

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Jon Caldara and Ben Murrey  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** July 21, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #75, concerning a reduction in property taxes.

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. Providing for a reduction in property taxes.
2. Reimbursing local governments for the reduction in revenue associated with lowering property taxes.

3. Creating new classes of property, including renewable energy agricultural land, primary residence real property, and qualified-senior primary residence real property.

## **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 proposed initiative may be on the 2024 ballot at the earliest. Is that the intent?
  - a. Pursuant to § 1-40-106 (1), C.R.S., the title for the proposed initiative must be set no later than the third Wednesday in April of the year in which the measure is to be voted on. The title for the proposed initiative was not set by the third Wednesday of April, 2023. The proposed initiative cannot be on the 2023 ballot and may only be on the November, 2024 (or later) ballot.
  - b. The proposed initiative would not increase the rate of property taxes or revenue collected. Rather, it would decrease the valuation for assessment rates, which will decrease revenue. Because the proposed initiative does not increase taxes or revenue, section 20 of article X of the Colorado constitution is not implicated and no odd-numbered year election is allowed. As such, the initiative cannot be on the 2023 ballot and may only be on the November, 2024 (or later) ballot.
3. The proposed initiative is effective upon the proclamation of the governor if it is approved by the voters at the November, 2024 general election. The proclamation of the governor usually occurs in December or January after the election. How will the different affected entities comply with the timing of the provisions requiring action on a date that is before the effective date of the proposed initiative?

The December 2024 or January 2025 effective date conflicts with the following timing dates in the proposed initiative:

- a. Section 1 of the proposed initiative provides that §§ 22-40-102 (3)(b)(I) and 22-40-102 (6)(b)(I), C.R.S., would postpone from December 15,

2023, to January 5, 2024, the deadline for certification by a school district of the amounts necessary for the school district to meet its financial obligations during that fiscal year.

- b. Section 11 of the proposed initiative provides that § 39-1-111 (1)(b)(I), C.R.S., would postpone from December 22, 2023, to January 12, 2024, the deadline for levying property taxes by county officials.
- c. Section 11 of the proposed initiative provides that § 39-1-111 (5)(b)(I), C.R.S., would postpone from December 10, 2023, to December 29, 2023, the deadline for changing the valuation for assessment or actual value by county officials.
- d. Section 12 of the proposed initiative provides that § 39-5-128 (1)(b)(I), C.R.S., would postpone from December 15, 2023, to January 5, 2024, the deadline for county assessors to certify the total valuation for assessment.
- e. Section 13 of the proposed initiative provides that § 39-3-210 (2)(a)(I), C.R.S., requires a treasurer to calculate the total property tax reduction for property tax years beginning on January 1, 2023, and January 1, 2024.
- f. Section 13 of the proposed initiative provides that, pursuant to § 39-3-210 (2)(c)(I), C.R.S., each county assessor will calculate the difference in assessed value from the property tax year commencing on January 1, 2022, beginning with the property tax year commencing on January 1, 2023.
- g. Section 13 of the proposed initiative provides that § 39-3-210 (2.5)(a)(I), C.R.S., applies to require county treasurers to report estimates of property tax revenue to the local government administrator on or before September 15, 2023.
- h. Section 13 of the proposed initiative provides that, pursuant to § 39-3-210 (3), C.R.S., each county treasurer will report to county assessors the amounts specified in § 39-3-210 (2), C.R.S., no later than March 1, 2024.
- i. Section 13 of the proposed initiative provides that, pursuant to § 39-3-210 (4)(a)(I), C.R.S., the state treasurer will reimburse to each county treasurer the amounts calculated pursuant to § 39-3-210 (4.5), C.R.S., no later than April 15, 2024.

- j. Section 14 of the proposed initiative provides that § 39-5-129 (2)(a), C.R.S., would postpone from January 10, 2024, to January 19, 2024, the deadline for delivery of a tax warrant from a county assessor to the state treasurer.
  - k. Section 15 of the proposed initiative provides that § 39-10-103 (1)(c)(I), C.R.S., requires the state treasurer to mail the property tax statement for the property tax year commencing January 1, 2023, as soon as practicable after January 19, 2024.
  - l. Section 17 of the proposed initiative provides that § 39-22-2002 (5.5)(a), C.R.S., requires the executive director of the department of revenue to calculate the identical individual refund amounts pursuant to § 39-22-2003 (3), C.R.S. The calculation shall be made no later than October 1, 2023. This requirement is repealed on July 1, 2024.
  - m. Section 18 of the proposed initiative provides that, pursuant to § 22-54-114 (10)(a), C.R.S., the state treasurer shall transfer seventy-two million dollars from the general fund to the state public school fund on February 1, 2024.
  - n. Section 19 of the proposed initiative provides that § 39-5-121 (3.5)(a), C.R.S., requires the property tax administrator to prepare a description of property tax classes and subclasses set forth in §§ 39-1-104 and 39-1-104.2, C.R.S., on or before March 1, 2024.
  - o. For property tax years commencing on January 1, 2023, section 20 of the proposed initiative provides that § 39-10-104.5 (3)(a)(II)(A), C.R.S., prohibits the accrual of delinquent interest for late payments if paid after the last day of February, 2023, and before the accrual of fifteen days after the mailing by the state treasurer of the tax statement.
4. Certain limits on property tax revenue and changes to property valuation set forth in the proposed initiative appear to be intended to take effect before the effective date of the proposed initiative. Is it the intent that the following provisions be applied retroactively once the proposed initiative takes effect?
- a. Section 5 of the proposed initiative provides that § 29-1-306 (2)(a), C.R.S., for property tax years beginning January 1, 2023, limits property tax revenue retained by a local government to an amount based on the growth in inflation from the previous property tax year.

