition of any statewide limitation or restriction upon the amount or growth of property tax revenue for the purpose of supplementing or backfilling revenue otherwise lost to local taxing authorities due wholly or partly to the statewide limitation upon their 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. Proposed section 24-77-103.10 (1) defines "local taxing authorities" to include "school districts." How would the state retaining and spending state revenues in excess of the limitation upon state fiscal year spending for the purpose of supplementing or backfilling revenue otherwise lost to school districts impact the calculation of the local and state shares of total program funding for purposes of school finance?
3. What is the phrase "the amount of local property tax revenue has been reduced by imposition of any statewide limitation or restriction upon the amount or growth of property tax revenue" intended to refer to? Would this phrase include any of the following instances:
 - a. The current limitations on fiscal year spending imposed by article X of section 20 of the Colorado constitution?
 - b. Any restrictions imposed on what current law allows for mill levy overrides?
 - c. A reduction in an assessment rate by the General Assembly or approved by voters through an initiative?
 - d. An adjustment to the amount of actual value that is subject to taxation either by the General Assembly or approved by voters through an initiative?
4. Does the phrase "has been reduced" mean that local property tax revenue is an amount that is less than what would have been collected but for the imposition

- of a statewide limitation or restriction upon the amount or growth of property tax revenue even if the amount of local property tax revenue collected has nonetheless increased from the amount collected for the preceding property tax year?
5. How do the proponents intend for the local taxing authorities to be supplemented or backfilled by the state with state revenues in excess of the limitation upon state fiscal year spending? For instance, is it the proponents' intent that every local taxing authority in the state that has a reduction in property tax revenue be made whole by the backfill made by the state with state revenues in excess of the limitation upon state fiscal year spending such that each local taxing authority receives an amount that is proportional to their lost revenue? Or, will every local taxing authority receive an equal amount based on the aggregate of revenue lost to all local taxing authorities and availability of state revenues in excess of the limitation upon state fiscal year spending?
 6. For how long do the supplementation and backfill provisions of the proposed initiative apply to any given statewide limitation or restriction upon the amount or growth of property tax revenue? For instance, if a limitation or restriction is imposed in a permanent manner that compounds a reduction in property tax revenue every year since the year in which the limit is imposed, would the provisions of the proposed initiative be effectively permanent and authorize the retention of excess state revenues and the supplementing or backfilling of revenue otherwise lost every year?
 7. Should there be a fixed year or amount by which it is determined whether the local taxing authority has a reduction in property tax revenue?
 8. Do the proponents intend that the proposed initiative apply to statewide limitations or restrictions upon the amount or growth of property tax enacted before January 1, 2025, that reduce property tax revenue in property tax year 2025 or a subsequent property tax year or only to statewide limitations enacted on or after January 1, 2025?
 9. Does the phrase "in that year" as it is used in the following sentence refer to the property tax year in which there has been a reduction in the amount of local property tax revenue due to the imposition of any statewide limitation or restriction upon the amount or growth of property tax revenue: "the state shall be authorized to retain and spend state revenues in excess of the limitation upon state fiscal year spending in that year under section 20(7)(d) (*sic*) of article x (*sic*) of the state constitution"?

10. In what year do the proponents intend for the state to make payments for the backfill or supplement to the local taxing authorities for lost revenue?
11. The proposed initiative appears to assume that there will be state revenues in excess of the limitation upon state fiscal year spending to supplement or backfill revenue otherwise lost to local taxing authorities. In a year in which the amount of local property tax revenue has been reduced by imposition of any statewide limitation or restriction upon the amount or growth of property tax revenue but there are not any state revenues in excess of the limitation upon state fiscal year spending, would the state be under any obligation to supplement or backfill revenue otherwise lost to local taxing authorities? What if there are only enough excess state revenues to partially cover the amount required to supplement or backfill the local taxing authorities for a reduction in property tax revenue?

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 in large capital letters (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:
2. When creating a new statutory section between existing statutory sections, for example between sections 24-77-103 and 24-77-104, only section numbers 24-77-103.1 to 24-77-103.9 can be used. It is not possible to create a section numbered 22-77-103.10. Consider changing the proposed section number and the amending clause accordingly.
3. It is standard drafting practice to add "definition" at the end of a headnote when a statutory section contains a definition. In the headnote for proposed section 24-77-103.10, consider adding "- **definition**" after "**authorities**".

4. 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) ...".
5. 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."
6. It is preferable not to use the word "shall" when you are not intending to specifically impose a duty on a person. In proposed section 24-77-103.10 (2), after "[t]his authorization", consider replacing "shall be" with "is".
7. 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. Roman numerals in references to the state constitution, for example "article X of the state constitution".
8. For statutory citations within the Colorado Revised Statutes, when referencing a different subsection within the same section, begin with the word "subsection", followed by the subsection number, then the phrase "of this section." For example, "subsection (2) of this section."