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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: May 17, 2023

SUBJECT: Proposed initiative measure 2023-24 #50, concerning a requirement for voter approval for government to retain additional property tax revenue if the total of statewide property tax revenue is projected to go up more than 4% annually and requiring a referred measure for such approval to be a stand-alone subject and providing specific language for the ballot title.

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 require voter approval for government to retain total statewide property tax revenue that is projected to be in excess of 4% annually.
2. To require that for voter approval of a property tax revenue increase, any referred measure be a stand-alone subject and the ballot title must contain specific language.

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. In the proposed initiative, the following language is added to subsection (1)(a) of section 3 of Article X of the Colorado constitution: "If the total of statewide property tax revenue is projected to go up more than 4% annually, voter approval is needed for government to retain the additional revenue."
 - a. What does "total of statewide property tax revenue" mean?
 - b. For purposes of this subsection (1)(a), how would the total statewide property tax revenue projection be calculated? Who is responsible for making the calculation?
 - c. When is the annual projection required to be made? Should the projection be tied to a fiscal year, or to a calendar year?
 - d. What is meant by the term "government"?
 - e. Does "the additional revenue" as used in the proposed initiative refer to the property tax revenue that is projected to be in excess of 4% from the prior year?
 - f. Is it the intent of the proponents that voter approval is required if the aggregate of all property tax revenue that will be collected across the state for every taxing entity is projected to go up more than 4% from the prior year?
 - g. If property tax revenue is projected to go up more than 4% for only one taxing entity in the state that imposes a property tax, under the proposed initiative, would voter approval be required for that taxing entity to retain the projected revenue that would be in excess of 4% from the prior year's revenue?

- h. Is it the intent of the proponents that a majority of voters across the state must vote to approve the retention of projected property tax revenue in excess of 4% from the prior year's revenue?
- i. If the intent is that a majority of voters across the state must vote to approve the retention of projected property tax revenue that would be in excess of 4% from the prior year's revenue, then if the majority of voters in a taxing entity in the state that imposes a property tax vote to approve such retention, but the majority of voters statewide do not, would the taxing entity whose voters voted to approve the retention not be able to retain the additional property tax revenue?
- j. If statewide property tax revenue is projected to go up more than 4% and voters reject government to retain and spend revenue above the limit, but actual statewide revenue fails to increase more than 4%, is the intent that any taxing entity with more than 4% growth must still refund or by other means stay below the annual limit?
- k. If there is a decrease in statewide property tax revenue from one year to the next, then would the decreased amount be the basis for calculating whether there will be an excess of 4% annual increase for the next year or for any subsequent year?
- l. If voters approve retention of property tax revenue under the proposed initiative and there is later a decrease by more than 4% of property tax revenue from the voter approved amount in any year, is subsequent voter approval required then for retention of property tax revenue that is projected to go up more than 4% from the decreased amount?
- m. Is it the intent of the proponents that retaining revenues for bond indebtedness, contractual obligations, or that are utilized for tax increment financing also be subject to voter approval?
- n. If voters do not approve retention of "additional revenue" what is the result for individual taxing entities?
 - I. Would refunds be required?
 - II. Would mill levies need to be reduced?
 - III. Would property tax credits be allowed to be offered?
 - IV. If the proponents intend for the proposed initiative to apply to the aggregate of property tax revenue across the state for all taxing entities, and refunds are required if voters do not approve retention of "additional revenue", how would the amount that should be refunded be calculated?
- o. What is the impact of the proposed initiative on taxing entities that have received voter approval to retain and spend fiscal year spending

exceeding the spending limits set forth in section 20 (7) of Article X of the Colorado constitution?

