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Colorado General Assembly

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MEMORANDUM

TO: Vilan Odekar and Luke Teater
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2022
SUBJECT: Proposed initiative measure 2021-2022 #108, concerning dedicated state income tax revenue for affordable housing programs

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 Revised Statutes appear to be:

1. To create the state affordable housing fund (fund) in the state treasury; to deposit in the fund, commencing on January 1, 2023, all state revenue collected from one-tenth of one percent of federal taxable income of every individual, estate, trust, and corporation; and to specify that such revenue

deposited in the fund is not subject to the limitation on fiscal year spending specified in section 20 of article X of the state constitution (TABOR).

2. To allow money from other sources to be deposited in the fund and to specify that money in the fund at the end of a fiscal year that is not expended or encumbered and all interest earned on the investment or deposit of money in the fund remains in the fund.
3. To require the state treasurer to transfer, on July 1, 2023, and on each July 1 thereafter, 40% of the money in the fund to the division of housing in the department of local affairs (division) and 60% of the money in the fund to the office of economic development (office).
4. To exempt the appropriations, transfers, and expenditures required by the proposed measure from the limitation on fiscal year spending specified in TABOR or any other spending limit provided by law.
5. To require the office to contract with a political subdivision of the state established for the purpose of increasing the supply of decent, safe, and sanitary housing for low-and moderate-income families or to contract with another third party established for such purposes (administrator) to administer the affordable housing programs created in the proposed measure.
6. To require the administrator selected by the office to use the money that the state treasurer transfers from the fund to the office pursuant to the proposed measure only for:
 - a. A land banking program to be administered by the administrator that will provide grants to local governments and loans to certain nonprofit organizations to acquire and preserve land for the development of affordable housing;
 - b. An affordable housing equity program to be administered by the administrator that will make equity investments in low- and middle-income multi-family rental developments and that will make equity investments in affordable housing projects intended to preserve existing affordable multi-family rental units; and
 - c. A concessionary debt program to be administered by the administrator that will: Provide debt financing of low- and middle-income multi-family rental developments; provide debt financing of existing affordable housing projects to preserve existing affordable multi-family rental units; provide gap financing in the form of subordinate debt and

pre-development loans for projects that qualify for federal low income housing tax credits; and provide debt financing for modular and factory built housing manufacturers.

7. To specify that of the money transferred from the fund to the office for the three programs specified above, the administrator shall use between 15% and 25% of the money for the land banking program, between 40% and 70% of the money for the affordable housing equity program, and between 15% and 35% of the money for the concessionary debt program, and to specify that the administrator may use up to 2% of the money allocated to each program for the direct and indirect costs of administering the program.
8. To specify certain requirements for the three programs for which the administrator is required to spend the money transferred from the fund to the office and to specify that projects funded in whole or in part by one of the three programs remain affordable housing in perpetuity.
9. To require the division to use the money that the state treasurer transfers from the fund to the division pursuant to the proposed measure only for:
 - a. An affordable home ownership program to be administered by the division or one or more contractors of the division that will offer home ownership down-payment assistance to first-time homebuyers, incentivize assistance to the extent practicable to first-generation homebuyers, and make grants or loans to non-profit organizations and community land trusts to support affordable home ownership and mobile home park buyback programs to preserve affordability;
 - b. A program serving persons experiencing homelessness to be administered by the division that will: provide rental assistance, vouchers, and eviction defense assistance to persons experiencing homelessness or at risk of experiencing homelessness; make grants or loans to nonprofit organizations, local governments, or private entities to support the development and preservation of supportive housing for persons experiencing homelessness; and support other activities that contribute to the resolution of or prevention of homelessness; and
 - c. A local planning capacity development program to be administered by the division that will provide grants to local governments to increase the capacity of local government planning departments responsible for

processing land use, permitting, and zoning applications for housing projects.

10. To specify that of the money transferred from the fund to the division for the three programs specified above, the division shall use 50% of the money for the affordable home ownership program, 45% of the money for the program serving persons experiencing homelessness, and 5% of the money for the local planning capacity development program, and to specify that the division may use up to 5% of the money allocated to each program for the direct and indirect costs of administering the program.
11. To specify certain requirements of the three programs for which the division is required to spend the money transferred from the fund to the division..
12. To allow the General Assembly to temporarily reduce the funding allocated to the office pursuant to the proposed measure if an economic and revenue forecast projects that revenue for the next fiscal year will fall below the limit imposed by TABOR.
13. Beginning in 2027, specify that to be eligible for direct funding pursuant to the proposed measure, a local government must:
 - a. Satisfy certain requirements to commit to and achieve annual increases in the number of affordable housing units within the local government's boundaries; and
 - b. Satisfy certain requirements regarding the implementation of a system to expedite the development approval process for affordable housing units.
14. To require that for any state fiscal year in which money is transferred from the fund in accordance with the proposed measure, the money appropriated shall supplement and not supplant the level of general fund appropriations for affordable housing programs as of the effective date of the proposed measure.

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. Proposed section 29-32-101 (1) defines "administrator" to mean "a political subdivision of the State[...] or other third party[...] selected by the office." Does such a political subdivision of the state already exist? If not, would the General Assembly, the office, or some other entity be responsible for creating it? Would it need to be created through implementing legislation? If the office does not select a third party, do you intend for the General Assembly to designate a subdivision as the administrator in implementing legislation?
3. Proposed section 29-32-101 (2) includes calculations for determining whether housing qualifies as "affordable housing." However, certain costs – like those for utilities or interest payments – are not defined, and would presumably require interpretation. What entity will perform these calculations?
4. Proposed section 29-32-102 (1) states that "all state revenue collected pursuant to article 22 on one-tenth of one percent of federal taxable income, as modified by state law, of every individual, estate, trust, and corporation, as defined in law, must be deposited into the fund." Regarding this provision:
 - a. Please consider clarifying that you are referring to article 22 of title 39.
 - b. What does "as defined in law" mean? Should any specific existing definitions of these terms in law be used?
 - c. The state income tax applies to federal taxable income, as modified by state law, and is currently assessed at a rate of 4.55%. The proposed measure appears to require that revenue generated from the portion of the tax that applies to one-tenth of one percent of taxable income be deposited in the fund, such that the tax on 0.1% of taxable income will be credited to the fund, and that the tax on 99.9% of taxable income will be credited to the general fund or the state education fund, as required under current law. Is this your intent?
 - d. Or do you instead intend that an amount of income tax equal to 0.1% of federal taxable income be credited to the fund? If this is your intent, please rewrite this subsection to clarify this.
 - e. Who is responsible for depositing this money in the fund?
 - f. How will the depositing authority know what amount of money to deposit in the fund? If you intend that this diversion occur like the transfer of income tax revenue to the State Education Fund, consider reviewing the procedures established in sections 22-55-103 and 22-55-104, C.R.S.

- g. Taxable income for a given year is not known until tax returns are filed in the following year, which can be as late as October for extension filers. If actual taxable income differs from the amount assumed when diversions were made, does the measure require adjustments?
 - h. Future income tax credits, which reduce tax due but not taxable income, would not affect deposits to the fund, but future income tax deductions, which reduce taxable income, would affect deposits to the fund. Is this your intent?
5. Proposed section 29-32-102 (1) states that "[t]he revenue deposited into the fund[...] is not subject to the limitation on fiscal year spending specified in section 20 of article X of the state constitution." Regarding this provision:
 - a. Can a statutory provision exempt revenue from the state's constitutional spending limit?
 - b. Do the proponents intend for this subsection to permit revenue to be retained and spent as a voter-approved revenue change under subsection (7) of TABOR?
 6. Proposed section 29-32-102 (3) begins with, "[e]xcept as otherwise required by this subsection (3)[...]"; however, there does not appear to be an exceptional circumstance identified in that subsection. Please consider removing this language or specifying an exceptional circumstance.
 7. Proposed section 29-32-103 (1) requires that transfers be made to "the division" and "the office." To what cash funds in the division and the office should money be transferred?
 8. If transfers are not made on July 1, should the amounts transferred be 40% and 60% of the balance as of July 1, or 40% and 60% of the balance as of the day when transfers are made?
 9. Proposed section 29-32-103 (2) continuously appropriates "all money in the fund that is to be transferred to the division[...]" What does it mean to appropriate money that "is to be" transferred? Does this provision give the division the authority to spend the identified money before the transfer actually occurs? If so, such spending would distort the 40% and 60% shares distributed in the previous subsection.
 10. Proposed section 29-32-103 (2) states that "[t]he appropriations, transfers, and expenditures required by this section are not subject to the limitation on fiscal

