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Colorado General Assembly

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MEMORANDUM

TO: Tom Kim and Anneliese Steel
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 27, 2023

SUBJECT: Proposed initiative measure 2023-2024 #97, concerning property 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 constitution** and the **Colorado Revised Statutes** appear to be:

1. To ensure that the actual value of real property for the 2023 property tax year shall equal the amount of the property's most recent sale or, if the property has not been sold since June 30, 2020, the amount of actual value used to calculate 2021 property taxes for the property, and shall thereafter increase annually by

no more than the lesser of inflation or two and one-half percent, unless the property is substantially improved or suffers a decline in value.

2. To require reappraisal of the actual value of real property that has been substantially improved that gives appropriate consideration to the cost approach, market approach, and income approach to appraisal for nonresidential property and gives appropriate consideration to the market approach to appraisal for residential real property.
3. To require annual reappraisal of property that has suffered a decline in actual value, as determined through a protest or appeal of the actual value, until the property's actual value increases to what it was, adjusted for inflation, before the protest or appeal concluded or the property is sold.

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. Throughout the proposed initiative, the changes to valuation apply to “real property.”
 - a. Do the proponents intend that the proposed initiative affect valuations for personal property?
 - b. Would the proposed initiative affect valuations for residential, industrial, commercial, and vacant real property?
 - c. Would the proposed initiative affect valuations for agricultural property? If so, how does this interact with the statement in article X, section 3 (1)(a) of the Colorado constitution 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"?
 - d. Would the proposed initiative affect valuations for producing mines? If so, how does this interact with the statement in section 39-1-103 (5)(a) that "[t]he valuation for assessment of producing mines... shall be determined pursuant to articles 6 and 7 of this title"?

- e. Would the proposed initiative affect valuations for oil and gas producing property? If so, how does this interact with the statement in section 39-1-103 (5)(a) that "[t]he valuation for assessment of... lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title"?
- 3. For which property tax year do the proponents intend for the provisions of the proposed initiative to be implemented?
 - 4. Concerning section 1 of the proposed initiative:
 - a. The proposed initiative adds a limit on the growth rate in the actual value of real property, and then duplicates this same limit on the growth rate in the actual value of residential real property. Does the first instance of the limit not govern valuations for residential real property? If it does, why include the same limit twice?
 - b. The language of the proposed initiative is that "actual value for real property shall not be increased annually by more than inflation, limited to 2.5%, and that the actual value of real property shall equal the amount of the property's most recent sale[]...unless the property is substantially improved in which case the property's actual value shall be reappraised...".
 - i. How is this language meant to interact? Does this mean that a property's value does not change until it is sold or is substantially improved?
 - ii. Is the language that "actual value shall not be increased by more than inflation, limited to 2.5%" a contradictory "shall" statement with the language regarding actual value equaling the amount of the property's most recent sale?
 - iii. In a year in which a property is sold, should an increase by inflation also be factored into determining the property's actual value?
 - c. If property is substantially improved, is there any limit on how much its value may increase?
 - d. If a property is sold, is there any limit on how much its value may increase?

- e. What period should be considered when determining the amount of inflation relevant to determining the actual value of property?
 - f. May a property's value decrease? If so, may it decrease below the value of its most recent sale and does this situation need to be addressed in the Colorado constitution?
 - g. How should a parcel that was created after June 30, 2020, for example by the subdivision of a larger parcel, be initially valued? The proposed initiative appears to contemplate only parcels with a valuation as of that date or that have been sold since that date.
 - h. After the amendments in the proposed initiative, article X, section 3 of the Colorado constitution still requires assessors to use the cost approach, market approach, and income approach to appraisal. Do the limits imposed in the proposed initiative allow assessors to apply the valuations that would be determined under these approaches?
 - i. What is the purpose of repealing the ability of appraisers to use the cost approach when valuing residential property?
 - j. What is the purpose of the sentence stating: "Nothing in this subsection (1)(a) of the Colorado constitution shall be construed to change the applicability of the homestead exemption for qualifying seniors and qualifying disabled veterans as set forth in section 3.5 of article X of the Colorado constitution"?
 - k. Does this new system of determining property valuation change the role of the "valuation for assessment study" that is required by article X, section 3 (2)(a) of the Colorado constitution?
5. Concerning section 2 of the proposed initiative:
- a. The definitions in proposed section 39-1-102.5 will apply to the entirety of sections 39-1-103 and 39-1-104, including provisions in those sections that are not amended in the proposed initiative. Is this the proponents' intent? Will there be any unintended consequences of using new definitions of inflation, sale, substantially improved, and portability in those sections?
 - b. Concerning the definition in proposed section 39-1-102.5 (2), C.R.S.:
 - i. What do the proponents intend to be the difference between a transaction "in the ordinary course of business" and a

"transaction that is: (a) bona fide, (b) at arm's length, and (c) free from any donative intent"?