- b. Section 6 of the proposed initiative provides that § 39-1-103 (5)(g), C.R.S., which deals with the actual value of renewable energy agricultural land, applies to property tax years beginning January 1, 2024.
  - c. Section 7 of the proposed initiative provides that § 39-1-104 (1)(b)(I), C.R.S., which deals with the valuation for assessment for property classified as nonresidential lodging property, applies to property tax years beginning January 1, 2023.
  - d. Section 7 of the proposed initiative provides that § 39-1-104 (1)(b)(II), C.R.S., which deals with the valuation for assessment for real and personal property classified as lodging property, applies to property tax years beginning January 1, 2024, until January 1, 2027.
  - e. Section 7 of the proposed initiative provides that § 39-1-104 (1.8)(a)(III), C.R.S., which deals with the valuation for assessment for real and personal property classified as agricultural property, applies to property tax years beginning January 1, 2024, until January 1, 2031.
  - f. Section 7 of the proposed initiative provides that §§ 39-1-104 (1.8)(b)(I) and 39-1-104 (1.8)(b)(II), C.R.S., which deal with the valuation for assessment for all property classified under any improved commercial subclass code, apply to property tax years beginning January 1, 2023.
  - g. Section 7 of the proposed initiative provides that § 39-1-104 (1.8)(b)(III), C.R.S., which deals with the valuation for assessment for all property not otherwise classified pursuant to §§ 39-1-104 (1) or 39-1-104 (1.8)(a), C.R.S., and that is not under a vacant land subclass, applies to property tax years beginning January 1, 2024.
  - h. Section 8 of the proposed initiative provides that § 39-1-104.2 (3)(r)(II), C.R.S., which deals with the valuation for assessment for residential property, applies to property tax years beginning January 1, 2023.
  - i. Section 8 of the proposed initiative provides that § 39-1-104.2 (3)(r)(III), C.R.S., which deals with the valuation for assessment for residential property, applies to property tax years beginning January 1, 2024.
5. How would an assessor administer the retroactive changes discussed in the previous question?

6. Would an assessor be required to refund property taxes collected for property tax year 2023 if the rate used to calculate 2023 property taxes is higher than that which is provided for in the proposed initiative?
7. Would an assessor be required to refund property taxes collected for property tax year 2024 if the rate used to calculate 2024 property taxes is higher than that which is provided for in the proposed initiative?
8. Some parts of the proposed initiative cite nonexistent statutes, funds, or accounts, as set forth below. Is it the intent to refer to a different statute, fund, or account in the following provisions?
  - a. Section 3 of the proposed initiative provides that money may be transferred to the state education fund pursuant to § 24-77-203 (3)(b)(III), C.R.S.
  - b. Section 4 of the proposed initiative provides in §§ 24-77-106.5 (1)(a) and 24-77-106.5 (1)(b), C.R.S., that the state may be allowed to retain certain revenues pursuant to part 2 of article 77 of title 24, C.R.S.
  - c. Section 7 of the proposed initiative, in § 39-1-104 (1.9)(a), C.R.S., cites part 2 of article 77 of title 24, C.R.S.
  - d. Section 8 of the proposed initiative, in § 39-1-104.2 (3.5)(a), C.R.S., cites to part 2 of article 77 of title 24, C.R.S.
  - e. Section 13 of the proposed initiative provides for a definition of "proposition HH general fund exempt account" in § 39-3-210 (1)(e.5), C.R.S., and that the account is created in "section 24-77-203 (3)(a)", C.R.S.
  - f. Section 13 of the proposed initiative states that § 39-1-210 (4)(a)(II), C.R.S., provides for funding to reimburse treasurers for the decrease in property tax rates using the local government backfill cash fund and the proposition HH general fund exempt account.
  - g. Section 13 of the proposed initiative provides that § 39-1-210 (4.5)(c)(I), C.R.S., refers to an amount in the proposition HH general fund exempt account.
  - h. Section 13 of the proposed initiative provides that § 39-1-210 (4.5)(c)(II), C.R.S., refers to an amount in the proposition HH general fund exempt account.

9. Section 7 of the proposed initiative provides that § 39-1-104 (1.9), C.R.S., would eliminate the reductions in valuation made in §§ 39-1-104 (1)(b) and 39-1-104 (1.8), C.R.S., if the state has not been permitted to retain and spend the surplus up to the proposition HH cap for state fiscal years beginning July 1, 2023. These provisions address property tax valuations for assessment for non-residential property classified as lodging property, agricultural property, renewable energy production property, or other nonresidential property not addressed in §§ 39-1-104 (1), C.R.S., or 39-1-104 (1.8)(a), C.R.S. Is the intent that if proposition HH is not approved by a majority of voters, the property tax valuation rates for these items will remain constant and not decrease?
10. Section 8 of the proposed initiative provides that § 39-1-104.2 (3.5)(a), C.R.S., would eliminate the reductions in valuation made in § 39-1-104.2 (3), C.R.S., if the state has not been permitted to retain and spend the surplus up to the proposition HH cap. These provisions address property tax valuations for the assessment of residential real property. Is the intent that if proposition HH is not approved by a majority of voters, the property tax valuation rates for residential real property will remain constant and not decrease?
11. Section 8 of the proposed initiative provides in § 39-1-104.2 (3.7)(a), C.R.S., that if proposition HH is approved by a majority of the voters, a working group will convene and issue a report due January 1, 2024.
  - a. If proposition HH is approved by a majority of voters, how will the working group issue the report by that date?
  - b. If proposition HH is not approved by a majority of voters, would this provision in the proposed initiative have any effect?
12. Section 8 of the proposed initiative provides that § 39-1-104.2 (3.7)(b), C.R.S., repeals § 39-1-104.2 (3.7)(a), C.R.S., effective July 1, 2024, which is before the effective date of the proposed initiative.
  - a. Is the intent to eliminate the working group component?
  - b. If so, why is § 39-1-104.2 (3.7)(a) included in the proposed initiative?
13. Section 13 of the proposed initiative provides that § 39-3-210 (4.5)(c)(I), C.R.S., calculates the property tax reimbursement amount for local governments based on an amount in the local government backfill cash fund and the proposition HH general fund exempt account. The proposition HH general fund exempt account does not exist. Is the intent to have the proposition HH general fund exempt account valued at zero dollars?

14. The local government backfill cash fund (fund) is created in the proposed initiative at section 13, which provides that, under § 39-3-210 (5.5), C.R.S., one hundred twenty-eight million dollars of general fund money will be transferred to the fund on February 1, 2024. The fund is used to backfill local governments for the property tax reductions in the proposed initiative.
- a. Is the intent that this fund is the only funding source for backfill?
  - b. How much backfill exceeding one hundred twenty-eight million dollars is expected to be needed?
  - c. How will any backfill exceeding one hundred twenty-eight million dollars be funded?
  - d. Is it the intent that the funding be retroactive to February 1, 2024?
  - e. How will the state fund a 2023-24 state fiscal year obligation during the 2024-25 state fiscal year?
  - f. Is the intent that the property tax administrator will not prepare the description of property tax classes by March 1, 2024?
  - g. If so, when will the description of property tax classes be submitted?
  - h. Is the intent that this provision not apply to property tax year 2023?
  - i. How will late payments for property tax years 2023 and 2024 be assessed?
15. Section 21 of the proposed initiative contains three appropriation clauses that concern the 2023-24 state fiscal year. Each clause states that a certain amount is appropriated for state fiscal year 2023-24. The proposed initiative would not be effective until December 2024 or January 2025, which is during the 2024-25 state fiscal year.
- a. What is the effect of these appropriation provisions?
  - b. Is the intent to not appropriate money to implement the act?
  - c. Is the intent to appropriate the funds in the 2024-25 state fiscal year?
16. What is the effect of the proposed initiative if a majority of voters approve proposition HH?
17. Is the proposed initiative intended to replace the language in proposition HH if proposition HH is approved by a majority of voters?



18. What is the effect of the proposed initiative if a majority of voters do not approve proposition HH?
19. Senate Bill 23-303 (the act), enacted during the 2023 legislative session, provides that section 3 of the act, § 39-1-104.2 (3.7), C.R.S., enacted in section 9 of the act, §§ 39-3-210 (1)(a.3), 1(e), and (2.5), C.R.S., enacted or amended in section 14 of the act, and section 18 of the act took effect upon its passage. What is the effect of these already enacted provisions if the proposed initiative is approved by a majority of the voters?
20. Section 5 of the proposed initiative provides that § 29-1-306 (2)(a), C.R.S., would limit increases in property tax revenue. Section 8 of the proposed initiative provides that § 39-1-104.2 (3)(q)(III), C.R.S., would subtract an amount from the valuation of property. Article X, section 3 (1)(a) of the Colorado constitution requires each property tax levy to be uniform upon all property in the jurisdiction. Do these provisions in the proposed initiative conflict with the Colorado constitution?
21. Does the new valuation approach in the proposed initiative comply with article X, section 3 (1)(a) of the Colorado constitution, which provides that the actual value of residential real property is determined solely by consideration of cost approach and market approach to appraisal?
22. If a local government imposes a mill levy that would exceed the property tax limit, as provided in section 5 of the proposed initiative, would this conflict with article X, section 20 of the Colorado constitution, which prohibits raising a mill levy beyond voter-approved limits?

## **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. The enacting clause on page 1 of the proposed initiative should end in a colon.
2. 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 Revised Statutes.