

# 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

March 11, 2011

TO: Senator Rollie Heath and Richard Valenty

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #19, concerning an increase in state taxes

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.

#### Purposes

The major purposes of the proposed amendment appear to be:

1. For income tax years beginning on or after January 1, 2012, but prior to January 1, 2015, imposing a five percent tax on the federal taxable income of every individual, estate, and trust.
2. For income tax years beginning on or after January 1, 2012, but prior to January 1, 2015, imposing a five percent tax on the Colorado net income of each domestic C corporation and foreign C corporation.

3. Beginning January 1, 2012, and ending December 31, 2014, imposing a three percent sales tax on all sales of commodities and services in the state and a three percent use tax on the storage, use, or consumption of tangible personal property purchased at retail in the state.
4. Stating that the additional revenue raised by the tax increases referenced above shall be spent only to fund education, including higher education, and that such additional revenue shall be used in addition to, and not as a substitute for, funds otherwise appropriated by the General Assembly for education, including higher education.

#### **Technical Comments:**

1. The preferred method for separating a series in a list is to use a comma after the second to last item in the series. Please consider making this change in section 1 of the measure and as necessary throughout the rest of the measure.
2. When referencing an act within the statutory language that creates it, it is standard drafting practice to reference either the bill number or the initiated measure that contained the amended or new section rather than to use the phrase "this act", as in section 1 of the initiative. Would the proponents consider changing this reference to specify "this measure" rather than "this act"?
3. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.
4. It is standard drafting practice to use lowercase letters in a headnote, even when the headnote is new language, such as in section 1.
5. It is standard drafting practice to use small capital letters, rather than ALL CAPS, to show the language being added to the Colorado Revised Statutes. For example, the first sentence of the new 24-77-103.3 would begin "THE REVENUES RAISED BY THE INCREASE IN TAXES...".
6. It is standard drafting practice to not include the word "Section" in an amending clause before the C.R.S. citation.
7. Please add a period to the end of the new language in the new subsection 39-22-104 (1.9).
9. Standard drafting practice for amending clauses would include removing the comma after "PARAGRAPH" in section 3 and after "SUB-PARAGRAPH" in section 4.
10. Standard drafting practice for listing specified dates includes a comma after the year. For

example, in the new language for 39-22-104, the date "January 1, 2012" would be written "January 1, 2012,".

11. The amendment to section 39-22-301 (1) (d) (I), C.R.S., in section 3 of the measure adds a new sub-subparagraph (J) to the section, rather than a new subparagraph (J). Please change the amending clause to indicate that there is a new sub-subparagraph.
12. In connection with the change to section 3 referenced in question 11 above, the new sub-subparagraph (J) in section 39-22-301 (1) (d) (I) specifies the corporate income tax rate for income tax years commencing on or after January 1, 2012, but prior to January 1, 2015. However, sub-subparagraph (I) of the same section specifies the corporate income tax rate for income tax years commencing "on or after January 1, 2000,". To avoid a statutory inconsistency, please consider making a conforming amendment to sub-subparagraph (I). The language of such a conforming amendment could read as follows:

(I) Except as otherwise provided in section 39-22-627, for income tax years commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2012, AND COMMENCING ON OR AFTER JANUARY 1, 2015, four and sixty-three one hundredths percent of the Colorado net income.

In addition, if you make the conforming amendment suggested above, please make the necessary changes to the amending clause so it reads as follows:

**SECTION 3.** 39-22-301 (1) (d) (I) (I), Colorado Revised Statutes, is amended, and the said 39-22-301 (1) (d) (I) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

13. In section 4 of the measure, the "sub-paragraph" being added is actually a "paragraph". Please change the amending clause as necessary. In addition, the letter (C) prior to the new language should not be capitalized, but instead should be a lower-case letter (c). The reference to "paragraph (A)" in the new language should also be a lower-case (a).
14. In section 4 of the measure, the new language in paragraph (c) references the "TWO AND NINETY ONE-HUNDREDTHS PERCENT RATE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1)". However, paragraph (a) of subsection (1) of section 39-26-106, C.R.S., actually includes two subparagraphs: Subparagraph (I) references a three percent tax rate and subparagraph (II) references the two and ninety one-hundredths percent tax rate. For clarity, please consider adding a reference to subparagraph (II) in the text of paragraph (c). For example, "TWO AND NINETY ONE-HUNDREDTHS PERCENT RATE PROVISIONS OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1)".
15. In section 5 of the measure, the new language amends the entire section of 39-26-202, C.R.S., not only subsection (1)(a). Please remove the "(1) (a)" from the amending clause.

