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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: September 15, 2023
SUBJECT: Proposed initiative measure 2023-2024 #88, concerning 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; and

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 structure of Section 3 of the proposed initiative raises questions as to the intent of the proponents. Section 3 of the proposed initiative pertains to the contents of §§ 24-77-201 and 24-77-203, C.R.S. What do the proponents intend for this section of their measure to accomplish?
 - a. Section 3 of the proposed initiative mirrors section 3 of S.B. 23-303, enacted during the 2023 legislative session. However, the proposed initiative does not incorporate the definition of "ballot issue" as it appears in S.B. 23-303. Section 3 of S.B. 23-303 was effective upon its passage and the language defining "ballot issue" is now in statute under § 24-77-201, C.R.S. As such, to the extent that the definition of "ballot issue" is intended to be repealed, the language in proposed initiative #88 should include the definition of "ballot issue" but strike it instead of leaving the definition out of the language of the proposed initiative.
 - b. The amending clause for Section 3 refers to amending article 77 of title 24, but it appears that the proposed initiative amends and possibly repeals various sections of statute within that article and title.
 - i. § 24-77-202, C.R.S., is not included in the proposed initiative. Because § 24-77-202, C.R.S., is in current law, to the extent that this provision of statute is intended to be repealed, the amending clause should "repeal" § 24-77-202.
 - ii. § 24-77-203 (3)(a), C.R.S. exists in statute but would be amended by the proposed initiative to change the language from "part 2" to "article". The amending clause should reflect that it "amends" § 24-77-203 (3)(a), C.R.S.

- c. Section 24-77-202, C.R.S., already exists in statute but is not included in the proposed initiative. To the extent this provision of statute is intended to be repealed, the existing statutory language must be shown and marked as stricken.
 - d. Section 24-77-203, C.R.S., already exists in statute and parts of this section are not included in the proposed initiative.
 - i. By not including §§ (1) and (2) of § 24-77-203, C.R.S., these sections remain in statute. If the intent is to remove the language already in statute, § 24-77-203 (1) and (2) must be shown as stricken and not left out of the proposed initiative.
 - ii. If the intent is to not include existing §§ (1) and (2) in the proposed initiative and instead to replace them with the language shown, § 24-77-203 (3) in the proposed initiative should be referred to as § 24-77-203 (1).
 - iii. To change the language "part 2" should be shown as stricken and "article" inserted in SMALL CAPITAL LETTERS.
3. The headnote for § 24-77-203 in the proposed initiative states that it creates the state education fund. § 22-55-103, C.R.S., creates the state education fund. This headnote should not indicate that it creates the state education fund.
 4. Section 9 of the proposed initiative states that § 39-1-104.2 (3.7)(a), C.R.S., requires a working group to provide a report to the General Assembly on or before January 1, 2024. The effective date of the proposed initiative will be after this date. Is the intent to forgo the working group's report?
 5. Section 9 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.
 6. Section 9 of the proposed initiative refers to the ballot issue described in § 24-77-202, C.R.S. Section 24-77-202, C.R.S., is not included in the proposed initiative but is in the Colorado Revised Statutes.
 - a. If the intent is for a repeal of § 24-77-202, C.R.S., and it is properly repealed as discussed in No. 2 (c) of this memorandum, then this reference is to a non-existent portion of the Colorado Revised Statutes.
 - b. If § 24-77-202, C.R.S. is properly repealed, what effect does that have on the creation and functioning of the working group?

