

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Carol Hedges and Steve Briggs

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 22, 2019

SUBJECT: Proposed initiative measure 2019-2020 #33 concerning State Fiscal Policy

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #33 to 50. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #33 to #50, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2019-2020 #3 to 9, 11, 13, 15, 17, and 19, were the subject of memoranda dated November 16, 2018, which

were discussed at a public meeting on November 18, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To repeal provisions that relate to the following topics from article X, section 20 of the Colorado constitution (TABOR):
 - a. Voter approval for certain district tax increases and the weakening of other limits on district revenue, spending, and debt;
 - b. Election provisions related to TABOR ballot issues;
 - c. The requirement that a district maintain an emergency reserve;
 - d. District spending limits; and
 - e. Prohibitions on new or increased transfer tax rates on real property, new state property tax, local district income tax, income tax rate or a new state definition of taxable income before the next year, and multiple income tax rates.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. Currently, there are lawsuits based on provisions of TABOR that are repealed in the proposed initiative. What happens to those lawsuits if they are still pending at the time the proposed initiative is approved by voters?

3. Currently it is anticipated that the state will be required to make a refund for fiscal year 2019-20, and those refunds would be made in the following fiscal year. If the proposed initiative is approved at the 2020 general election, would the state still be required to refund money for the fiscal year 2019-20?
4. Is this initiative a state matter arising under section 20 of article X of the state constitution as defined in section 1-41-102, C.R.S., that you intend to be referred to voters at the November 2019 election?
5. The section number and the headnote, "Taxpayer's Bill of Rights" are stricken. Did you intend to renumber or relocate the section? Do you intend to change the headnote or otherwise rename or renumber the section?
6. The definition of "fiscal year spending" is not repealed in the proposed initiative. Is this defined term used somewhere in the remaining provisions of TABOR that are not being repealed? If not, is it necessary to keep it?
7. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

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. The subsections do not need to be in bold.
2. The proponents have stricken the "Section 20." language within article X. Unless the proponents wish to relocate the section, the section number will need to remain for organizational purposes. If the proponents do wish to relocate the section within the article, please indicate the new number. Additionally, the proponents also strike the headnote for subsection (8) ("Revenue limits"). If the proponents wish to rename, rather than remove, the headnote for this subsection, please indicate.
3. It is standard drafting practice to only include those provisions that are actually being amended in a measure. Subsections (2)(a), (2)(b), (2)(d), (2)(e), (4)(b), (8)(b), (8)(c), and (9) are not amended, and therefore, may be excluded from the measure if the proponents so choose. Note, that if you make this change and remove the unnecessary provisions, the amending clause could be changed to properly reflect the content of the proposed initiative as follows:

In the constitution of the state of Colorado, section 20 of article X, **amend** (1) and (3)(a); and **repeal** (2)(c), (2)(f), (2)(g), (3)(b), (3)(c), (4)(a), (5), (6), (7), and (8)(a) as follows: