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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Steven Ward
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: August 23, 2023
SUBJECT: Proposed initiative measure 2023-2024 #77 concerning Ballot Title
Economic Impact Statements

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. To require that each ballot title for ballot measures include a summary of qualifying economic impact statements; and

2. To set the conditions under which an economic impact statement qualifies to be included in the summary.

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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least twelve days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.
3. The measure uses the phrase "economic impact statement" or "economic impact statements" in proposed section 1-40-106 (3)(k), in the headnote of proposed section 1-40-122.5, and in proposed section 1-40-122.5 (1), (3), and (5). The following questions concern this phrase:
 - a. What is the "economic impact statement"?
 - b. Do the proponents intend for "economic impact statement" to mean the same thing in all instances where it is used? If so, the proponents may consider defining this term in the measure.
 - c. For a single ballot measure, is there one economic impact statement or are there multiple economic impact statements?

- d. Who writes the economic impact statement? Proposed subsection 1-40-122.5 (3) seems to imply that economic impact statements are written and submitted by interested parties pursuant to proposed subsection 1-40-122.5 (2); however, proposed subsection 1-40-122.5 (5) states that the content of the economic impact statement shall be certified by the director of legislative council.
 - e. When should the economic impact statement be written? Is it the proponents' intent that an economic impact statement be written before a ballot title is set by the title board? If it is the proponents' intent that an economic impact statement be written after a ballot title is set by the title board, is it the proponents' intent that the ballot title be subsequently changed to include a summary of the economic impact statement?
4. Proposed section 1-40-106 (3)(k) requires that a summary of the economic impact statement appear before each ballot title, and proposed section 1-40-122.5 (1) requires that the ballot title include a summary of qualifying economic impact statements. These requirements appear to be additive, such that two summaries are required. Is this the proponents' intent?
 5. If only one summary is required, the proponents may consider clarifying whether the summary is required to appear before the ballot title or as part of the ballot title.
 6. Proposed section 1-40-106 (3)(k) requires a "summary of the economic impact statement."
 - a. What does "the economic impact statement" mean in this instance?
 - b. Proposed section 1-40-122.5 (3) contemplates the submission of multiple qualifying statements. If multiple qualifying statements are submitted, which should be summarized?
 - c. When should the summary of the economic impact statement be written?
 - d. What does it mean for a summary of the economic impact statement to precede each ballot title? Is it a separate sentence or paragraph from the ballot title?
 - e. Does it precede the ballot title set by the title board, the ballot title printed on circulated petitions, the printed ballot mailed to voters, the ballot information booklet, or some combination of these?

7. Proposed section 1-40-106 (3)(k) would appear in the same section of the Colorado Revised Statutes that requires ballot titles for statewide referred measures to be in the same form as ballot titles for initiatives as required by section 1-40-106 (3)(c), C.R.S. Is it your intent that the requirement in proposed section 1-40-106 (3)(k) apply to referred measures? If so, you may consider clarifying the requirement accordingly.
8. Does the requirement in proposed section 1-40-106 (3)(k) apply in a case when no economic analysis is submitted pursuant to proposed section 1-40-122.5 (2)?
9. Proposed section 1-40-122.5 (1) requires that "the ballot title" include an objective summary of qualifying economic impact statements.
 - a. Does "the ballot title" refer only to initiated measures, or to both initiated and referred measures?
 - b. What does it mean for the summary of qualifying economic impact statements to be objective?
 - c. Who is required to write the objective summary?
 - d. Is the summary meant to summarize all qualifying economic impact statements? If so, does the measure require the inclusion of multiple summaries or of a single summary of multiple statements?
 - e. When should the summary be added to the ballot title?
 - f. The procedure in the measure does not appear to allow for a summary of qualifying economic impact statements to be prepared in time for inclusion by the title board at its title-setting meeting. In light of this, does the measure require that the ballot title subsequently be amended to add the summary?
 - g. Colorado courts have determined that a ballot title must clearly state a single subject and describe the central features of a proposed initiative. Are the qualifying economic impact statements a central feature or an additional requirement for the ballot title?
10. Proposed section 1-40-122.5 (1) states that "[t]he *statement* must utilize dynamic scoring and at a minimum must include [...]" (emphasis added). Are these requirements intended to apply to the statement or to the summary to be included in the ballot title?
11. What is "dynamic scoring"?

