

# 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:** February 5, 2025

**Subject:** Proposed initiative measure 2025-2026 #16, concerning Voter Approval for Statewide Fees

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** appear to be:

1. To require advance voter approval for a statewide fee that is imposed or increased after January 1, 2027, and that is projected to generate over \$100 million in revenue in its first five fiscal years.
2. To require the ballot title for the imposition or increase of such a fee to begin with certain specified language.

## 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. As an amendment to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. In the definition of "fee" in proposed subsection (2)(d.5):
  - a. What do you mean by "voluntarily incurred"?
  - b. What is covered by a "governmental charge" and "the costs incurred by the government"? Would this apply to enterprises, which are government-owned businesses?
4. Proposed paragraphs (d.6), (d.7), and (d.8) purport to be added to subsection (2) of section 20 of article X (TABOR). Subsection (2) establishes the definitions used throughout TABOR. Because proposed paragraphs (d.6), (d.7), and (d.8) are not definitions and are, instead, substantive legal requirements, please consider creating a new subsection within TABOR and adding these paragraphs to that new subsection. Please also consider changing the word "definition" to "act" in subsection (2) of the applicability clause.
5. Paragraphs (d.7) and (d.8) of the proposed initiative create requirements regarding the applicability of this "section." As used here, "section" appears to refer to section 20 of article X (TABOR). If you intend only to create requirements regarding the applicability of the new paragraphs added in the proposed initiative, please consider clarifying accordingly.
6. In paragraph (d.6) of the proposed initiative:
  - a. Will this requirement begin on or after January 1, 2027, or on or after January 2, 2027?
  - b. What do you mean by a "statewide fee"?
  - c. It appears that your proposed initiative intends to require advance voter approval for a fee that is projected to generate over \$100

million in revenue in its first five fiscal years. This requirement also appears to apply to fees with actual revenue collected over \$100 million. If advance voter approval is required based on projected revenue, what do you intend the actual collection of revenue over \$100 million to trigger? If you intend this to trigger voter approval to continue collecting the fee, what happens in the interim between reaching the \$100 million threshold and the election to approve the fee?

- d. Proposed paragraph (d.6) appears to cover both the initial imposition of a fee and the subsequent increase of a fee already imposed. How does the first-five-fiscal-year time period apply to the subsequent increase of a fee?
- e. The required ballot title language for prior voter approval of fees covers only the initial imposition of a fee. If you intend that the prior voter approval requirement apply to a subsequent increase of a fee already imposed, please consider including alternative wording to cover that in the required ballot title language.
- f. The required ballot title language requires that the “full dollar collection for first five fiscal years” be included. Prior to the establishment of a fee, the revenue collection amount will not be known. Do you intend for this amount to be an estimate? If so, what happens if fee collections exceed this estimate?

7. In paragraph (d.7) of the proposed initiative:

- a. What do you mean by "created or increased simultaneously"?
- b. Who will determine whether fees are "collected to fund similar purposes"? What criteria should be used to make this determination?

8. In paragraph (d.8) of the proposed initiative:

- a. What do you intend this paragraph to accomplish?
- b. This paragraph is the only provision of the proposed initiative that references "enterprises", and its language is nearly identical to that of section 24-77-108 (2), C.R.S. Was your intent to simply model this paragraph on section 24-77-108 (2), C.R.S., and should this paragraph be referring to "fees established or increased

simultaneously" rather than "enterprises created simultaneously"?

- c. What do you mean by "created simultaneously"?
  - d. How do you determine whether enterprises serve "similar purposes"?
  - e. Do you intend this paragraph to cover all revenue collected by such enterprises, even revenue that is not generated by fees?
9. The proposed initiative uses two terms in relation to the imposition of fees: "established" and "enacted" in paragraph (d.6) and "enacted" in subsection (2) of Section 2 of the initiative. Please consider using consistent terminology, which is typically the word "impose."
10. Section 2 of the proposed initiative states that the new definition applies to fees enacted or increased on or after the measure's effective date. However, proposed paragraph (d.6) only requires voter approval for fees established or increased after January 1, 2027. Accordingly, it appears that the definition in (d.5) would apply to new fees created between the effective date of the initiative and January 1, 2027, but the voter approval requirement in (d.6) would not apply until after January 1, 2027. Is this correct?
11. Article V, section 1 (4)(a) of the Colorado constitution states, in relevant part, that an initiative "shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor ...". Given this language, subsection (1) of section 2 of the proposed initiative appears to be redundant and could be removed without changing the effective date of the proposed initiative.

## **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. An amending clause amending the state constitution should be in the following format:

**SECTION 1.** In the constitution of the state of Colorado, section 20 of article X, **add** (2)(d.5) as follows:

2. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Because the proposed initiative will be adding language to article X, section 20 of the constitution, a headnote should be added to section 1 of the proposed initiative and be in bold-face type. This headnote should appear as follows: "**Section 20. The taxpayer's bill of rights.**"
3. In the definition of "fee" in subsection (2)(d.5) of the proposed initiative, there appears to be an "a" missing between "in exchange for" and "specific benefit."