- ii. 26 CFR section 25.2512-8 defines a "transfer of property made in the ordinary course of business" as "a transaction which is bona fide, at arm's length, and free from any donative intent." In the proposed initiative, is a transfer of property made "in the ordinary course of business for full and adequate consideration" intended to be distinct from "a transaction that is (a) bona fide, (b) at arm's length, and (c) free from any donative intent"? Alternatively, should the "and" after "consideration" be changed to another word like "in" or "through"?
- iii. Is this definition intended to also apply in instances throughout the proposed initiative where the term "sold" is used?

c. Concerning the definition in proposed section 39-1-102.5 (3), C.R.S.:

- i. Is there an instance where a renovation substantially improves a property even if such renovation does not change the square footage of existing structures or building on the property? Why are such renovations not qualified as "substantially improve[ing]" the real property under the proposed initiative?
- ii. Is it correct that if a building on a piece of property is in a state of disrepair or otherwise has a low value, is completely destroyed in a natural disaster, and is entirely rebuilt, that this building does not qualify as substantially improved, unless the property on which the building sits exceeds 120% of the square footage of property before the disaster?

6. Concerning section 3 of the proposed initiative:

a. Concerning proposed section 39-1-103 (5)(a):

- i. What is the purpose of repealing the language "and other than residential real property" in the second sentence of the subsection?
- ii. Why is the language added by the proposed initiative to article X, section (3) (1)(a) regarding residential real property include the parenthetical "(although the actual value of real property that has not sold since June 30, 2020, shall be equal to the actual value

used to calculate the property's 2021 property taxes)" not also added in this subsection regarding residential real property when the rest of the language in the subsection appears identical to the language added to article X, section (3) (1)(a)?

- iii. Why is the sentence stating: "Nothing in this paragraph (a) of this subsection (1) shall be construed to change the applicability of the homestead exemption for qualifying seniors and qualifying disabled veterans as set forth in section 3.5 of article X" added to the end of article X, section 3 (1)(a) of the Colorado constitution, but not here?
 - iv. If a property is sold, but the sale does not fit within the defined "term" set forth in Section 2 of the proposed initiative, how should the value of the property be determined? Would the value have to be the value of the property since the last "sale" that meets the definition of "sale" under the proposed initiative as increased annually by inflation in an amount no more than two and a half percent until the property is sold in a manner that meets the proposed initiative's definition of "sale"?
 - v. The proposed initiative's definition of "sale" includes an instance in which "the property passes at death to anyone other than the deceased's spouse[...]" which means that the estate that the property passes from likely does not receive consideration. In such an instance, how should the actual value be determined because this would be sale according to the proposed initiative and the value of the real property must "equal the amount of the property's most recent sale"?
- b. Concerning proposed section 39-1-103 (15):
- i. What is the impact of striking "the cost approach, market approach, and income approach to appraisal as required by"? How does this interact with the second sentence of the subsection which uses the same phrase and would remain in existing law?
 - ii. The proposed amendment to this subsection would declare that the actual value of real property "shall equal the amount of the property's most recent sale, unless the property is substantially improved, or the value has been protested[...]". It does not include a provision allowing valuations to grow by inflation,

limited to two and a half percent. How does this interact then with the rest of the proposed initiative which includes provisions that valuations grow by inflation limited to two and a half percent?

iii. Is the language that is added by the proposed initiative as the last sentence to the subsection intended to apply only to the actual value of real property for purposes of the second year in the reassessment cycle?

iv. Regarding the language about protest:

1. This subsection allows for actual value to be reappraised if there is a protest, but this same allowance is not included in the language added to the Colorado constitution by the proposed initiative or in language added to subsection (5)(a) in Section 3. Why is this the case and how does this omission impact this subsection?

2. When value of a property is protested by a taxpayer to an assessor under current law pursuant to the sections the proposed initiative cross references, reappraisal is not triggered. What is the purpose of requiring reappraisal here and how should any conflict with existing law and the proposed initiative concerning a requirement for reappraisal be resolved?

3. Under current law, after a property's valuation is protested by the taxpayer to the assessor, the taxpayer may appeal to the County board of equalization and then may either pursue further relief through arbitration, the district court, or the State board of assessment appeals. Are these levels of appeal intentionally excluded under the language of the proposed initiative? If so, why?

c. Concerning proposed section 39-1-103 (15.5):

i. If a property suffers a decline in value or an assessor determines that a county has suffered a sustained economic downturn, it appears that the property is reappraised annually until it reaches a prior value. Is there a limit on how much the value of the property may be increased during a reappraisal?