12. What does it mean for a statement or summary to utilize dynamic scoring?
Does the requirement that a statement utilize dynamic scoring impose any additional requirement beyond the requirement in proposed section 1-40-122.5 (2) that the underlying economic analysis that composes the basis for the statement include dynamic modeling?
13. What would the dynamic score be for this proposed initiative?
14. Proposed section 1-40-122.5 (1) creates a requirement that an objective summary of qualifying economic impact statements be included in a ballot title. How should the author of the objective summary weigh this requirement against the requirement in section 1-40-106 (3)(b), C.R.S., that ballot titles be brief?
15. Does the requirement in proposed section 1-40-122.5 (1) apply in a case when no economic analysis is submitted pursuant to proposed section 1-40-122.5 (2)?
16. In an instance where a ballot measure, such as this measure, is expected to have no effect on one or more of employment, GDP, or state and local government revenues, expenditures, taxes, and fiscal liabilities, does the measure require that the ballot title state that no such effect(s) are expected?
17. Does proposed section 1-40-122.5 (1) require that dynamic scoring be used to estimate the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities? If so, must the dynamic scoring account for decisions that state and local policymakers will be motivated to make in the future as a result of a measure's passage?
18. How would the objective summary address local government revenues, expenditures, taxes, and fiscal liabilities for measures that are expected to affect different local governments in different ways?
19. The measure does not specify whether the objective summary may or must identify qualitative or quantitative effects. Is it your intent that the objective summary identify one or the other type of effects, or both?
20. Proposed section 1-40-122.5 (2) allows "any interested party" to submit an economic analysis. Who is an interested party? Does this mean something different than "any person"?
21. The state chief economist of the general assembly is not currently an officer created in statute.

- a. Is the state chief economist of the general assembly the same person as the chief economist of the staff of the legislative council?
 - b. As this office is not currently referenced in statute, is it the proponents' intent that the general assembly always be required to designate a chief economist?
22. Proposed section 1-40-122.5 (2) requires that an economic analysis include dynamic modeling.
- a. What is "dynamic modeling"?
 - b. How, if at all, does dynamic modeling differ from dynamic scoring?
 - c. What does it mean for an analysis to include dynamic modeling?
 - d. Must an analysis reach any of its conclusions by way of dynamic modeling, so long as a dynamic model is included?
 - e. Must an analysis reach all of its conclusions by way of dynamic modeling?
23. Proposed section 1-40-122.5 (2) requires that an economic analysis include impacts on "state and local GDP, personal income, employment and tax revenue"; however, proposed section 1-40-122.5 (1)(c) requires the objective summary to include "the effect the measure will have on state and local government revenues, expenditures, taxes and fiscal liabilities."
- a. How will the objective summary include the effect of a measure on government revenue from nontax sources, government expenditures, and government fiscal liabilities if these effects are not included in the economic analysis?
 - b. Will the portions of the economic analysis presenting a measure's effects on local GDP and personal income be used to prepare the economic impact statement or objective summary?
 - c. Should an economic analysis present impacts for all local jurisdictions together, all local jurisdictions separately, or only some local jurisdictions?
24. The economic analysis is required to be "performed by an economist."

- a. There is no public certification for an economist analogous to that for a physician or attorney. In light of this, what qualifications, if any, must a person possess in order to perform an economic analysis?
 - b. What documentation, if any, must an interested party provide to the chief economist in order to prove that the economic analysis was performed by an economist?
25. The assumptions used in the analysis are required to be reviewed and validated by "an expert in the field".
- a. What is "the field"? Does this refer to economics, public policy, or the subject matter area of the initiative for which an economic analysis is submitted?
 - b. What qualifications, if any, must a person possess in order to review and validate the assumptions used in an economic analysis?
 - c. What documentation, if any, must an interested party provide to the chief economist in order to prove that the assumptions were reviewed and validated by an expert in the field?
 - d. It appears that the measure does not require an interested party to present their assumptions to the chief economist; rather, it only requires that the interested party assure the chief economist that the assumptions were validated by an expert in the field. Is this correct?
 - e. Will the expert in the field be selected by the interested party, the economist performing the analysis, the state chief economist of the general assembly, or someone else?
 - f. What does it mean for assumptions to be "validated"? Insofar as the assumptions concern future economic behavior, how can they be validated before the behavior is actually observed?
26. For the purposes of proposed section 1-40-122.5 (3), who is the "state chief economist"? Is this person the same as the "state chief economist of the general assembly" identified in proposed section 1-40-122.5 (2)?
27. Is it correct to interpret proposed section 1-40-122.5 (3) as requiring the chief economist or their designee to determine that any economic analysis is qualified, regardless of its methodological value, bias, or conclusions, if: it includes dynamic modeling; it includes impacts on state and local GDP, personal income, employment, and tax revenue; it was performed by an

- economist; and its assumptions were reviewed and validated by an expert in the field?
28. Dynamic models are often proprietary products subject to user agreements that do not allow for public sharing of their methodology. If an interested party submitting an economic analysis does not allow the chief economist to examine the methodology used to create the analysis, how will the chief economist determine whether the analysis uses dynamic modeling?
 29. States that have used dynamic modeling to estimate the economic impacts of legislation have found that policy changes generally result in smaller dynamic impacts than expected. This may be because dynamic models used to estimate the effects of a program fail to capture opportunity costs, i.e., the way in which money used for a program would otherwise be used in its absence. The measure does not include any requirement that a dynamic model account for opportunity costs, out-of-state leakages, or other common sources of estimation error. Is it the proponents' intent that the chief economist or their designee evaluate analyses submitted pursuant to proposed section 1-40-122.5 (2) for methodological soundness or flaws?
 30. Commercially available dynamic economic models are complex and rely on the correct calibration of hundreds or thousands of assumptions in order to produce accurate results. Does the requirement in proposed section 1-40-122.5 (2) that the assumptions used in the analysis be reviewed and validated by an expert in the field require that the expert in the field ensure that the model is correctly calibrated to produce accurate results? If not, who, if anyone, will ensure that the dynamic model used to prepare an economic analysis is correctly calibrated?
 31. It is unclear whether proposed section 1-40-122.5 (3) requires the chief economist to prepare an economic impact statement summary, or whether it requires the chief economist to issue a final determination as to the qualification of an economic impact statement summary produced by someone else. What is the proponents' intent?
 32. Is the chief economist required to issue a single final determination as to all economic analyses submitted with respect to a given initiative at the same time, or is a unique final determination to be issued for every economic analysis?
 33. What is meant by "[i]f multiple qualifying statements are submitted there shall be a range of all qualifying statements in the summary"? Does "statements"

