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Colorado General Assembly

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MEMORANDUM

TO: Dave Davia and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 19, 2024

SUBJECT: Proposed initiative measure 2023-2024 #198, concerning property tax revenue

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 2023-2024 #199 and #200. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #199 and #200, 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 Revised Statutes appear to be:

1. To require voter approval for a government to retain property tax revenue, if statewide property tax revenue is projected to go up more than four percent, excepting any property tax increase for a property with a substantial change of use over the preceding year and any property tax revenue resulting from a mill levy override that is approved by voters after January 1, 2025;

2. To establish the language that must be used in a ballot question asking for such voter approval;

3. Lowering the valuation for assessment of all taxable property in the state, excepting residential real property, producing mines, lands or leaseholds producing oil or gas, and agricultural lands exclusive of building improvements thereon, on or after January 1, 2025, from twenty-nine percent to twenty-five and one-half percent;

4. Lowering the valuation for assessment for residential real property, on or after January 1, 2025, from seven and fifteen-hundredths to five and seven-tenths percent, minus the less of fifty-five thousand dollars or the amount that causes the valuation for the assessment of the property to be one thousand dollars;

5. No later than April 15 of each year, requiring the state treasurer to issue a warrant to be paid from the general fund to reimburse local districts for lost revenue as a result of the passage of the proposed initiative; and

6. Requiring that any reduction in revenue attributed to the voter approval of the proposed initiative will not reduce funding for the state education fund.

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 a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly unless a constitutional limit on the general assembly's plenary power to legislate applies. Are the proponents aware

of this possibility? Do the proponents believe that the proposed initiative's limit on the amount of increased statewide property tax that a government may retain without voter approval is a "limit on district revenue, spending, and debt" that "may be weakened only be voter approval" under section 20 (1) of article X of the Colorado constitution?

3. The following questions relate to the proposed definitions in section 39-1-102:

    a. Does the definition of "substantial change of use" mean that a substantial change of use caused by the construction of a structure only occurs after the structure is completed?

    b. Does the construction of any additional structure cause a "substantial change of use"? Perhaps relatedly, what is a "subsidiary structure"?

    c. Who determines whether a property has a "substantial change of use"?

    d. Is it the proponents' intent to repeal the definition of "school" in section 39-1-102 (15.5)? If so, what are the consequences of this repeal?

4. The following questions relate to proposed section 39-1-103.9 (1):

    a. Who projects "statewide property tax revenue" for purposes of this section and when do they make that projection?

        i. Is this determination made early enough in the year for the state or local government to adjust assessment rates or otherwise decrease the amount of property tax revenue collected by "government"?

        ii. Does the four percent cap on property tax revenue disincentive a "government" from lowering the amount of property tax revenue it collects?

    b. What is meant by "government" in proposed section 39-1-103.9 (1)?

    c. In determining the amount of property tax revenue for the previous year, is the amount equal to the amount that "government" was allowed to retain or the amount that "government" collected irrespective of whether there was voter approval to "retain the additional revenue"?

    d. Assuming that "statewide property tax revenue is projected to go up more than 4%" and that voters do not approve the ballot question in proposed section 39-1-103.9 (2):

i. How is it determined which taxing jurisdictions retain which amounts of revenue?

ii. What happens to the additional revenue that "government" may not retain?

5. The following questions relate to proposed section 39-1-103.9 (2):

    a. What is meant by the mention of "referred measure" in proposed section 39-1-103.9 (2)? Does this mean that the only way a ballot question about "the additional revenue" can be put before the voters is through a measure referred by the General Assembly?

    b. Is the ballot question in proposed section 39-1-103.9 (2) meant to be a statewide ballot question? If so, does this mean that the voters in a particular taxing jurisdiction would not be able to determine whether the tax jurisdiction could retain "the additional revenue", but that instead that determination would be made at the statewide level?

    c. If the voters of a taxing jurisdiction, independent of the ballot question in proposed section 39-1-103.9 (2), vote to allow that jurisdiction to retain "the additional revenue", what happens?

    d. Assuming that the ballot question in proposed section 39-1-103.9 (2) is placed before the voters in a November election:

        i. Is there enough time for local governments to determine their annual budgets and meet other statutory deadlines after the results of the election are known?

        ii. Would the results of the election be known before local governments mailed out property tax bills?

    e. Is the "[total projected increase over the preceding year]" in the required ballot measure language meant to be a percentage or a dollar amount?

    f. What is meant by "for [dates x to x]" in the required ballot measure language?

