

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Ms. Marla Fernandez- Benavides and Ms. Debra Carroll
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: May 26, 2023
SUBJECT: Proposed initiative measure 2023-2024 #64, concerning the general power of taxation.

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 to:

1. Establish an income tax of one-quarter of one percent of taxable income to be assessed on all individuals and corporations in Colorado;
2. Develop a state tax basis independent of the federal tax base; and

3. Prohibit the taxation of Colorado citizens by the federal government.

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 that your intention?
3. The beginning of the first paragraph of the proposed initiative states that the initiative is to "amend Article X, adds to Section 20, number (10) of the Taxpayer Bill of Rights."
 - a. Does this citation refer to the Colorado constitution?
4. Why does the measure add to Article X, Section 20 of the Colorado constitution rather than creating a new section in Article X of the Colorado constitution?
5. As a subsection of Article X, Section 20, the proposed initiative appears to be subject to the provisions of Subsection (1) of section 20 of article X that apply to Section 20 as a whole. Is this your intent?
6. The phrase "In the State Fiscal year 2025-2026 through the state fiscal year 2025-2034." in the second and third lines of the first paragraph of the proposed initiative is not a complete sentence.
 - a. Is there another part in the initiative that goes with the phrase?
 - b. Did you mean to use 2033 instead of the second use of 2025?
7. The phrase "The Statewide base per program spending, as defined in Article X, taxpayer bill of rights." in the third and fourth line of the first paragraph of the proposed initiative is not a complete sentence.
 - a. Is there another part of the initiative that goes with the phrase?
 - b. To what does "Article X" refer?

8. The term "Statewide base per program spending" used in line three of the first paragraph of the proposed initiative, is not defined in article X of the Colorado constitution. What is the meaning of this term?
9. The initial paragraph of the proposed initiative states that, "The General Assembly commands the means of supplying its own wants [...]" Does this authorize the General Assembly to take any action that it may not currently take? If not, what is your intent in including it in the proposed initiative?
10. The initial paragraph of the proposed initiative states that, "The General Assembly [...] has the power to initiate litigation on the federal government for usurping Article I, Section 2, Clause 3 [...]"
 - a. Does this provision create a right of action that does not already exist?
 - b. The measure appears to be permissive, rather than requiring the initiation of litigation. What if the General Assembly does not utilize the power granted in the measure?
 - c. Why does the measure grant this power to "The General Assembly" rather than to the State of Colorado?
11. Article I, Section 2, Clause 3, of the United States constitution states, in relevant part, that "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers [...]"
 - a. How does the imposition of a federal income tax "usurp" the apportionment of "direct Taxes"?
 - b. Does the measure allege that the federal government has incorrectly apportioned Representatives, or only "direct Taxes"?
 - c. In your view, what amount of "direct Taxes" would be correctly apportioned to the State of Colorado?
12. Does "Amendment XVI" in the initial paragraph of the proposed initiative refer to Amendment XVI of the United States constitution? If not to what does "Amendment XVI" refer?
 - a. If you are referring to Amendment XVI of the United States constitution, why does it need to be amended?

- b. If you are referring to Amendment XVI of the United States constitution, on what grounds are the people of Colorado not obliged to comply with it?
 - c. What do you mean by "For purposes of this section"? Are you referring only to the proposed new subsection (10) of article X of the Colorado constitution?
- 13. The initial paragraph of the proposed initiative states that "the State of Colorado shall comply with Article 1, Section 2, Clause 3 of the United States Constitution."
 - a. What does this mean?
 - b. Article 1, Section 2, Clause 3 addresses the apportionment of Representatives and "direct Taxes". This appears to be a responsibility of the federal government. How can the State of Colorado apportion these things?
- 14. The initial paragraph in the last sentence of the proposed initiative states that "The people of Colorado as of January 1, 2024, shall not be taxed by the federal government directly."
 - a. How will this amendment to the Colorado constitution supersede federal law requiring taxation of Colorado citizens?
 - b. How will this date work with the effective date in section 20 (10)(g) which states that the proposed initiative will be effective on the date in January 2025 when the legislative session begins?
- 15. The proposed initiative indicates that if submitted, the initiative will be on the November 2024 ballot but the people would be exempt from federal taxation beginning January 1, 2024. Do you intend for the people to be retroactively exempt from taxation from the federal government?
- 16. Article X, section 20, subsection (10)(a) of the proposed initiative states that it is a definition section. It specifies that "categorical state programs" include specified types of programs but does not define the term "categorical state programs".
 - a. What is the intended definition of "categorical state programs"?
 - b. The term is not used elsewhere in the proposed initiative. Is it your intent to define the term but not use it?

- c. What type of programs are "categorical state programs"?
17. What is the meaning of the term "other current and future programs" in article X, section 20, subsection 10(a) of the proposed initiative?
 18. The general assembly already has the power to appropriate and spend money from the general fund and that spending is subject to statutory and constitutional limitation on growth and fiscal year spending. What is the purpose of subsection (10)(b) of the proposed initiative?
 19. Article X, section 20, subsection (10)(c)(I) of the proposed initiative creates the "state internal revenue".
 - a. Is this a new state department?
 - b. How is this different than the state's current department of revenue?
 - c. What taxes will the new "state internal revenue" administer?
 - d. How will the new "state internal revenue" work with the current department of revenue?
 - e. Why is the "state internal revenue" created in the department of the treasury? What oversight will the state treasurer have over this new entity?
 20. Article X, section 20, subsection (10)(c)(I) of the proposed initiative provides for a tax of one-quarter of one percent of "state taxable income" for individuals and corporations.
 - a. Is this in addition to the current state income tax?
 - b. If the measure creates a new tax, it must comply with the current provisions in article X, section 20, subsection (3) of the Colorado constitution, including the prescribed ballot language.
 - c. What is "state taxable income"?
 21. Article X, section 20, subsection (10)(c)(I) of the proposed initiative references "United States union dues." What are "United States union dues"?
 22. In what state fund will the money from the new tax be deposited?
 23. Subsection (10)(c)(I) of the proposed initiative includes a requirement that "Monies remaining in the General Fund at the end of a fiscal year shall be refunded as per this section."

- a. The refund requirements that appear in article X, section 20, subsections (1), (3), and (7) of the Colorado constitution do not require that money remaining in the general fund at the end of a fiscal year be refunded. Do you mean for your measure to create a new refund obligation?
 - b. Does the refund obligation in your measure apply only to revenue generated from the new tax, or to all money in the general fund at the end of a fiscal year?
 - c. If the refund requirement applies to all money in the general fund at the end of a fiscal year, how will the state pay obligations that arise in the following fiscal year before any revenue is collected? For example, state employees currently receive their paychecks for June on the first business day of each July.
24. Article X, section 20, subsection (10)(c)(II) of the proposed initiative provides that besides paying United States union dues, “monies” may be used only to comply with section 20, accountable tax reform, and accountable programs to meet the federal government needs.
- a. Does this provision apply only to revenue generated from the new tax, or to some broader set of “monies”?
 - b. Does "section 20" refer to article X, section 20 of the Colorado constitution?
 - c. What costs must be paid to “comply with section 20”?
 - d. What is "accountable tax reform"?
 - e. What are "accountable programs"?
 - f. What are "federal government needs"?
 - g. How will "federal government needs" be calculated?
 - h. Is it your intent that the money from this new tax go to the federal government?
25. Article X, section 20, subsection (10)(c)(III) of the proposed initiative provides that the state will develop a state tax basis independent of the federal tax basis. How will a state tax basis be developed independently of the federal tax basis?
26. What does it mean to “develop a tax basis [...] to support the development and implementation of a state tax basis [...]” as stated in article X, section 20,

- subsection (10)(c)(III) of the proposed initiative. How can a tax basis support development of a tax basis?
27. Article X, section 20, subsection (10)(c)(IV) of the proposed initiative states that the state will "increase [its] expenditure to cover its programs." To which expenditure and which programs are you referring?
 28. Article X, section 20, subsection (10)(d) of the proposed initiative has the headnote "Maintenance of effort" but does not appear to address a maintenance of effort requirement.
 29. Article X, section 20, subsection (10)(d)(I) prohibits "monies appropriated directly from the people" to be used for political campaigns, unions, political candidates, and any non-profit with anonymous donors. What are "monies appropriated directly from the people"?
 30. How does proposed subsection (10)(d)(I) fit within the single subject of the proposed initiative?
 31. Article X, section 20, subsection (10)(c)(IV) of the proposed initiative states that the state will "increase [its] expenditure to cover its programs." However, article X, section 20, subsection (10)(d)(II) appears to state that the general assembly shall not increase appropriations from fiscal years 2025-2026 to 2030-2031. Is it intended for the state to increase spending or be limited in spending from fiscal years 2025-26 to 2030-31?
 32. The following questions concern the requirement in article X, section 20, subsection (10)(d)(II) of the proposed initiative that the General Assembly "at minimum, annually shall not increase the general fund appropriation."
 - a. Does this requirement apply to all appropriations, or only the appropriation of revenue generated from the tax in the measure?
 - b. If it applies to all appropriations, how does it fit within the single subject of the proposed initiative?
 - c. What does "at minimum" mean in this context? What would be an example of the General Assembly doing more than the minimum amount required?
 33. Article X, section 20, subsection (10)(f) of the proposed initiative says that "Nothing in this amendment changes the taxpayer bill of rights." However, the amendment adds a new subsection to Article X, section 20, of the Colorado constitution, otherwise known as "The Taxpayer's Bill of Rights." How can the

measure add a new subsection to the Taxpayer's Bill of Rights without changing it?

34. Article X, section 20, subsection (10)(g) of the proposed initiative says that the proposed initiative will take effect in January 2025. In subsection (10)(c)(3), the proposed initiative appears to require that the state develop a new basis for taxation. In subsection (10)(e), the proposed initiative requires that the state continue to comply with the Taxpayer's Bill of Rights. In article X, section 20, subsection (8)(a) of the Colorado constitution, the state is not allowed to apply a new definition of taxable income until the following tax year. Taken together, it appears that the measure would require a new tax basis to be developed in 2025, but that the tax basis not apply until 2026. This would result in the state collecting no income tax for the 2025 tax year. Is this your intent?

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 begin an initiative with an enacting clause as follows:

Be it Enacted by the People of the State of Colorado:

2. Following the Enacting Clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). The section number is then followed by an amending clause explaining how the law is being changed. For example:

SECTION 1. In the constitution of the state of Colorado, section 20 of article X, **add** (10) as follows:

3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to subsection (10) of the proposed initiative and be in bold-face type. For example:

Section 20. The Taxpayer's Bill of Rights. (10) Headnote. (a) Headnote. [Text of measure].

(b) **Headnote.** [Text].

4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] 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.
5. 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;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
6. The following words are misspelled: [THRE] should be spelled [THERE]; [TREASURU] should be spelled [TREASURY]; [ANNONYMOUS] should be spelled [ANONYMOUS].