year spending specified in section 20 of article X of the state constitution or any other spending limitation provided by law." Regarding this provision:

- a. Do you intend for this subsection to permit that revenue be retained and spent as a voter approved revenue change under subsection (7) of TABOR?
 - b. How does this provision regarding appropriations, transfers, and expenditures interact with the earlier provision regarding revenue? Do the two provisions affect the same money or different money? Is the effect of the two provisions duplicative, or does the presence of this provision result in a further change to the state's TABOR computations?
 - c. The first sentence of this subsection concerns money transferred to the division, but the division is not mentioned in the second sentence that includes the TABOR language. Do you intend for this provision to apply also to money transferred to the office? If so, please consider clarifying this.
 - d. What "other spending limitation provided by law" would apply to this money?
 - e. The first sentence specifies that the money "is continuously appropriated to the division for the purposes specified in subsection (3) of this section as applicable to the division." However, this section does not have a subsection (3). What subsection did you intend to reference?
11. Proposed section 29-32-101 (1) indicates that the administrator may be a political subdivision of the state of Colorado. Then, proposed section 29-32-104 (1) requires the office to "announce the contract opening publicly." How do these two provisions work together? Would a political subdivision of the state need to bid against private contractors?
 12. Could the office select itself as a political subdivision of the state to administer the programs listed in proposed section 29-32-104 (1)? If not, why is a third-party administrator required?
 13. The proposed measure includes ranges of percentages that may be used to determine the allocations of money transferred to the office among the three programs to be funded using this money. Does the office or the administrator determine the allocations within these ranges?

14. May the office contract with a new administrator in the future? If so, what happens to equity investments made by or loans owed to the previous administrator?
15. Proposed section 29-32-104 (1)(a) creates a land banking program through which money is distributed from the office in the form of loans to local governments and nonprofit organizations. The proposed measure states that "[l]oans made by the program will be forgiven if land[...] is properly zoned[...] within 5 years[...] and if the development is permitted and funded within 10 years." Regarding this provision:
 - a. It appears that, at the time when loans are made, the office and administrator will not know whether the loans will be forgiven, and may not know until 10 years later. Is this a correct reading of the proposed measure?
 - b. Do you intend that loans be structured so that repayment does not begin until 10 years after the date when the loans are issued?
 - c. The proposed measure goes on to state that "[i]f land acquired[...] is not developed within the timeline above, the loan must be repaid, with interest, as soon as practical, but not more than six months after expiration of said timeline." Do you intend that the entire debt service schedule facilitate repayment no earlier than 10 years after the date of issuance, and no later than 10 years, 6 months, after the date of issuance?
 - d. Similarly, if the timeline for zoning is not satisfied, do you intend that the entire debt service schedule facilitate repayment no earlier than 5 years after the date of issuance, and no later than 5 years, 6 months, after the date of issuance? Or is it your intent that the debt service schedule facilitate repayment no earlier than 5 years and no later than 10 years, 6 months, after the date of issuance?
 - e. Are loans repaid to the administrator, the office, the state affordable housing fund created in proposed section 29-32-102, or somewhere else?
 - f. Are repayments subject to the requirement in the introductory portion of proposed section 29-32-104 (1) that money be spent to support the listed programs only?
 - g. The requirement for proper zoning may require actions from local governments, such that the loan repayment responsibilities of the

recipients of the funds depend on whether local government entities act to rezone land to allow for affordable housing development. Is this your intent?

- h. The proposed measure allows land to be "conveyed to an [sic] state agency or other entity for the development of affordable housing with the approval of the administrator." Does this provision apply if the housing was not developed because the land was not zoned properly? In such a case, the state agency or other entity might not be able to develop affordable housing on the land in question either.

16. What type of equity investments do you expect to be funded in proposed section 29-32-104 (1)(b)? Regarding this provision:

- a. Do equity investments need to be made in new buildings or in buildings newly designated as low- and middle-income multi-family residential developments? Or may the program purchase equity in an existing development?
- b. What is an "affordable housing project intended to preserve existing affordable multi-family residential units"? Is this an organization that rents these units now, or does the project need to demonstrate that the existence of the units would somehow be jeopardized if not for the project's involvement?
- c. How is the weighted average imposed in this subsection to be calculated? Are projects weighted according to the number of units, or according to the program's financial investment in them? Please consider clarifying this.

17. The following questions concern the tenant equity vehicle in proposed section 29-32-104 (1)(b):

- a. Does "residents in projects funded by the program for at least one year" refer to residents who reside for at least one year in a project funded by the program, or to any resident who resides in a project that receives at least one year of equity investment from the program?
- b. The proposed measure states that "residents[...] will be entitled to funding from the program for a down-payment on housing or related purposes." Then, the proposed measure states that only returns on program investments greater than the program's initial investment shall

be retained to fund the tenant equity vehicle. If returns are less than the program's initial investment, then how will this entitlement be funded?

- c. If the proposed measure does not divert sufficient funding to pay for the entitlement, is the administrator required to pay this cost from some other source of funds?
- d. It appears that the entitlement obligates the affordable housing equity program administered by the administrator, which may not be a subdivision of the state. If the administrator is a private entity, is the state obligated to fund the entitlement created in this subsection?
- e. To how much money is a tenant entitled? Or, how is this amount to be determined?

18. Proposed section 29-32-104 (1)(c) creates a "concessionary debt program" to fund four categories of loans, which are enumerated in subsection (1)(c)(i) through (1)(c)(iv) in the text of that subsection. Regarding this provision:

- a. Subsections (1)(c)(i) and (1)(c)(iii) include "rental developments" and "pre development loans." Do you intend that loans made under these categories be issued only to fund new affordable housing projects?
- b. Subsection (1)(c)(ii) includes "debt financing of existing affordable housing projects for the purpose of preserving existing affordable multi-family residential units." Would these loans support organizations that rent these units now? Does the debtor need to demonstrate that the existence of the units would somehow be jeopardized if not for issuance of the loans?
- c. Subsection (1)(c)(iv) includes "debt financing for modular and factory build housing manufacturers." It appears that these loans would finance the manufacturers as businesses, rather than specific modular or factory-built construction. Is this correct?
- d. Are loans repaid to the administrator, the office, the state affordable housing fund created in proposed section 29-32-102, or somewhere else?
- e. How are loan terms to be established? The measure requires that debt financing and loans "shall be made below market interest rates," but does not include other provisions governing repayment terms or delinquency. Would this be left to the administrator's discretion?

- f. How is the weighted average imposed in this paragraph to be calculated? Are projects weighted according to the number of units or according to the program's financial investment in them?
 - g. Subsection (1)(c) includes restrictions on the use of "returns on program investments." Do these restrictions apply only to earned interest and service fees, or do they apply to repaid principal as well?
 - h. Are repaid principal amounts subject to the requirement in the introductory portion of proposed section 29-32-104 (1) that money be spent to support the listed programs only? If so, please consider clarifying this.
19. Proposed section 29-32-104 (2) states that "[a]ll projects funded in whole or in part by one of the programs created under this subsection (1) shall remain affordable housing in perpetuity." Regarding this provision:
- a. Subsection (1) allows funding for some programs other than affordable housing. For example, subsection (1)(b) creates a tenant equity vehicle to fund "down-payments or related purposes," and subsection (1)(c) provides "debt financing for modular and factory build housing manufacturers." How do these provisions interact with the requirement in subsection (2)?
 - b. Subsection (1)(b) allows for equity investments "intended to preserve existing affordable multi-family rental units." How would the requirement in subsection (2) affect a situation where the intent is not realized, and existing affordable multi-family rental units are not preserved?
 - c. Can the terms of a construction finance arrangement usually bind the use of the construction project in perpetuity?
 - d. Can a project funded under subsection (1) ever be destroyed?
 - e. How do you intend for this requirement to be enforced?
20. Proposed section 29-32-104 (4) enumerates programs to be funded from the money transferred to the division. These programs are to be administered by the division directly, rather than by an administrator. Why does the proposed measure require the office to select an administrator for its programs, but require the division to administer its programs directly?

21. Proposed section 29-32-104 (4)(a) states that the affordable home ownership program "shall incentivize assistance, to the extent practicable, to first-generation homebuyers." What does "incentivize assistance" mean here?
22. The affordable home ownership program is required both to offer down-payment assistance and to "make grants or loans to non-profits and community land trusts to support affordable home ownership and mobile home park buyback programs[...]" Will the division determine how much of the program's funding is allocated to each of these purposes?
23. What is a mobile home park buyback program?
24. The program serving persons experiencing homelessness, created in proposed section 29-32-104 (4)(b), is required to provide assistance to persons experiencing homelessness and to make grants or loans to nonprofit organizations, local governments, or private entities. Will the division determine how much of the program's funding is allocated to each of these purposes?
25. What are "time-limited and non-time-limited vouchers"?
26. What are "pay for performance housing programs"?
27. Are loans issued under proposed sections 29-32-104 (4)(a) and (4)(b) repaid to the division, the state affordable housing fund created in proposed section 29-32-102, or somewhere else?
28. Are repaid principal and interest amounts subject to the requirement in the introductory portion of proposed section 29-32-104 (4) that money be spent to support the listed programs only? If so, please consider clarifying this.
29. Proposed section 29-32-104 (5) states that "[t]he appropriations, transfers, and expenditures required by this section are not subject to the limitation on fiscal year spending specified in section 20 of article X of the state constitution or any other spending limitation provided by law." Regarding this provision:
 - a. Do you intend for this subsection to permit that revenue be retained and spent as a voter approved revenue change under subsection (7) of TABOR?
 - b. How does this provision interact with the provisions in proposed sections 29-32-102 (1) and 29-32-103 (2)? Do the provisions affect the same money or different money? Is their effect redundant, or does the

presence of this provision result in a further change to the state's TABOR computations?

- c. Proposed section 29-32-104 (4)(c) allows the division to make grants to local governments. Is it your intent to allow local governments to retain and spend the granted funds in excess of their local TABOR limits? If so, is this something that can be accomplished via a change to state law?
- d. What "other spending limitation provided by law" would apply to this money?

30. Proposed section 29-32-104 (6) states that, in response to the March Legislative Council Staff revenue forecast, "the general assembly may temporarily reduce the funding allocated to the Office required by this section for a maximum of one year in order to balance the state budget for the next state fiscal year."

Regarding this provision:

- a. This provision appears to apply only to funding allocated to the office, and not to funding allocated to the division. Is this correct?
- b. What does "a maximum of one year" mean? If the General Assembly reduces the allocation for FY 2023-24 in response to the March 2023 forecast, may it subsequently reduce the allocation for FY 2024-25 in response to the March 2024 forecast? If not, could it reduce the allocation for some later year in response to a future forecast? Or may it only reduce the allocation once, ever?
- c. If the General Assembly takes the action allowed in this section, does the revenue not allocated remain in the fund? Or is it not diverted from the general fund to the fund in the first place?
- d. Proposed section 29-32-102 (3) requires that money in the fund remain in the fund unless expended or encumbered. How does that provision interact with the allowance in proposed section 29-32-104 (6), if at all?
- e. Proposed section 29-32-102 (1) states that "[t]he revenue deposited into the [fund] by this subsection (1) is not subject to the limitation on fiscal year spending specified in section 20 of article X of the state constitution." If the General Assembly takes the action allowed in proposed subsection 29-32-104 (6), does that affect the amount exempted from TABOR under the measure?

31. Proposed section 29-32-105 (1) applies requirements "for affordable housing projects within a government's territorial boundaries to be eligible for funding[...]" . Is it your intent that projects only be funded if all local governments whose boundaries encompass a project satisfy all of the requirements in subsections (2) and (3)?
32. Some of the programs created in proposed section 29-32-104 may not have defined locations at the time when they are funded. These include, for example, the tenant equity vehicle created in proposed section 29-32-104 (1)(b); the affordable home ownership program created in proposed section 29-32-104 (4)(a); and the program serving persons experiencing homelessness in proposed section 29-32-104 (4)(b). How does the requirement in proposed section 29-32-105 (1) apply in these cases?
33. The requirement in proposed section 29-32-105 (1) applies beginning in 2027, and requires local governments to satisfy the requirements of subsections (2) and (3). However, subsection (2)(a) requires a commitment to be made by November 1, 2023, concerning the expansion of affordable housing in a jurisdiction by December 31, 2026. Does eligibility under subsection (1) depend on making and filing the commitment or accomplishing its substance?
34. Can funding be distributed before 2027? If so, do any of the provisions of proposed section 29-32-105 apply?
35. Proposed section 29-32-105 (2)(a) requires a commitment from "the governing body of each local government[...]" . Using the definition in proposed section 29-32-101 (6), this requirement appears to apply to every home rule municipality, statutory municipality, home rule county, statutory county, consolidated city and county, and local housing authority in the state. Is this your intent?
36. If you intend that proposed section 29-32-105 (2)(a) only apply to local governments seeking funding under subsection (1), consider narrowing the requirement in subsection (2)(a).
37. Do you foresee any constitutional issues with obligating home rule local governments to commit to increasing their supply of affordable housing by 3% as required by the proposed measure?
38. What are the "territorial boundaries" of a "local housing authority"?
39. If a local government does not file a commitment by November 1, 2023, can it receive funding through the proposed measure at any point in the future? Or

does failure to file a commitment by that date preclude the local government from ever receiving funding?

40. Proposed section 29-32-105 (2)(c)(III) allows local governments to refer to "a web based system[...] with the estimates specified in subsection (c)(I) of this section, or if the division finds that the estimates specified in said subsection (c)(I) would be deleterious to the efficacious implementation of this section, an alternative source of estimates that the division finds to be appropriate."

Regarding this provision:

- a. This subsection appears to allow the division to use an alternative set of estimates when populating its web-based system, if it finds the 5-year estimates from the American Community Survey to be deleterious. Is this correct?
- b. Even if the division finds the American Community Survey estimates to be deleterious and omits them from its web-based system, local governments would still be able to refer to them directly as allowed in subsection (2)(c)(I). Is this your intent?

41. Do the American Community Survey and Comprehensive Housing Affordability Strategies estimates required to be used include data for all the local governments required to make and file a commitment under proposed section 29-32-105 (2)(a)? For example, are estimates available for unincorporated areas of counties, for all municipalities, and for local housing authorities?

42. Is the required commitment in proposed section 29-32-105 (2)(d) a substitute for, or addition to, the required commitment in proposed section 29-32-105 (2)(a)?