- ii. How do these annual reappraisals interact with the proposed language stating that "actual value [of property] shall not be increased annually by more than inflation, limited to 2.5%"?
 - iii. The Colorado constitution prevails in a conflict with statute. As such, would the proposed language in article X, section 3 (1)(a) of the Colorado constitution prevent a property's value from annually increasing under this proposed section to "recover" its value by more than two and a half percent or the rate of inflation, unless the property was sold or substantially improved?
- d. Concerning proposed section 39-1-103 (15.5)(a):
- i. How do the proponents anticipate an owner will know that their property has declined in value for purposes of triggering this subsection (15.5)(a)?
 - ii. What happens after a "property recovers all its value" under this section?
 - iii. What happens if a reappraisal results in a value that is higher than the amount of the last sale of the property or the amount of annual increase for inflation, limited to two and a half percent? Would the value established by the reappraisal be the value of the property going forward?
 - iv. Does "actual value of the property prior to when the protest or appeal concluded" mean the actual value as determined by the appraiser using one of the permitted real estate valuation approaches or the most recent sale value, adjusted for inflation?
- e. Concerning proposed section 39-1-103 (15.5)(b):
- i. Can anyone protest an assessor's determination that a "county has suffered a sustained economic downturn"?
 - ii. Can an assessor be petitioned to determine whether a "county has suffered a sustained economic downturn"?
 - iii. What is meant by "a sustained economic downturn"?
 - iv. Does the language "has suffered a sustained economic downturn" mean that an assessor can only make this determination after such a downturn has ended?

- v. How should the value of a property "prior to the sustained economic downturn" be determined? For instance, how should the value of parcels that are split during a sustained economic downturn and thus did not exist as independent properties prior to the downturn be calculated?
 - vi. In this paragraph, does “actual value of the property prior to the sustained economic downturn” mean the actual value as determined by the appraiser using one of the permitted real estate valuation approaches, or the most recent sale value, adjusted for inflation?
 - vii. What happens if during the period in which annual reappraisals are required, a reappraisal results in a value that is higher than the amount of the property before the "economic downturn" including annual increases for inflation, limited to two and a half percent? Would the value established by the reappraisal be value of the property going forward?
- f. Concerning proposed section 39-1-103 (15.5)(c):
- i. Should the calculation of a property's value for purposes of this subsection (15.5)(c) also reference an assessor's determination of "a sustained economic downturn" so that this subsection (15.5)(c) better relates to subsection (15.5)(b) of this section?
 - ii. This paragraph states that “the property’s actual value shall be the value of the sale[...].” Does this requirement mean that the annual adjustments for inflation authorized elsewhere in the proposed initiative do not apply in this case?
 - iii. Does this subsection prevent a property from being reappraised in the case of a later "sustained economic downturn" or in the case of a property suffering a later decline in value?

7. Concerning proposed section 4:

- a. Is there a difference between the requirements of proposed section 39-1-104 (10.2)(c) and the amendments to article X, section (3) (1)(a) of the Colorado constitution? If not, why is the language different in the two sections?

- b. By the time the proposed initiative is considered by the voters, valuations for both property tax years 2023 and 2024 will long have been set and in fact taxes for both property tax years 2023 and 2024 will have been paid. Should the date therefore be changed in this subsection? If not, are the proponents suggesting assessors revalue property for property tax years 2023 and 2024? How do the proponents suggest local governments handle taxes which may have been over or under paid if such revaluations are required to occur?
 - c. S.B. 22-238 and S.B. 23B-001 collectively reduced the assessed value for residential real property and certain non-residential real property for property tax years 2023 and 2024 and established a mechanism to backfill local governments for revenue losses resulting from the reductions. Do the proponents anticipate that there will be further need to backfill local governments or provide a backfill for funding for certain services provided by local governments to account for the additional loss of revenue from the proposed initiative for property tax years 2023 and 2024 in addition to the loss of revenue from S.B. 22-238 and S.B. 23B-001?
 - d. Article IX, section 17 of the Colorado constitution created the state education fund and requires the General Assembly to increase the statewide base per pupil funding amount under the school finance act and total state funding for categorical programs by at least the rate of inflation in the current budget year and subsequent budget years. Have the proponents considered the impact on the state share in the school finance formula if the state base grows by inflation in excess of 2.5%, which is the limitation on growth of property values imposed by the proposed initiative and thereby a limitation on the growth of property tax revenue available to the school districts?
8. Concerning proposed section 5:
- a. Are the amendments to subsections 39-5-121 (1)(b)(I) and (1.2) intended to eliminate the state's biennial reassessment cycle?
 - b. Are these amendments sufficient to accomplish the elimination of the biennial reassessment cycle?
 - c. In particular, how should the language in section 39-1-103 (15) in section 3 of the proposed initiative and language in section 39-1-104 (10.2) in

section 4 of the proposed initiative concerning the two-year assessment cycle interact with the amendments in this section 5?

