

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
029 State Capitol Building  
Denver, Colorado 80203-1784  
Telephone (303) 866-3521  
Facsimile (303) 866-3855  
TDD (303) 866-3472  
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director  
Office of Legislative Legal Services

**Office Of Legislative Legal Services**  
091 State Capitol Building  
Denver, Colorado 80203-1782  
Telephone (303) 866-2045  
Facsimile (303) 866-4157  
E-Mail: olls.ga@state.co.us

### MEMORANDUM

February 15, 2011

TO: Carol Hedges and Marijo Rymer

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #14, concerning a fair income tax system

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 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 2011-2012 #13 to #18. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2011-2012 #13 and #15 to #18, 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. Only new comments and questions are included in this memorandum.

## Purposes

The major purposes of the proposed amendment appear to be:

1. On and after January 1, 2012, to impose a graduated state income tax on federal taxable income on individuals, estates, and trusts as specified in a schedule of rates;
2. To require the adjustment of the income brackets in the specified schedule of rates each income tax year by the percentage change in Colorado personal income;
3. To specify that revenues raised by the income tax imposed by the proposed initiative constitute a voter-approved revenue change and may be collected, kept, and spent without regard to other limits in the constitution or other law and to specify the manner in which such revenue may be spent;
4. To specify that revenues raised by the income tax imposed by the proposed initiative be spent only for paying the costs of education, higher education, health care, and public safety;
5. To specify that at least 90% of the revenues raised by the taxes imposed as a result of the proposed initiative be spent on services for Colorado residents and not administrative costs;
6. To require the general assembly to establish a citizen's oversight committee to assure that such revenues are spent in accordance with the constitution;
7. To require the director of research of the legislative council to prepare an annual report concerning the amount of revenue raised and spent as a result of the proposed initiative; and
8. To make the earned income tax credit permanent for any income tax year commencing on or after January 1, 2012, and increasing the credit to twenty percent of the federal credit claimed.

## Technical Comments:

The technical comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #13 are applicable to proposed initiative 2011-2012 #14 and, as such, will not be repeated. However, the following new technical comments and questions have arisen in this 2011-2012 #14. 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. Section 1 of the proposed initiative is not connected to any statute and therefore will not become statutory. It will appear in the Blue Book only. Was this your intention?
2. It is standard drafting practice to not small capitalize the language in a headnote.
3. Statutory provisions are usually divided into component parts using the following structure:

Subsection, or, for example, "(1)", followed by paragraphs, or, for example, "(a)" followed by subparagraphs, or, for example, "(I)", ending with sub-subparagraphs, or, for example, "(A)". In the proposed initiative, consider adding "(a)" after "(2)" and then making the unlabeled paragraph following "(II)" into "(b)".

4. Statutory provisions are often divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs, for ease of reading. The proponents may want to consider breaking up the text of the proposed initiative into separate subsections, etc., as follows:

**24-77-103.3. Voter approved revenue change-use of revenues - accountability.**

(1) THE REVENUES RAISED BY THE TAXES IMPOSED PURSUANT TO...

(2) THE GENERAL ASSEMBLY SHALL ESTABLISH A CITIZENS' OVERSIGHT COMMITTEE.....INCLUDES THE FOLLOWING INFORMATION:

(a) THE AMOUNT OF STATE REVENUES...

(b) A DESCRIPTION OF HOW THE STATE...

(3) THE REPORT REQUIRED BY THIS SECTION SHALL BE COMPLETED...

5. In section 2 of the proposed initiative, the word "to" should be inserted in the first line after "taxes imposed pursuant", the word "assure" should be replaced by "ensure", and the final citation to section 39-22-104 should be singular (SECTION 39-22-104, not SECTIONS 39-22-104).
6. It is standard drafting practice to include spaces between the parentheses when citing a statute, for example: 39-22-304 (2) (b) not 39-22-304(2)(b).
7. It is standard drafting practice to use "C.R.S." when a statutory section is citing another statutory section and the cite is in a different title than the section containing the cite. For example:

**24-77-103.3. Voter approved revenue change-use of revenues - accountability.**

(1) THE REVENUES RAISED BY THE TAXES IMPOSED PURSUANT TO SECTION 39-22-104, C.R.S., SHALL CONSTITUTE...

8. For the proposed initiative, the amending clause to Section 3 should read: "39-22-104 (2), Colorado Revised Statutes, is amended, and the said 39-22-104 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:"
9. By striking the language in Section 4 related to the refund of state excess revenues, the proposed initiative makes the earned income tax credit permanent. The language in sections 39-22-123 (4) and (5) should also be stricken as those subsections relate to the refund of excess revenues. The amending clause to Section 4 should then read: "39-22-123 (1) (b), (4), and (5), Colorado Revised Statutes, are amended to read:"

### **Substantive Comments and Questions**

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2011-2012 #13 are applicable to proposed initiative 2011-2012 #14 and, as such, will not be repeated. However, the following new substantive comments and questions have arisen:

1. Does the inclusion of the change to the earned income tax credit in section 4 of the proposed initiative affect the requirement in Article V, section 1 (5.5) of the Colorado constitution that all proposed initiatives have a single subject?
2. Section 20 (8) (a) of article X of the Colorado constitution specifies as follows:

**Section 20. The Taxpayer's Bill of Rights. (8) Revenue limits.** (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

This proposed initiative changes the flat income tax rate to a graduated rate and makes all those changes in the Colorado revised statute without amending the above constitutional section. Please explain how this proposed initiative is constitutional in light of this section.