

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Scott Wasserman and Ed Ramey

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: November 7, 2023

SUBJECT: Proposed initiative measure 2023-2024 #96, concerning a state property tax on luxury residential real property for the purpose of replacing and backfilling revenue lost to local communities as a result of the imposition of any statewide limitations upon the amount or growth in amount of statewide or local property tax revenue.

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 amendments to the **Colorado constitution** and **Colorado Revised Statutes** appear to be:

1. To exempt from any otherwise applicable statewide limitation upon the amount or growth of property tax revenue any statewide and state-administered property tax levy that is imposed for the primary purpose of assisting local taxing authorities and communities in addressing inequities in the availability or distribution of local property tax revenue as the result of the imposition of any statewide limitation upon the amount or growth of property tax revenue.
2. To remove the prohibition in section 20 (8)(a) of article X of the Colorado constitution on the imposition of any new state real property tax.
3. To impose a supplemental state property tax on luxury residential real property for any property tax year commencing on or after January 1, 2027, in which statewide property tax revenue has been reduced by any statewide limitation on property tax revenue growth in an amount sufficient to offset the reduction in revenue.
4. To require revenue received by political subdivisions from the supplemental state property tax on luxury residential real property to be forwarded to the state and to allow the state to collect, retain, deposit, and spend that revenue as a voter-approved revenue change.
5. To require that revenue from the state property tax on luxury residential real property be redistributed by the state to and made available for expenditure by political subdivisions for the purpose of replacing and backfilling revenue lost to local communities as a result of the imposition of any statewide limitations upon the amount or growth in amount of statewide or local property tax revenue.

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. "Multi-family residential real property" is defined in section 39-1-104.2 (1)(a), C.R.S., as "residential real property that is a duplex, triplex, or multi-structure of four or more units[.]". What is the term "apartment property" intended to apply to that the term "multi-family residential real property" does not already apply to?

3. The definition of the term "multi-family residential real property" in section 39-1-104.2 (1)(a), C.R.S., states that it is a subclass of residential real property for purposes of the ratio of valuation for assessment. Section 39-1-104.2 (3), C.R.S., establishes a different ratio of valuation for assessment for multi-family residential real property than for residential real property.
 - a. What is the intent of making "apartment property" a subclass of residential real property for purposes of the ratio for valuation for assessment?
 - b. What ratio of valuation for assessment do you intend to apply to apartment property?
 - c. Depending on the proponents' intent regarding the ratio of valuation for assessment for apartment property, amendments to section 39-1-104.2, C.R.S., may be necessary in order to make that intent clear and effectuate it.
4. Is the inflation adjustment that is in the definition of "luxury residential real property" intended to adjust the two million dollars actual value threshold? Is the timing of the inflation adjustment intended to be made at the time of assessment in a year in which the supplemental luxury residential real property tax is to be assessed?
5. Do the proponents intend that the ratio of valuation for assessment for residential real property apply to luxury residential real property?
6. Proposed section 39-1-104.8 (2), C.R.S., states that the state shall assess and impose a supplemental tax on luxury residential real property "[f]or any property tax year...in which the amount of statewide property tax revenue has been reduced by imposition of a statewide limitation upon the amount or growth of property tax revenue[.]". Is it the proponents' intent that this tax be assessed and imposed when local taxing jurisdictions' property tax revenue has been reduced? If so, would the proponents consider clarifying that in the proposed language?
7. What is the phrase "statewide limitation upon the amount or growth of property tax revenue" intended to refer to?
8. Is it the proponents' intent that the state impose the supplemental tax on luxury residential real property in the same year in which the local taxing jurisdictions will have property tax revenue reduced by the imposition of a statewide limitation upon the amount or growth of property tax revenue?

