

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Scott Wasserman and Kevin Vick
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2023
SUBJECT: Proposed initiative measure 2023-2024 #39, concerning retention of excess state revenues for purposes related to school financing, fire protection, and water conservation

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 initiative 2023-2024 #40. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2023-2024 #40, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the memorandum for initiative 2023-2024 #40 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 allow voters to authorize the state to retain and spend state revenues in excess of the limitation on state fiscal year spending that the state would otherwise be required to refund under section 20 (7)(d) of article X of the state constitution for the purposes of:
 - a. Supplementing the state's share of a district's total program to offset any reduction in revenue available to fund the district's share of its total program as a result of any statewide restriction, limitation, or cap placed on the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution;
 - b. Funding payments or grants to local government entities or special districts for fire protection programs, services, and equipment to offset any reduction in revenue to the local government entities or special districts for these purposes as a result of any statewide restriction, limitation, or cap placed on the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution; and
 - c. Funding payments or grants to local government entities or special districts for water conservation programs and services to offset any reduction in revenue to the local government entities or special districts for these purposes as a result of any statewide restriction, limitation, or cap placed on the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution.

Substantive Comments and Questions

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

1. Section 1 (5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. What is meant by the language "as a result of any statewide restriction, limitation, or cap placed upon the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution" Are applicable assessment rates, the rates set forth in title 39 of the Colorado Revised Statutes?
3. Is the amount of "state revenues in excess of the limitation on state fiscal year spending" (excess state revenues) that the proposed initiative authorizes the state to retain and spend limited to the amount needed to "off-set" reductions in local government revenue resulting from any statewide restriction or cap placed upon the amount or increase in the amount of revenue that may be collected and spent under applicable assessments rates or does the proposed initiative authorize the state to retain and spend all excess state revenues? If the proposed initiative authorizes the state to retain and spend all excess state revenues, can the state spend the retained excess state revenues above the amounts needed for the purposes set forth in the proposed initiative for other purposes?
4. The proposed initiative states that the state is authorized to retain and spend, as a voter-approved revenue change, state revenues in excess of the limitation on state fiscal year spending for the purpose of "supplementing the state's share of a district's total program as defined in section 22-54-106 (1)(b), C.R.S., of the Public School Finance Act of 1994, or any successor act, to off-set any reduction in revenue available to fund the district's share of total program funding...". How will this provision impact the manner in which the state funds its share of a district's total program under current law?
5. The proposed initiative states that the state is authorized to retain and spend, as a voter-approved revenue change, state revenues in excess of the limitation on state fiscal year spending for the purposes of "funding payments or grants to local government entities or special districts for fire protection programs, services, and equipment" and "funding payments or grants to local government entities or special districts for water conservation programs and services".
 - a. What is meant by the language "funding payments or grants"?
 - b. What is meant by the term "local government entities"? Does the term necessarily include special districts? Would the proponents consider defining the term "local government entities"?
 - c. Does a local government entity or a special district have to provide, or have the authority to provide, fire protection programs, services, and

equipment in order to receive payments or grants from the state pursuant to the provisions of the proposed initiative?

- d. Does a local government entity or a special district have to provide, or have the authority to provide, water conservation programs or services in order to receive payments or grants from the state pursuant to the provisions of the proposed initiative?
6. How will the state calculate the amounts that are to be distributed to districts for total program funding, to local government entities, or to special districts in accordance with the requirements in the proposed initiative?
7. A forecast of state revenue subject to the limitation on state fiscal year spending set forth in section 20 of article X of the state constitution is not available beyond state fiscal year 2024-2025. If such state revenue is under the Referendum C cap in a future year, is it the proponent's intent that any revenue reduction under the proposed initiative would result in reduced amounts in funding payments and grants to local governments and special districts?
8. Should the provisions of the proposed initiative be applicable only if there is a statewide restriction limitation, or cap placed on the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution after the effective date of the proposed initiative?
9. Should the effective date of the proposed initiative be contingent on there being a statewide restriction, limitation, or cap placed on the amount or increase in amount of revenue that may be collected and spent under applicable assessment rates as permitted under subsection (1) of section 3 of article X of the state constitution?

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

In section 1 of the proposed initiative, the proponents may consider changing the subparagraphs labelled (i), (ii), and (iii) to roman numerals (I), (II), and (III).

2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The first letter of the first word of each entry of an enumeration paragraphed after a colon should be large-capitalized.
3. When referencing the title of an act in the Colorado Revised Statutes, the first letter of each word in the act name should be large-capitalized and the entire name after the word "the" should be placed in quotation marks. In subsection (1)(c)(i) of Section 1 of the proposed initiative, the proponents may consider putting quotation marks around "Public School Finance Act of 1994".
4. The following words are misspelled: The word "off-set" should not be hyphenated and should be spelled "offset" in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iii) of Section 1 of the proposed initiative.