- here refer to the economic analyses submitted by interested parties pursuant to proposed section 1-40-122.5 (2)?
34. Proposed section 1-40-122.5 (3) states that "[i]f no party submits a qualifying statement, then this section shall not apply."
 - a. "This section" appears to mean proposed section 1-40-122.5. Is this correct?
 - b. For how long does the section cease to apply? Does the inapplicability of the section disallow interested parties from submitting an economic analysis pursuant to subsection (2) of the affected section?
 - c. If the inapplicability provision is triggered, does the requirement in proposed section 1-40-106 (3)(k) continue to apply? If so, how should a summary of the economic impact statement be authored in this instance?
 35. For the purpose of proposed section 1-40-122.5 (3), what is "a final determination as to the qualification of the economic impact statement summary"?
 36. To whom should the final determination be issued?
 37. Do the proponents intend to specify a date by which the chief economist is required to issue a final determination as to the qualification of the economic impact statement summary?
 38. For the purpose of proposed section 1-40-122.5 (4), what is "the county in which the petition has been filed"? Will this always be the city and county of Denver?
 39. Does the phrase "the court shall conduct a summary proceeding on the record and shall be concluded within ten days after the commencement thereof" mean that the summary proceeding must be conducted within ten days after the filing of a challenge?
 40. Proposed section 1-40-122.5 (4) does not specify what changes, if any, must be made upon the decision of the district court. If the district court determines that the state chief economist erred in their determination pursuant to proposed section 1-40-122.5 (3), what corrective action should be taken?
 41. Do the proponents intend to specify a date by which the review of the district court decision shall be reviewed by the Colorado Supreme Court? For instance,

- section 1-40-107, C.R.S., requires a ballot title challenge "shall be disposed of promptly."
42. If, pursuant to the determination of the state chief economist, or pursuant to the decision of the district court or the Colorado Supreme Court, all submitted economic impact statements are disqualified, what economic impact statement summary shall be included on the ballot?
 43. The economic impact statement must be finalized in time for local governments to print the millions of statewide ballots. Given the timing of the filings, and the possible appeals, what happens if a final economic impact statement is not ready at the deadline for the local election officials to print the ballot?
 44. Is the "director of legislative council" in proposed section 1-40-122.5 (5) the same as the "director of research of the legislative council of the general assembly" in section 1-40-105.5, C.R.S.?
 45. For the purpose of proposed section 1-40-122.5 (5), what is "the economic impact statement"? Is this the same as the "economic impact statement summary" on which the state chief economist is required to issue a final determination pursuant to subsection (3)?
 46. Is it the proponents' intent that the director of legislative council certify the content of the economic impact statement before or after a district court decision is reviewed by the Colorado Supreme Court?
 47. Is the economic impact statement certified to the secretary of state the language to be included in the ballot title pursuant to proposed section 1-40-122.5 (1), and to precede the ballot title pursuant to proposed section 1-40-106 (3)(k)? If the latter, then given it appears the economic analysis may be submitted after the statement of sufficiency is filed, do you intend for the ballot title that is included on the ballot to be different from the ballot title that was circulated for signatures?
 48. Is the economic impact statement certified to the secretary of state different from the objective summary of qualifying economic impact statements? If it is different, when and by whom should the objective summary be prepared? As subsection (1) uses economic impact *statements*, plural, what other economic impact statement or statements should be objectively summarized?
 49. Is the economic impact statement written by the interested parties pursuant to subsection (2), the chief economist pursuant to subsection (3), or the director of legislative council pursuant to subsection (5)?

50. What does it mean for the director of legislative council to "certify" the content of the economic impact statement?
51. Does "the content of the economic impact statement" mean the same as "the economic impact statement"?
52. What, if anything, should the secretary of state do upon receipt of the certification?
53. Does receipt of the certification require the ballot title for a measure to be amended to include the economic impact statement? If so, does the title board have any role in this part of the process?
54. Colorado courts have recognized that the power of initiative under article V, section (1) of the Colorado Constitution is a fundamental right. Does the inclusion of new language in an initiative ballot title or before it on the ballot impair or limit this power?

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. Although the text of added language should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate, including the first letter of the first word of each sentence.
2. It is standard drafting practice to use the Oxford comma in a list.