

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Marla F. Benavides and Debra Carroll
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 24, 2023

SUBJECT: Proposed initiative measure 2023-2024 #28, concerning power of taxation

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 constitution** appear to be:

1. To repeal amendment XVI to the U.S. Constitution; and
2. To levy an income tax on individuals and corporations.

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. As an amendment to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is that your intention?
3. The end of the first paragraph of section 1 of the proposed initiative states that "the Laws of Congress, and Amendments to the Constitution shall become Supreme Law only when PURSUANT TO THE CONSTITUTION:".
 - a. Is the reference to the "Constitution" to the state constitution or the U.S. Constitution"?
 - b. Small capital letters should be used when adding language to the state constitution throughout the proposed initiative.
 - c. One of the conditions for "the Laws of Congress" and "Amendments to the Constitution" to "become Supreme Law" is that amendment XVI of the U.S. Constitution is invalid. Do you want congressional authority and amendments to the U.S. Constitution to be supreme over state law if amendment XVI is found invalid?
4. Section 1 (b) to (h) of the proposed initiative are statements of intent or opinions. They do not appear to be connected to the language in the last sentence of section 1 of the proposed initiative, "when PURSUANT TO THE CONSTITUTION:". Consider relocating these statements of intent or opinions to section 6 of the proposed initiative, where there are other findings.
5. The proposed initiative would amend section 17 (1) of article X of the Colorado constitution. Section 17 (1) of article X is currently in the Colorado constitution. Is it your intention to repeal all of the current section 17 (1) of article X and replace it with the language of the proposed initiative?
6. Section 2 of the proposed initiative refers to section 39-22-104 (1.9)(b) in the Colorado Revised Statutes. This section does not exist in statute. Did you mean to refer to another section?

7. The amending clause in section 2 of the proposed initiative states that it will add language from the Colorado Revised Statutes and that it will amend sections 39-21-304 (1)(a) and (4), C.R.S. Is this intended to be a constitutional change or a statutory change?
8. Section 3 of the proposed initiative states that "no tax can be laid on land which will not affect the proprietor of millions of acres."
 - a. Does "land" encompass any property other than real property?
 - b. What is the meaning of the word "proprietor"?
 - c. Is it your intent that any property tax levied must "affect the proprietor of millions of acres"?
 - d. Can a local government levy a property tax if there is no proprietor in its jurisdiction that owns millions of acres?
 - e. What is the purpose of the requirement that "[t]he general assembly shall provide by law"?
 - f. Must all the property owned and taxed under this section be located in Colorado?
 - g. The introductory portion of Section 3 discusses taxes "laid on land," and then includes text that appears to be a headnote concerning income tax. Why are these two provisions in the same section?
 - h. Does the provision regarding taxes laid on land fit within the single subject of the proposed initiative?
9. An income tax is imposed in section 3(a) of the proposed initiative "on or after January 1, 2024 BUT BEFORE JANUARY 1, 2023".
 - a. The conjunction "BUT" means that this clause concerns dates that meet both of these conditions, but there are no dates that meet both of these conditions. What dates do you intend this clause to cover?
 - b. For what length of time do you intend for the tax to be retroactive?
 - c. How would tax be assessed and collected for years in the past?
10. The proposed initiative in section 3 (a) provides for an individual income tax of four and fifty-five hundredths of a percent to be levied on or after January 1, 2024. Section 3 (b) of the proposed initiative provides for another income tax of

- four and four-tenths of a percent to be assessed after January 1, 2024. Is the intended individual tax rate eight and ninety-five hundredths of a percent?
11. Section 3 (b) of the proposed initiative is "SUBJECT TO SUBSECTION (2) OF THIS SECTION...". The proposed initiative does not contain a subsection (2) in section 3. Did you mean to refer to a different subsection?
 12. Section 3 (b) of the proposed initiative refers to section 39-22-104 (1.9)(a) in the Colorado Revised Statutes. This section does not exist in statute. Did you mean to refer to another section?
 13. Section 3 (b) of the proposed initiative refers to section 63 of the state internal revenue code. The state does not have an "internal revenue code." Did you mean to refer to section 63 of the federal internal revenue code?
 14. Section 3 (c) of the proposed initiative states that "[p]rior to the application of the tax rate prescribed in subsection (1), (1.5), or (1.7), OR (1.9) of this section, the federal taxable income shall be modified as provided in subsections (3) and (4) of this section".
 - a. Section 3 of the proposed initiative does not have a subsection (1), (1.5), (1.7), or (1.9). Did you intend to refer to different subsections?
 - b. The proposed initiative does not contain subsection (3) or (4) in section 3. Did you mean to refer to another section?
 15. The proposed initiative in section 4 states that the rate reduction set forth in section 39-22-301 (1)(d)(I)(k) of the Colorado Revised Statutes is not subject to the requirements set forth in 39-21-304.4, C.R.S. This section of statute does not exist. What section of statute did you mean to refer to?
 16. Section 4 of the proposed initiative states that the section is an amendment to the Colorado constitution, then states that it is amending the Colorado Revised Statutes. Is section 4 amending the Colorado constitution or changing the Colorado Revised Statutes?
 17. Section 5 of the proposed initiative specifies that it will be effective ninety days after final adjournment of the general assembly (unless a petition is filed). The date of final adjournment may be considered to occur in either 2023 or 2024.
 - a. Which date of adjournment of the general assembly will trigger this provision?
 - b. Does this effective date apply to the entire proposed initiative?

