

# STATE OF COLORADO

## 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:** October 30, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #93, concerning property tax valuation

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 to:

1. Prohibit the actual value of property from increasing by more than 5% between the 2022 and 2024 property tax years for property that does not have an unusual condition which results in an increase or decrease in value;

2. Decrease the valuation for assessment of nonresidential property that is classified as lodging property to twenty-seven and nine-tenths percent of an amount equal to the actual value for the 2024 and 2025 property tax years;
3. Decrease the valuation for assessment of certain nonresidential property to twenty-seven and nine-tenths percent of an amount equal to the actual value for the 2024 and 2025 property tax years;
4. Establish a one-time four-year reassessment cycle beginning January 1, 2021;
5. Set the assessment rates for nonresidential real property and multi-family residential real property for the 2024 property tax year to be the same as those rates for the 2023 property tax year; and
6. Eliminate the dollar amount reduction to the valuation for assessment for residential real property for the 2023 property tax year.

## **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. What will be the effective date of the proposed initiative?
3. Questions related to the limitation on the increase in actual value:
  - a. Proposed section 39-1-103 (19), C.R.S., references "the actual value of a property".
    - i. Is this meant to only apply to "real property"?
    - ii. Does this proposed section apply to producing mines and nonproducing mining claims and leaseholds and lands producing oil or gas? The Colorado constitution requires that "the valuation for assessment for producing mines, as defined by law, and lands or leaseholds producing oil or gas, as defined by law, shall be a portion of the actual annual or actual average annual production therefrom, based upon the value of the unprocessed material, according to procedures prescribed by law for different types of minerals." Colo. Const. art. X, sec. 3 (1)(b).

If so, does instituting a cap on the actual value of producing mines and nonproducing mining claims and leaseholds and lands producing oil or gas detach the actual value of residential real property from the constitutionally permitted method of valuation?

- iii. Does this proposed section apply to residential real property? The Colorado constitution requires that "the actual value of residential real property shall be determined solely by consideration of cost approach and market approach to appraisal." Colo. Const. art. X, sec. 3 (1)(a). Does instituting a cap on the actual value of residential real property detach the actual value of residential real property from the constitutionally permitted method of valuation?
  - iv. Does this proposed section apply to agricultural land? The Colorado constitution requires that "the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law." Colo. Const. art. X, sec. 3 (1)(a). Does instituting a cap on the actual value of agricultural land detach the actual value of the agricultural land from the constitutionally permitted method of valuation?
  - v. Does this proposed section also apply to mobile homes? If so, how does this change interact with the current process for determining the actual value of this kind of property?
- b. If the actual value of a property increases by more than five percent between the 2022 and 2024 property tax years, how much may the actual value of that property increase?
  - c. If the cap on the increase in actual value is only in place for a single reassessment cycle, what will happen after that cycle? Will actual values be able to rise by more than five percent?
  - d. Would there be any unintended side effects, such as discouraging improvements to real property, in not extending the cap on actual values to those properties with "unusual conditions"?
  - e. To what extent would the impact of a cap on the increase in actual value be offset by special districts that already have voter approval to increase

mill levies in response to revenue shortfalls and school districts with bond and override levies?

- f. It appears that this section would have the effect of causing many property valuations to decrease significantly between the 2023 and 2024 property tax years, and then increase significantly between the 2024 and 2025 property tax years, when the limitation no longer applies. Does this match the proponents' expectation?

4. Questions related to the repeal of the reductions to the valuation for assessment:

- a. Currently 39-1-104 (1)(b), C.R.S., states "Notwithstanding subsection (1)(a) of this section, for the property tax year commencing on **January 1, 2023**, the valuation for assessment of nonresidential property that is classified as lodging property is temporarily reduced to twenty-seven and nine-tenths percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars." (Emphasis added.) The emphasized language is not reflected in the initiative. Likewise, section 39-1-104 (1.8)(b), C.R.S., currently states:

"(1.8)(b) The valuation for assessment of all nonresidential property that is not specified in subsection (1) or (1.8)(a) of this section is twenty-nine percent of the actual value thereof; except that, for the property tax year commencing on **January 1, 2023**, the valuation for assessment of this property is temporarily reduced to:

(I) For all of the property listed by the assessor under any improved commercial subclass codes, twenty-seven and nine-tenths percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars." (Emphasis added.)