6. The following questions relate to proposed section 39-1-103.9 (3):

    a. Who determines when a property has a substantial change of use and how is this information conveyed to whoever makes the determination in proposed section 39-1-103.9 (1)?

b. What is meant by "any statewide property tax limit"? Is this meant to cover the 4% cap described in subsection (1) of this section? Is this meant to cover any other type of property tax limit, if so what other kind of property tax limit?

c. What is meant by the last sentence of proposed section 39-1-103.9 (3)?

d. Is it proponents' intent to include revenue increases from annexations, changes in exemptions, oil and gas, producing mines, and all other sources of revenue in the calculation or imposition of the property tax limit?

7. The following questions relate to proposed section 39-1-103.9 (4):

a. What is meant by the term "mill levy override"? Is this the same as override mills?

b. How does this proposed section interact with any currently approved override mills?

c. What is meant by "local government" in this subsection? Is it different than "government" in subsection (1) of this section or "local district" in this subsection?

d. What is meant by the term "local district" in this subsection? Is it different than "government" in subsection (1) of this section or "local government" in this subsection?

e. What does it mean to say that "locally-approved mill levy increases approved after January 1, 2025 shall be subject to the valuations of assessment set forth in section 39-1-104 and 39-1-104.2"?

8. The following questions relate to proposed section 39-1-103.9 generally. How does the property tax revenue limit in this proposed section interact with:

a. Tax increment financing?

b. Preexisting approved bond measures?

c. The annual levy law in section 29-1-301?

d. The spending limits in article X, section 20 of the Colorado constitution (TABOR)?

9. The following questions concern proposed sections 3 and 4:

a. Why did the proponents repeal and reenact sections 39-1-104 (1) and 39-1-104.2 (3)(r), rather than add new language to sections 39-1-104 (1) and 39-1-104.2 (3)?

b. What is the order of operations for applying the $55,000 reduction in proposed section 39-1-104.2 (3)(r)? Is the reduction applied to the actual value before the assessment rate is applied to that property or after?

10. The following questions concern proposed section 5:

a. What revenue would be considered "lost revenue as a result of the passage of" the proposed initiative? Would this include revenue lost due to the changes in proposed sections 39-1-104 (1) and 39-1-104.2 (3)(r), revenue that could not be retained as a result of proposed section 39-1-103.9, or some combination of both of those? Who makes this determination?

b. Is the state treasurer required to issue a warrant to each local government in the state that has "lost revenue as a result of the passage of" the proposed initiative?

c. Would reimbursements from the general fund made pursuant to this section be an appropriation subject to the state general fund reserve requirement?

d. Would the general assembly know whether it would need to reimburse local governments with enough time to adjust the state budget for the fiscal year to reflect that reimbursement?

e. The proposed initiative states that "[r]eimbursements to local districts shall not reduce refunds due to taxpayers for revenues in excess of the spending limit established in Article X, Section 20 of the Colorado constitution."

i. How do the proponents intend for this to be measured? In other words, what "refunds due to taxpayers for revenues in excess of the spending limit established in Article X, Section 20 of the Colorado constitution" do the proponents intend to be the baseline for this determination?

ii. Do the proponents consider the payments made to local districts pursuant to sections 39-3-209 and 39-3-210 (4)(a) to be "refunds due to taxpayers for revenues in excess of the spending limit

established in Article X, Section 20 of the Colorado constitution"?

f. What is meant by a "local district" and how does it differ from a "local governmental entity" as defined in section 39-3-210 (1)(d.5)? Does "local district" include school districts?

11. The following questions concern proposed section 6:

a. How would school districts be exposed to revenue loss due to the passage of this measure, since school districts are funded through a balance of local and state funding?

b. How would a "reduction in revenue attributed to the voter approval of [the proposed initiative]…reduce funding for the state education fund"?

c. How would the proposed language "insulate school districts from revenue loss"?

d. Why did proponents repeal and reenact subsection 39-3-210 (7), rather than create a new subsection 39-3-210 (8)?

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. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."

2. 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.