- c. If the effective date does not apply to the entire proposed initiative, does it apply only to Section 5?
 - d. Has the time it will take to implement the proposed initiative by the department of revenue been considered?
 - e. If a petition is filed, is it your intent that this proposed initiative be subject to a vote in the 2026 election?
18. Sections 5 and 10 of the proposed initiative set forth the effective date and state that it is subject to a petition of the people. If the people file a petition against this measure, it will be voted on in the 2026 election and become effective upon the governor's certification afterwards. Do you want to subject the proposed initiative to another election in 2026?
19. Section 6 says that it takes effect December 31, 2023, or as stated; however, the proposed initiative would appear on the ballot at the 2024 general election. When do you intend that this section take effect? Is it meant to take effect at a different date than the rest of the proposed initiative?
20. The last sentence in the first paragraph of section 6 of the proposed initiative (labelled "Findings") appears to be missing a clause at the end that would reference the powers described below in subsections (a) to (n). Consider adding language that would explain how subsections (a) to (n) are to be used in the proposed initiative.
21. Section 7 of the proposed initiative states, "**According to ARTICLE I SECTION 9, THE PEOPLE FIND that:**". To what does this citation refer?
22. Section 8 of the proposed initiative states, "The State of Colorado cannot coin money...". Later it says, "[Colorado] can reintroduce coin gold and silver money...". May Colorado create coined money?
23. Does the provision concerning coinage fit within the single subject of the proposed initiative?
24. Section 8 of the proposed initiative grants Colorado the power to issue federal notes.
- a. What are "federal notes"?
 - b. How will Colorado issue a federal note?
25. Does the provision concerning federal notes fit within the single subject of the proposed initiative?

26. Section 9 says that “The People of Colorado render Amendment XVI NULL and VOID.”
- a. How do you propose that the state constitution should nullify part of the U.S. Constitution?
 - b. How does Section 9 function in conjunction with Article VI, Clause 2, of the U.S. Constitution, the Supremacy Clause?
 - c. The nullification of part of the U.S. Constitution would presumably affect the entire United States, not only Colorado. Is this your intent?
27. Section 9 “challenge[s] the United States to try and collect income taxes directly without apportionment.” What does “challenge” mean here?
28. Section 3 (b) of the proposed initiative appears to refer to the federal internal revenue code; however, the internal revenue code would presumably be invalid under Section 9 of the proposed initiative. How will Section 3 (b) of the proposed initiative function in light of Section 9?
29. The state income tax established in Title 39, Article 22, of the Colorado Revised Statutes applies to federal taxable income as modified by Colorado law. To what tax base will the state income tax apply if Section 9 of the proposed initiative causes the federal laws defining “federal taxable income” to become null and void?
30. Pursuant to section 10 of the proposed initiative, the effective date is thirty days after the 2023 election (unless a petition is filed).
- a. Does this effective date apply to the entire proposed initiative?
 - b. The proposed initiative would appear on the ballot at the 2024 general election. Would the proponents consider changing “November 2023” to “November 2024”?
 - c. Has the time it will take to implement the proposed initiative by the department of revenue been considered?
 - d. If a petition is filed, is it your intent that the proposed initiative be subject to a vote in the 2026 election?

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.).
For example:
SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:
 2. 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, {choose one of the following and customize for the initiative} ["In the constitution of the state of Colorado, **add** section __ to article X as follows:".] OR [For example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".]
 3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A section number and headnote should be added to "10)" on page 7 of the proposed initiative and be in bold-face type.
 4. 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.
 5. 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.
- 6. The following words are misspelled: In section 17 (a), "rebuttal" should be spelled "rebut".