- p. If voters vote to approve government retention of statewide property tax revenue that is projected to go up more than 4% from the preceding year pursuant to the proposed initiative, could it be said that such voter approval would also constitute the voter approval required under section 20 (7)(d) of Article X of the Colorado constitution for a local district to retain and spend revenue exceeding the maximum annual percentage change in the local district's fiscal year spending?
3. In the proposed initiative, subsection (1)(e) is added to section 3 of Article X of the Colorado constitution and states: "For voter approval of a property tax revenue increase, any referred measure must be a stand-alone subject. The ballot title shall read: "Shall property taxes be increased by [total projected increase over prior fiscal year] allowing government to retain and spend property tax revenue above the 4% annual limit on property tax increases for fiscal year X to X?"
- a. Is subsection (1)(e) intended to apply to voter approval that is required for government to retain additional revenue if "the total of statewide property tax revenue is projected to go up more than 4% annually"?
 - b. What constitutes a "stand-alone subject"?
 - I. If a "stand-alone subject" is the same as the requirement that all proposed initiatives have a single subject pursuant to Article V, section 1 (5.5) of the Colorado constitution, would the proponents consider removing this "stand-alone subject" requirement to eliminate redundancy?
 - c. The language proposed in subsection (1)(a) of the proposed initiative states that "voter approval is needed for government to retain the additional revenue" "[i]f the total of statewide property tax revenue is projected to go up more than 4% annually". However, the language for proposed subsection (1)(e) says "[s]hall property taxes be increased" and "allowing government to retain and spend property tax revenue above the 4% annual limit on property tax increases". Accordingly, the language in the proposed initiative appears to refer to the 4% limit differently, in (1)(a) the limit is regarding "property tax revenue" and in (1)(e) the limit is regarding "property tax".
 - I. How should these two sections be read together?

- II. Is the intent of the proposed initiative to impose a cap of more than 4% on property taxes? Or, is the intent of the proposed initiative to impose a cap of more than 4% on property tax revenue?
 - III. Would the proponents consider revising the language accordingly based on their intent?

- 4. Section 29-1-301 (1)(a) of the Colorado Revised Statutes prohibits the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent on special districts, statutory municipalities, and counties, unless the increase beyond the limit is approved by voters. Section 29-1-301 (1.5) of the Colorado Revised Statutes further states that all property tax revenues, except revenue exempted, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation and that the limitation shall be applied to such aggregate property tax revenues.
 - a. If the proposed initiative 2023-24 #50 is approved by voters, will section 29-1-301 (1)(a) of the Colorado Revised Statutes, with the five and one-half percent excess revenue limit, be made obsolete?
 - I. If so, would proponents consider adding conforming amendments to part 3 or article 1 of title 29?
 - b. Section 29-1-301 of the Colorado Revised Statutes provides a number of exclusions for computing the revenue limit set forth in section 29-1-301 (1)(a). For example, section 29-1-301 (1)(a) of the Colorado Revised Statutes excludes from the calculation increased valuation for assessment attributable to annexation or inclusion of additional land within the taxing entity in the preceding year, new construction, increased volume of production by certain producing mines, and previously exempt federal land that becomes taxable if such property causes an increase in level of services provided by the taxing entity. Section 23-1-301 (1)(b) of the Colorado Revised Statutes allows any taxing entity to apply to the division of local government in the department of local affairs for authorization to exclude all or any portion of the increased valuation for assessment attributable to new primary oil or gas production for the preceding year from certain producing oil and gas leasehold or land. And, section 29-1-301 (1.2)(a)

of the Colorado Revised Statutes excludes revenue raised to pay for capital expenditures.

- I. Should the exclusions enumerated in section 29-1-301 of the Colorado Revised Statutes also be applicable to the calculation of the total statewide property tax revenue under the proposed initiative?
- II. The homestead exemption for qualifying senior citizens and disabled veterans in section 3.5 of Article X of the Colorado constitution, exempts, for the purposes of section 20 of Article X of the Colorado constitution, any compensation a local government entity receives as a result of the net amount of property tax revenues lost caused by the exemption. Under the proposed initiative, will compensation to a local government entity as a result of the homestead exemption for qualifying senior citizens and disabled veterans count towards the calculation of the excess 4% annual total statewide property tax revenue limitation?
- III. Should there be any additional exclusions in the calculation of the excess 4% annual total statewide property tax revenue increase limitation?

5. Do the proponents anticipate any interaction or conflict with any other proposed referred ballot measures or any other proposed ballot initiatives?

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. It is standard drafting practice for the headnote following the Colorado constitution section number to be in bold and lowercased, with a period at the end of the headnote. For example:
 - a. **"Section 3. Uniform Taxation – Exemptions."**

2. Articles in the Colorado constitution are numbered with roman numerals. Therefore, references to "article 10" should be "article X".
3. It is standard drafting practice to specify in the amending clause which subsections of the Colorado constitution are being amended, added, or repealed, unless you are amending the entire section. Consider rewriting the amending clause in Section 1 as follows:
 - a. "In the constitution of the state of Colorado, section 3 of article X, **amend** (1)(a); and **add** (1)(e) as follows:"
4. In the second sentence of subsection (1)(e), the first word of the sentence, "THE", should be capitalized to read as "THE".