This emphasized language is also not reflected in the initiative.

- i. Are the changes to section 39-1-104 (1)(b) and (1.8)(b), C.R.S., meant to retrospectively change the valuation for assessment for the 2023 property tax year?
- ii. Assuming that the changes to section 39-1-104.3 (2), C.R.S., are meant to apply to the 2023 property tax year:

1. Is this impermissibly retrospective?
  2. Is the removal of the reduction in section 39-1-104.3 (2), C.R.S., "a tax policy change directly causing a net tax revenue gain to any district" that triggers the requirements of Colo. Const. art. X, sec. 20?
  3. How would this be implemented, given that taxpayers will have paid their 2023 property taxes before this initiative goes into effect?
- iii. How will the changes to section 39-1-104 (1)(b) and (1.8)(b), C.R.S., that are proposed by this initiative interact with the potential changes to section 39-1-104 (1)(b) and (1.8)(b), C.R.S., if proposition HH is approved by the voters?
5. Questions concerning the change to the reassessment cycle:
    - a. How will these changes impact the current property tax reassessment cycle?
    - b. How will these changes impact the payment of property taxes for property tax year 2023 before this initiative goes into effect?
    - c. How does this provision interact with the limit on growth of property values in Section 1 of the proposed initiative? If properties are not revalued during the four-year reassessment cycle, then in what circumstance would the limit on growth of property values apply?
  6. Questions concerning the ratio of valuation for assessment for multi-family residential real property:
    - a. How will the changes to section 39-1-104.2 (3)(q), C.R.S., that are proposed by this initiative interact with the potential changes to section 39-1-104.2 (3)(q), C.R.S., if proposition HH is approved by the voters?
  7. Questions concerning the valuation for assessment for residential real property:
    - a. Are the changes to section 39-1-104.3 (2), C.R.S., meant to apply retrospectively to the 2023 property tax year?
    - b. Assuming that the changes to section 39-1-104.3 (2), C.R.S., are meant to apply to the 2023 property tax year:
      - i. Is this impermissibly retrospective?

- ii. Is the removal of the reduction in section 39-1-104.3 (2), C.R.S., "a tax policy change directly causing a net tax revenue gain to any district" that triggers the requirements of Colo. Const. art. X, sec. 20?
  - iii. How would this be implemented, given that taxpayers will have paid their 2023 property taxes before this initiative goes into effect?
- c. How will these changes interact with the potential repeal of section 39-1-104.3 (2), C.R.S., if proposition HH is approved by the voters?

## **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 to use SMALL CAPITAL LETTERS 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.
  - a. Do not, however, show paragraph letters in small caps as in the internal reference to (19)(a) that is in (19)(b)(I), section one of the initiative.
  - b. In section two of the proposed initiative, it appears that language in (1)(b) has been removed without being shown in stricken type and language has been added without showing it in small caps. "January, 2024," is not current statutory language. The statute currently reads "January 1, 2023,".
2. The proposed initiative amends statutory provisions that will also be amended if proposition HH which will be submitted to a vote of the registered electors of the state of Colorado at the statewide election to be held in November 2023 for its approval or rejection, Is approved by the voters As such, this initiative will need to amend both versions of the applicable statutory provisions, one of which remains in effect only if proposition HH is not approved by the voters and one of which takes effect only if [proposition HH is approved by the voters,

as they are printed in the Colorado Revised Statutes. Using section two of the initiative as an example:

**SECTION 2.** In Colorado Revised Statutes, **amend** (10.2)(b); **amend as they exist until proposition HH is approved** [insert provisions to be amended]; and **add** (12)(d) as follows:

**SECTION 3.** In Colorado Revised Statutes, **amend as they will become effective if proposition HH is approved** [insert provisions to be amended] as follows:

3. 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, as in the second sentence of (12)(d) in section two of the initiative; and
  - b. Roman numerals of articles of the state constitution, as in section one of the initiative in (19)(a).