43. Proposed section 29-32-105 (3) requires a local government to "establish processes to enable it to provide a final decision" on certain kinds of applications "not more than ninety calendar days after submission." Regarding this provision:

- a. What does "establish processes" mean here? How does this differ from a requirement that the local government enable itself to make a final decision within the prescribed period of time?
- b. Proposed subsection (3)(d) of this section states that the subsection does not require a developer to utilize the fast-track approval process. Does the proposed subsection require the local government to use the fast-

track approval process if it is requested by the developer? If so, where does it require that?

- c. How can a local housing authority meet the requirements in this subsection?

44. Proposed section 29-32-105 (3)(e) states that a local government may only receive financial assistance if it "has met its goal" for affordable housing for the prior three-year period. Regarding this provision:

- a. What is "its goal"? Is this the commitment in proposed subsection (2) of this section?
- b. If the goal is the commitment in proposed subsection (2), then why locate this requirement in subsection (3), when the rest of the subsection is about the fast-track approval process?
- c. Proposed subsection (3)(e) appears to create a qualifying criteria that applies only to local governments, and not to other recipients of funding who might work to develop affordable housing within those local governments' territorial boundaries. This differs from the requirement in proposed section 29-32-105 (1) and (4); however, those sections require satisfaction of the requirements in both subsections (2) and (3). How do these provisions interact?

45. Proposed section 29-32-105 (4) states that local governments that fail to meet the requirements in subsections (2) and (3) "by the end of any three-year cycle" will be ineligible to receive financial assistance "in the following calendar year." Can those governments apply in the second and third year before the cycle resets?

46. Proposed section 29-32-105 (4) states that developers developing an affordable housing project in a local government that fails to meet the requirements by the end of the three-year cycle "will also be ineligible to receive financial assistance," but it does not specify a period of time. Does this ineligibility last for one year, three years, or some other amount of time?

47. Proposed section 29-32-106 states that money appropriated from the fund "must supplement and shall not supplant the level of general fund appropriations for affordable housing programs as of the effective date of this article." Regarding this provision:

- a. What is the effective date of the article?

- b. If the effective date of the article is upon proclamation of the result of the election by the governor, then the effective date will most likely occur in November or December 2022. At that time, there will be no general fund appropriations for affordable housing for FY 2023-24, because a budget will not be enacted for that fiscal year until sometime during the 2023 legislative session. How should this section be interpreted in light of this?
- c. This section requires that appropriations from the fund supplement general fund appropriations. Can the appropriations from the fund supplant appropriations from other cash funds, such as the housing development grant fund?

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 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
- 2. While you have generally conformed to the structure above, some items in certain paragraphs should be broken out into separate subparagraphs. For

- example, proposed section 29-32-104 (1)(c) specifies that "[t]he program will: (i) provide debt financing...". The (i) should be a separate subparagraph (I).
3. 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." Consider using "shall" or "must" rather than "will" throughout the proposed measure.
 4. Although the text of the proposed measure 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.
 5. Words and phrases, such as "state," "administrator," "affordable housing equity program," etc. do not need to be large-capitalized.
 6. When referring to another subsection in the same section, the correct format is "subsection (x) of this section". For example, in subsection (2), a reference to subsection (1) of the same section would be "subsection (1) of this section". A reference to subsection (2) would be to "this subsection (2)".
 7. In addition, the whole subsection should be referenced in a cross-reference. For example: "estimates specified in subsection (2)(c)(I) of this section" rather than "estimates specified in subsection (c)(I) of this section".
 8. In proposed section 29-32-104 (2), the citation to "this subsection (1)" should be corrected to say "this section".
 9. It is standard drafting practice that the phrase "except that" be preceded by a semicolon:

"...threshold); EXCEPT THAT WHERE THE PROGRAM..."
 10. In proposed section 29-32-105 (2)(c)(I), the first two words "REFERENCE TO" appear to be unnecessary because the introductory clause of section 29-32-105 (2)(c) ends with "REFERENCE TO".