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MEMORANDUM

TO: Alex Valdez and Colin Larson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 2, 2022

SUBJECT: Proposed initiative measure 2021-2022 #70, 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2021-2022 ##71 to 77. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2021-2022 ##71 to 77, 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.

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 and personal property shall not be increased annually by more than inflation, limited to three percent, and shall equal the amount of the property's most recent sale, unless the property is substantially improved, its use is changed, or it suffers a decline in value.
2. To allow voters to decide in 2032 whether they want to keep the property valuation system established in the proposed initiative or return to the current system.

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. Concerning section 1 of the proposed initiative:
 - a. If the value of property "shall equal the amount of the property's most recent sale" price, unless the property was substantially improved or its use was changed, does this mean that property's value does not change until it is sold, is substantially improved, or its use is changed? If so, what is the meaning of the language stating that "actual value shall not be increased by more than inflation, limited to 3%"?
 - b. If property is substantially improved or its use is changed, is there any limit on how much its value may increase?
 - c. If a person did not sell their property for an extended period of time and then did sell their property, would there be any limit on how much the actual value of their property would increase?
 - d. What period of time should be considered when determining the amount of inflation relevant to determining the actual value of property?

- e. 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?
 - f. How does this initiative interact with article X, section 3.5 (2) of the Colorado constitution which states: "Notwithstanding the provisions of subsection (1) of this section, section 20 of this article, or any other constitutional provision, for any property tax year commencing on or after January 1, 2003, the general assembly may raise or lower by law the maximum amount of actual value of residential real property of which fifty percent shall be exempt under subsection (1) of this section"?
 - g. What is the purpose of 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"?
 - h. 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)?
3. Concerning section 2 of the proposed initiative:
- a. The definitions in section 39-1-102, C.R.S., apply to the entirety of the first thirteen articles of title 39. Do you think there will be any unintended consequences of using new definitions of inflation, sale, substantially improved, and use in these articles?
 - b. Concerning the definition in proposed section 39-1-102 (6.9), C.R.S.:
 - i. Does this mean that inflation is measured based on the consumer price index for Denver-Aurora-Lakewood even if the property is located in a different part of the state?
 - ii. If the increase in property valuation is already limited so that "actual value shall not be increased by more than inflation, limited to 3%", what is the purpose of including "limited to 3%" in the definition of inflation?
 - c. Concerning the definition in proposed section 39-1-102 (15), C.R.S.:
 - i. Is any "transaction that is: (a) bona fide, (b) at arm's length, (c) free from any donative intent" necessarily a "sale"?

- ii. What is the difference between a transaction "in the ordinary course of business" and a "transaction that is: (a) bona fide, (b) at arm's length, (c) free from any donative intent"? 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."
 - iii. 26 CFR section 25.2512-8 states that a "transfer of property made in the ordinary course of business...will be considered as made for an adequate and full consideration in money or money's worth." Is that not necessarily the case here?
 - iv. You use the phrase "property is sold" throughout the initiative, does this definition of "sale" apply in those instances?
 - v. How is the value of property determined if a property is sold but does not satisfy the proposed definition of "sale"?
 - d. Concerning the definition in proposed section 39-1-102 (15.7), C.R.S.:
 - i. Why are renovations that do not change the square footage of existing structures or buildings on real property not qualified as "substantially improv[ing]" the real property? Can such renovations not "substantially improve" the property?
 - 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 size of property before the disaster?
 - iii. How is property size measured for the purpose of determining whether it is substantially improved after a natural disaster? Does this not consider the square footage of structures on the real property?
 - e. Concerning the definition in proposed section 39-1-102 (17.5), C.R.S.:
 - i. What is meant by "for purposes of determining the property's classification"?
4. Concerning section 3 of the proposed initiative:

- a. Concerning proposed section 39-1-103 (5)(a):
 - i. What is the purpose of the sentence that states: "Nothing regarding how the actual value of a property is determined shall be construed as a tax change or as a change to a property's mill levy rate or property tax rate"?
 - 1. Is this sentence meant to address section 1-40-106 (3)(f), C.R.S.? If so, given that the proposed initiative has not yet been enacted and section 1-40-106 (3)(f), C.R.S., is current law, how would that work?
 - 2. Why is this sentence not added to the end of article X, section 3 (1)(a) of the Colorado constitution?
 - 3. Is this sentence meant to apply to instances beyond the proposed initiative that would relate to the determination of "the actual value of a property"?
 - ii. Likewise, why was 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?
- b. Concerning proposed section 39-1-103 (15):
 - i. Since the Colorado constitution prevails in a conflict with statute, 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 three percent or the rate of inflation, unless the property was sold, substantially improved, or its use changed?
- 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 3%"?
- d. Concerning proposed section 39-1-103 (15.5)(a):
 - i. Unless property was sold, substantially improved, or its use changed, how would the owner know that it has declined in value for purposes of this subsection (15.5)(a)?
 - ii. What happens after a "property recovers all its value" under this section?
 - iii. Does "prior to the protest or appeal" mean prior to when the protest or appeal is filed or prior to when the protest or appeal is concluded?
- 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?
- 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?

5. Concerning proposed section 4:

- a. It might be helpful to explain how the three subsections in this section interact so that it is clear which subsections supersede each other.

- b. Is the total adjustment for inflation in all three subsections of this section limited to three percent or just each annual adjustment?
- c. Concerning proposed section 39-1-104 (10.2)(a):
 - i. Does "subsequent property tax years" refer to tax years after the tax year in which the property was sold?
- d. Concerning proposed section 39-1-104 (10.2)(b):
 - i. What is meant by this subsection (10.2)(b)?
- e. Concerning proposed section 39-1-104 (10.2)(c):
 - i. How will the county assessor know that property has been substantially improved or that its use has been changed?
 - ii. What happens if property is sold and substantially improved in the same year?
- 6. Concerning proposed section 5:
 - a. Although the actual value of most property is unlikely to increase by more than three percent each year, it appears that the actual value of property that is sold, substantially improved, or used differently may increase at a higher rate. Assuming this increase could be by more than seventy-five percent, why remove the requirement that the assessor mail the taxpayer an explanation for this increase?
- 7. Concerning proposed section 6:
 - a. Why is this section nonstatutory?
 - b. How will the Secretary of State be aware of this requirement in ten years?
 - c. How can the Secretary of State resubmit this ballot by the same ballot title if the question at issue is different? Presumably, the ballot question would need to notify the voters that they are determining whether language remains in statute.
 - d. Would voters reverting back to the current property tax system in 2032 count as a "tax increase" and so require a TABOR ballot title?

- e. What happens if the language amended in this proposed initiative is further amended in the next ten years? Do the voters have the option to keep that amended language?
 - f. Article V, section 24 of the Colorado constitution requires laws that are "revived" to be "published at length." Would this require the publication and submission to voters of both the proposed initiative and the relevant constitutional and statutory language as it existed prior to the election in November of this year?
 - g. What is meant by the phrase "the provisions of the initiative will sunset"?
8. Concerning proposed section 7:
- a. 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 beginning of 2023?

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 briefly describe the content of the section. A headnote should be added to each section of the proposed initiative and be in bold-face type. For example:

In the constitution: "**Section 3. Uniform taxation – exemptions.** (1)(a) Each property tax..."

In the statutes: "**39-1-102. Definitions.** (6.9) "INFLATION" MEANS..."
2. When referencing the section you are currently in, the section number does not need to be referenced. For all other article and section divisions, the number or letter of what you are referencing should be specified for every level of the reference. For example:
 - a. This section

- b. This article XXX
 - c. Article XIX of the Colorado constitution
 - d. Section 20 of article X of the Colorado constitution
 - e. Section 20 (3)(b) of the Colorado constitution
 - f. Subsection (5)(b)(II) of section 9 of article XVIII of the Colorado Constitution
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

- (a) Paragraph
 - (I) Subparagraph
 - (A) Sub-subparagraph
 - (B) Sub-subparagraph
 - (II) Subparagraph
 - (b) Paragraph
 - (2) Subsection
 - (3) Subsection
4. It is standard drafting practice to create a new subsection when a new definition is being added. For example, in proposed Section 2, a new (15.3) should be added with the definition of "sale" rather than amending repealed (15).
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 number or letter of what you're referencing needs to be specified for every other level of reference, even when you're referring to a provision within the same:
 - a. Title: "this title 1"
 - b. Article: "this article 1"
 - c. Part: "this part 1"
 - d. Subsection: "this subsection (2)"
 - e. Paragraph: "this subsection (2)(a)"
 - f. Subparagraph: "this subsection (2)(a)(I)"
 - g. Sub-subparagraph: "this subsection (2)(a)(I)(b)"
7. The following word is misspelled: "case" should be spelled "cast" in section 6.