7. As amended by Section 14 of the proposed initiative, § 39-3-210 (5) would read, “On or before March 21, 2025, based on the information available as of that date, the property tax administrator shall submit a report to the general assembly describing the TOTAL property tax revenue during reduction for all local government entities statewide for the property tax year commencing on January 1, 2024.” This requirement is not clear. What is the property tax administrator required to report on or before March 21, 2025?
8. Section 19 of the proposed initiative requires a transfer to be made on February 1, 2024. This is before the effective date of the proposed initiative.
9. Section 20 of the proposed initiative requires the property tax administrator to prepare certain property tax information by March 1, 2025, but requires that county assessors include this information with notices of valuation that are required to be sent in the 2024 calendar year. These notices of valuation are required under current law to be sent before the effective date of the proposed initiative, and before March 1, 2025.
10. Section 22 of the proposed initiative appropriates \$94,162,222 from the state education fund and \$62,426 from the general fund. These appropriations are for the 2024-2025 state fiscal year and would become effective during the middle of that fiscal year. Depending on appropriations made in the 2024 long bill and other 2024 legislation, these appropriations could cause total appropriations to exceed available resources in one or both funds.
11. What is the effect of the proposed initiative if a majority of voters approve proposition HH?
12. Is the proposed initiative intended to replace the language in proposition HH if proposition HH is approved by a majority of voters?
13. What is the effect of the proposed initiative if a majority of voters do not approve proposition HH?

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 constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. The amending clause for section 3, for example, will need to be revised. This will require several sections that amend each section of law. It's also not accurate to say the initiative is amending the entirety of article 77, because part 1 of the article is omitted. Here's an example of an amending clause that would be correct when amending part 2 of article 77:

SECTION 3. In Colorado Revised Statutes, **amend** section 27-77-201 as follows:

Be aware that 24-77-203 will need a separate amending clause, and it will need to specify the subsections, paragraphs, subparagraphs, and sub-subparagraphs (if applicable) that are being amended.

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 constitution or the Colorado Revised Statutes. The word "TOTAL" on page 29 of the initiative should be in SMALL CAPITAL LETTERS rather than all caps.
3. Section 9 of the proposed initiative provides that § 39-1-104.2 (3.7) is being added to the Colorado Revised Statutes and is in SMALL CAPITAL LETTERS (which is used to indicate new statutory language). However, § 39-1-104.2 (3.7), C.R.S., was effective upon the passage of SB23-303 and that language is now in the Colorado Revised Statutes. Accordingly, this section of the proposed initiative is unnecessary to the extent the proponents intend to incorporate the same language used in SB23-303. If the proponents intend to change the language used in SB23-303, then the language should be in regular type, which should be stricken for repealed portions, and new language should be in SMALL CAPITAL LETTERS.
4. Section 14 of the proposed initiative provides that §§ 39-3-210 (1)(a.3), (1)(e) and (2.5) are being added to the Colorado Revised Statutes and are in SMALL CAPITAL LETTERS (which is used to indicate new statutory language). However, these sections of the Colorado Revised Statutes were effective upon the passage of S.B. 23-303 and that language is now in the Colorado Revised Statutes. Accordingly, this section of the proposed initiative is unnecessary to the extent the proponents intend to incorporate the same language used in S.B. 23-303. If the proponents intend to change the language used in S.B. 23-303, then the

existing language should be in regular type, which should be stricken for repealed portions, and new language should be in SMALL CAPITAL LETTERS.

5. Section 18 of the proposed initiative provides that §§ 39-22-2002 (5.5)(a) and (b) are being added to the Colorado Revised Statutes. However, these sections of the Colorado Revised Statutes were effective upon the passage of S.B. 23-303 and that language is now in the Colorado Revised Statutes. Accordingly, this section of the proposed initiative is unnecessary to the extent the proponents intend to incorporate the same language used in S.B. 23-303.
6. Section 18 of the proposed initiative changes the date in § 39-22-2002, C.R.S., from July 1, 2024 to July 1, 2025. The previous date, "July 1, 2024" should be shown as stricken and replaced with the new date, "July 1, 2025" in SMALL CAPITAL LETTERS.
7. The amending clause for Section 18 of the proposed initiative should indicate that it is "amending" § 39-22-2002 (5.5), C.R.S., and not "adding" the language because subsection (5.5) is already in the Colorado Revised Statutes.