- a. What is the proponents' intent regarding the timing for when the state should levy the supplemental tax on luxury residential real property? For instance, should it be at the same time as local taxing jurisdictions are required to certify their levies in accordance with section 39-5-128, C.R.S.?
 - b. Proposed section 39-1-104.8 (2), C.R.S., requires the county assessors and the property tax administrator in the division of property taxation within the division of local affairs to determine the amount of state tax required to be assessed and imposed sufficient to replace "that reduction in revenue". Is "that reduction in revenue" intended to refer to the aggregate reduction in revenue to local taxing jurisdictions as the result of the imposition of a statewide limitation upon the amount or growth of property tax revenue?
 - c. How should the timing work regarding when the assessors and the administrator will have information available to determine the amount of the reduction in revenue to local taxing jurisdictions as the result of the imposition of a statewide limitation upon the amount or growth of property tax revenue and when the state should certify the amount of the supplemental tax on luxury residential real property?
9. Pursuant to section 39-10-101 (1), C.R.S., county treasurers collect taxes levied within their jurisdiction, and pursuant to section 39-10-107 (1), C.R.S., all taxes collected by the county treasurers are then apportioned, credited, and distributed to local taxing jurisdictions. Proposed section 39-1-112 (2), C.R.S., states that "[u]pon receipt by a political subdivision of revenues from supplemental taxes levied upon luxury residential real property pursuant to section 39-1-104.8 of this title, the political subdivision shall remit such revenues to the department of the treasury[.]".
- a. What do proponents mean by using the term "political subdivision" in this section and throughout the proposed initiative? Would the proponents consider defining the term?
 - b. Do the proponents intend that political subdivisions will be directly collecting from taxpayers within their jurisdiction the state tax on luxury residential real property? If so, how will this work for political subdivisions whose boundaries overlap? Additionally, if the county treasurers collect all other taxes, why should political subdivisions be collecting the state tax on luxury residential real property?

10. The first part of the first sentence in proposed section 39-1-112 (4), C.R.S., states, "Funds held in the residential real property tax fund...".
 - a. Should this say, "Funds held in the luxury residential real property tax fund..."?
 - b. Standard drafting practice is to use the word "fund" to refer to an account into which "money" or "revenue" is placed. Therefore, the word "fund" or "funds" is not typically used to refer to the money or revenue itself. Would the proponents consider changing the phrase "funds" to "money" or "revenue" in this instance and throughout the proposed initiative?
11. The last part of the first sentence in proposed section 39-1-112 (4), C.R.S., states, "except that funds received prior to January 1, 2026, shall be distributed prior to December 31, 2025.". If money in the luxury residential real property tax fund is revenue from the state luxury residential real property tax that is only authorized to be assessed and imposed for any property tax year commencing on or after January 1, 2027, will there be any money in the fund prior to January 1, 2026? Please explain what this provision is intended to mean.
12. Is the following language in proposed section 39-1-112 (5), C.R.S., "The revenue received and distributed by the department of the treasury pursuant to this section may be collected, retained, deposited and distributed by the state as a voter-approved revenue change under section 20 of article X of the state constitution," , intended to allow the state to retain revenue received from the supplemental luxury residential real property tax in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the Colorado constitution that the state would otherwise be required to refund under section 20 (7)(d) of article X of the Colorado constitution?
13. Do the proponents anticipate that, in a year in which the state assesses and imposes the supplemental tax on luxury residential real property, every local taxing jurisdiction will have a reduction in revenue as the result of the imposition of a statewide limitation upon the amount or growth of property tax revenue?

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 when referencing statutory sections to include a soft space between the hyphenated title, article, and section number and the subsection number. References to statutory sections in C.R.S. no longer need to be followed by "C.R.S.". You may consider adding a space between "39-1-104.2" and "(1)(a)" and removing the succeeding "C.R.S." in proposed section 39-1-104.8 (1)(c) of the proposed initiative.
2. It is standard practice to organize a non-statutory legislative declaration in the same manner in which statutory sections are organized. In Section 1 of the proposed initiative, you may consider making the introductory portion that begins "We, the voters of the state of Colorado..." subsection (1) and letter the paragraphs that follow as (a), (b), (c), etc. Additionally, it is standard practice for the paragraphs in a legislative declaration to be organized as a list if they are one sentence. You may consider replacing the period that ends the first four paragraphs with semi-colons and adding "and" between the fourth and fifth paragraphs.
3. In an amending clause concerning a constitutional provision, it is standard practice that "constitution" not be capitalized.
4. It is standard practice to not write out subsections being amended or added. In the amending clause for Section 3 of the proposed initiative, you may consider revising the amending cause to change "paragraph (a) of subsection (8)" to "(8)(a)".
5. It is standard practice to include section headings when amending the section. For example, in Section 3 of the proposed initiative, you may consider adding "(8) **Revenue limits.**" before "(a)".
6. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The proponents may consider removing instances of "shall" where a person's duty is not being described in the active voice. For example, in

proposed section 39-1-104.8 (1)(c), "shall have" may be replaced by "has". In proposed section 39-1-104.8 (2), "shall be" may be replaced by "is".

7. In an amending clause, it is standard practice to specify which subsections in a section are being amended or added. For example, in Section 5 of the proposed initiative, you may consider revising the amending clause to say "In Colorado Revised Statutes, 39-1-112, **amend** (1); and **add** (2), (3), (4), and (5) as follows:".