9. Concerning proposed section 6:

- a. Is the proposed initiative intended to have retroactive effect so that, for example, proposed section 39-1-104 (10.2)(f), which starts with the phrase "beginning with the property tax year which commences January 1, 2023," can be given effect?
- b. Will there be enough time after the adoption of the initiative for the state and local governments to implement this initiative before assessing property taxes in the subsequent year?
- c. Would the proponents consider, as was done for the 2023 property tax year in Senate Bill 23B-001, modifying the following statutory deadlines or budget provisions in order to allow local governments and the property tax administrator time to implement the provisions of the proposed initiative:
 - i. The deadlines to certify mill levies set forth in section 22-40-102 (3)(a) and (6)(a), C.R.S., and section 39-5-128 (1)(a), C.R.S.;
 - ii. The deadline for local governments to adopt a budget set forth in section 29-1-108, C.R.S.;
 - iii. Appropriation and budget limitations after a budget has been adopted by a local governments set forth in section 29-1-108 (4)(a), C.R.S., and section 29-1-109 (2)(a)(I) and (2)(c)(I), C.R.S.;
 - iv. The deadline for a board of county commissioners to levy taxes set forth in section 39-1-111 (1)(a), C.R.S.;
 - v. The deadline set forth in 39-1-111 (5)(a), C.R.S., for assessors to notify the board of county commissioners, other bodies authorized to levy property taxes, the division of local government, and the department of education if the assessor has made changes in valuation for assessment or total actual value after circulating certification of valuation for assessment and notification of total actual value;
 - vi. The deadline set forth in section 39-3-207 (2)(b), C.R.S., for the property tax administrator to provide written notices to assessors concerning the applications for homestead tax exemptions for

qualifying seniors and veterans with a disability that the property tax administrator has approved and denied;

vii. The deadline for assessors to deliver the tax warrants to the treasurers set forth in section 39-5-129, C.R.S.; and

viii. The deadline for treasurers to mail tax statements set forth in section 39-10-103, C.R.S.

10. Do the proponents anticipate that the proposed initiative may conflict with other proposed initiatives that may be approved by the voters or with legislation adopted prior or subsequent to the proposed initiative being approved? If so, how should such conflicts be resolved?

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 section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes should be in lower-case bold-face type: For example:

In statute: "**39-1-102.5. Additional definitions.** AS USED IN SECTIONS ..."

2. When cross referencing a section in existing law, the entire citation should be included. In **Section 1**, "As used in sections 103 and 104," should be changed to "As used in section 39-1-103 and 39-1-104,".

3. It is common drafting practice to use commas to set off phrases, not parentheticals. For example, in **Section 1**:

"EXCEPT THAT ACTUAL VALUE FOR REAL PROPERTY SHALL NOT BE INCREASED ANNUALLY BY MORE THAN INFLATION, LIMITED TO 2.5%, AND THAT THE ACTUAL VALUE OF REAL PROPERTY SHALL EQUAL THE AMOUNT OF THE PROPERTY'S MOST RECENT SALE, ALTHOUGH THE ACTUAL VALUE OF REAL PROPERTY THAT HAS NOT SOLD SINCE JUNE 30, 2020, SHALL BE EQUAL TO THE ACTUAL VALUE USED TO CALCULATE THE PROPERTY'S 2021 PROPERTY TAXES, UNLESS..."

4. In **Section 2**, consider reorganizing (2) as follows:

(2) "SALE" MEANS THE TRANSFER OF MORE THAN 50% OWNERSHIP OF REAL PROPERTY MADE EITHER:

(a) IN THE ORDINARY COURSE OF BUSINESS FOR FULL AND ADEQUATE CONSIDERATION AND A TRANSACTION THAT IS:

(I) BONA FIDE;

(II) AT ARM'S LENGTH; AND

(III) FREE FROM ANY DONATIVE INTENT; OR

(b) UPON THE DEATH OF THE PROPERTY'S OWNER, IF THE PROPERTY PASSES AT DEATH TO ANYONE OTHER THAN THE DECEASED'S SPOUSE.

5. It is not necessary to include subsections that are not being amended in an amending clause or to include the text of these provisions in the initiative. For example, since **Section 4** is only amending section 39-1-104 (10.2)(a) and (10.2)(f), the amending clause should read as follows:

"SECTION 4. In Colorado Revised Statutes, 39-1-104, **amend** (10.2)(a); and **add** (10.2)(f) as follows:

(10.2)(a) Except as...

(f) BEGINNING WITH..."

The statutory text of (10.2)(b), (10.2)(c), (10.2)(d), and (10.2)(e) does not need to be included following the amending clause since it is not being amended.