

# 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:** April 2, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #269, concerning Adjustment To Nonresidential Assessment Rate for School Funding

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:

1. For property tax years commencing on and after January 1, 2025, in which the local share of total program funding under the "Public School Finance Act of 1994" is estimated to fall below fifty percent of total program funding for school districts statewide, establishing that the assessment rate for

nonresidential property, excluding small business property, is thirty-two percent of the actual value of the property;

2. Providing that additional revenue attributable to an assessment rate increase that is the conditional thirty-two percent assessment rate is to be dedicated and applied exclusively to the local share of total program funding under the public school finance act of 1994 for school districts within the local taxing district; and
3. Creating a subclass of nonresidential real property for "small business property" and defining the term to mean "nonresidential real property wholly owned by one or more persons or entities that are actively conducting business on or by utilization of such property and that does not exceed the applicable size standard and affiliation restrictions that would qualify the business as a small business for programs administered by the United States Small Business Administration."

## **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 term "nonresidential real property" is not a term otherwise defined or used in title 39.
  - a. Do the proponents intend to create a new classification of property for nonresidential real property for the conditional assessment rate created in the proposed initiative? If so, what do the proponents intend for "nonresidential real property" to mean as it is used in the proposed initiative and would the proponents consider defining the term so that their intent is clear?
  - b. Alternatively, do the proponents mean to refer to, in whole or in part, the term "nonresidential property" which is a classification under current law and is defined in section 39-1-104 (1.8)(d), C.R.S., to mean "all taxable real and personal property in the state other than residential real property, producing mines, or lands or leaseholds producing oil and gas" including the subclasses of agricultural property, lodging property, and renewable energy production property?

3. Is it the proponents' intent that the thirty-two percent assessment rate imposed by the proposed initiative only be imposed if the assessment rate for "nonresidential real property", as the proponents intend the term to mean, is less than thirty-two percent? If so, would the proponents consider specifying this?
4. Do the proponents intend for the thirty-two percent assessment rate to be triggered if, statewide, the aggregate of local share of total program funding for all school districts is expected to fall below fifty percent? Or, is it triggered if, statewide, every school district's local share of total program funding is expected to fall below fifty percent? Or, do the proponents mean something else for the trigger for imposing the thirty-two percent assessment rate?
5. If the property tax revenue resulting from the increase in the assessment rate specified in the proposed initiative is to be dedicated and applied exclusively to the local share of total program funding, doesn't that necessarily supplant the amount that would otherwise be required for the state share of total program funding? How does this interact with the language in the proposed initiative that the revenue "shall be used to supplement and not supplant funding otherwise available to" school districts?
6. Is only the additional property tax revenue resulting from the increased assessment rate attributable to mills levied by school districts to be dedicated and applied to the local share of total program funding or is such additional property revenue from mills levied by all taxing jurisdictions to be so dedicated and applied?
7. If the property tax revenue resulting from the temporary increase in assessment rate specified in the proposed initiative exceeds one hundred percent of the total program cost, how should it be used?
8. What does the phrase "for school districts within the local taxing district" mean? Why are the proponents specifying a breakdown of school districts within local taxing districts? Why not have the breakdown be at the county level?
9. Who is responsible for estimating whether the local share of total program funding for school districts statewide will fall below fifty-percent of total program funding?
10. When do proponents anticipate it should be estimated if local share of total program funding for school districts statewide will fall below fifty-percent of total program funding? Will this allow enough time for the appropriate

authorities to calculate their budgets for the next fiscal year? Will this allow enough time for assessors and treasurers to implement a different assessment rate?

11. Have the proponents considered the impact the proposed initiative may have on the budget process or on the budgets of local taxing authorities that are not school districts?
12. Will county treasurers be responsible for calculating the amount of property tax revenue from the increased assessment rate for "nonresidential real property" that is owed to school districts and distributing the correct amount accordingly to school districts within the county?
13. The proposed measure creates a subclass of "nonresidential real property" for "small business property" and exempts it from the thirty-two percent assessment rate set forth in proposed section 39-1-104 (1.9), C.R.S. What will the assessment rate for "small business property" be?
14. Will assessors have time to implement a new subclass for property tax year 2025 given the January 1 assessment date set forth in section 39-1-105, C.R.S. and the requirement that notices of valuation must be mailed by May 1 in accordance with section 39-5-121, C.R.S.?
15. What does the phrase "actively conducting business on or by utilization of such property" mean?
16. Do the proponents intend for the subclass for "small business property" to be certified annually?

## **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 statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, section 2 of the proposed initiative should read:

**"SECTION 2.** In Colorado Revised Statutes, 39-1-104, **add** (1.9) as follows:"

2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 2 of the proposed initiative and be in bold-face type as follows:

**"39-1-104. Valuation for assessment - definitions."**

3. Except when specifying "this section," in all other levels of the statutes, the number and letter of the level being referenced should be specified, even when you are within the same provision. For example, in section 2 of the proposed initiative, "this paragraph" should instead be referenced as "this subsection (1.9)".
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

Accordingly, in subsection (1.9), the provisions in (I) and (II) are subparagraphs and should be formatted as follows:

"...owned by one or more persons or entities:

(I) Actively conducting business on or by utilization of such property; and

(II) Not exceeding the applicable size standard and affiliation restrictions that would qualify the business as a small business for federal government programs administered by the United States small business administration."

5. 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)...".
6. 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.

However, it is unnecessary to initial-capitalize "Small Business Administration" in the proposed initiative.

7. It is standard drafting practice, when referencing an act, to initial-capitalize the name of the act and use quotation marks. For example, the public school finance act of 1994 should instead be shown as the "Public School Finance Act of 1994".