16. It is standard drafting practice for the first subsection in a section to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote. In section 5, please consider starting the language in subsection (2.5) on the same line as the headnote.
17. In section 5 of the measure, the new language in subsection (2.5) references the "TWO AND NINETY ONE-HUNDREDTHS PERCENT RATE PROVISIONS OF SUBSECTION (1) OF THIS SECTION,". However, subsection (1) of section 39-26-202 actually includes two paragraphs: Paragraph (a) references a three percent tax rate and paragraph (b) references the two and ninety one-hundredths percent tax rate. For clarity, please consider adding a reference to paragraph (b) in the text of subsection (2.5). For example, "TWO AND NINETY ONE-HUNDREDTHS PERCENT RATE PROVISIONS OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION,".
18. In connection with the changes that the measure makes in section 5, it appears that a conforming amendment to subsection (3) (a) of section 39-26-202, C.R.S., may be necessary. Paragraph (a) of subsection (3) states "Notwithstanding the rate provisions of paragraphs (a) and (b) of subsection (1) of this section...". For clarity, would you consider amending section 39-26-202 (3) (a), C.R.S., to include a reference to subsection (2.5)? The language of such conforming amendment could read as follows:

(3) (a) Notwithstanding the rate provisions of ~~paragraphs (a) and (b) of subsection~~ ~~(1)~~ SUBSECTIONS (1) AND (2.5) of this section, for any fiscal year commencing...

In addition, if you make the conforming amendment suggested above, please make the necessary changes to the amending clause so it reads as follows:

**SECTION 5.** 39-26-202 (3) (a), Colorado Revised Statutes, is amended, and the said 39-26-202 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19. Would the proponents consider using a standard effective date clause, with a headnote, in section 6 of the measure to conform to standard drafting procedure? For example:

**SECTION 6. Effective date.** This act shall take effect January 1, 2012.

### Substantive 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. When codified into law, the new language that appears in section 22-77-103.3, C.R.S., will not have any geographic or substantive connection to the other provisions in the measure that increase the income tax and sales and use tax. To make the connection more apparent, please

consider specifying the sections that are amended in the rest of the measure in section 22-77-103.3, C.R.S. For example, "The revenues raised by the increase in taxes imposed pursuant to this measure, as specified in sections 39-22-104 (1.9), 39-22-301 (1) (d) (I) (J), 39-26-106 (1) (c), and 39-26-202 (2.5), C.R.S., shall constitute..."

3. What do the proponents mean by the phrase "spent only for *paying the costs of*" education, including higher education? What are the costs of education and higher education? Do you mean that the general assembly shall appropriate the additional revenue from the tax increases only for education and higher education?
4. What do the proponents mean by the term "education"? For example, do you intend that the additional tax revenue collected as a result of this measure be used to fund only the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., or would it include categorical program funding and funding for other educational programs, such as grant programs, that are not included in the "Public School Finance Act of 1994"?
  - a. Would the general assembly be authorized to use the additional tax revenue collected as a result of this measure to fund the department of education and the state board of education?
  - b. Would you consider specifying for what purposes in connection with "education" the general assembly may appropriate the additional tax revenues collected as a result of this measure?
  - c. Would you consider adding more detail to the phrase "education" as you refer to it in the measure? For example, specifying that the additional revenue shall be used for providing "public education from preschool through the twelfth grade" or similar language?
5. What types of institutions do the proponents intend to include in the term "higher education"? Do you intend to include district junior colleges and area vocational schools in the term or only state institutions of higher education? If you intend to include these institutions, would you consider using the more inclusive term "post-secondary" education rather than higher education? In the alternative, would you consider specifying that the moneys may be used for "state institutions of higher education, including district junior colleges and area vocational schools"?
6. What do you intend to include in the costs of providing funding for "higher education"? Currently, the general assembly makes appropriations for the "College Opportunity Fund Act", article 18 of title 23, C.R.S., fee-for-service contracts pursuant to section 23-5-103, C.R.S., student financial aid pursuant to article 3.3 of title 23, C.R.S.; area vocational schools, and district junior colleges pursuant to section 23-71-301, C.R.S.

- a. Do you intend to limit the use of the additional tax revenues collected as a result of this measure for these purposes? If not, what other purposes do you intend to include? In the alternative, which of these purposes do you intend to exclude?
  - b. Would the general assembly be authorized to use the additional tax revenues collected as a result of this measure to fund the department of higher education and the Colorado commission on higher education?
  - c. Would you consider specifying for what purposes in connection with "higher education" the general assembly may appropriate the additional tax revenues collected as a result of this measure?
7. The measure states that the allocation of funds required by the measure are intended to be "*in addition to and not a substitute for* funds otherwise appropriated by the general assembly...". In connection with this phrase:
  - a. What are the specific appropriations by the general assembly for "education" and "higher education" that you intend to supplement, rather than supplant with the additional tax revenues collected as a result of this measure? As discussed above, would you consider specifying the current appropriations in connection with "education" and "higher education" for which the general assembly may appropriate the additional tax revenues collected as a result of this measure?
  - b. From what point do you intend to determine the amount of moneys that have been "otherwise appropriated by the general assembly"? Would it be moneys appropriated for "education" and "higher education" for the 2011-12 fiscal year? Moneys appropriated as of the effective date of section 1 of the measure? Some other date?
  - c. For clarity, would you consider being more specific about the point in time from which the amount of moneys that were appropriated for "education, including higher education" are determined and the appropriations that you intend to include? For example, Amendment 23 specifies that moneys from the state education fund "shall not be used to supplant the level of general fund appropriations existing on the effective date of this section for total program education funding under the Public School Finance Act of 1994...and for categorical programs...".
8. It appears that the language in the measure requiring that the additional tax revenue be "in addition to and not a substitute for" other appropriations by the general assembly for education and higher education, creates a maintenance of effort requirement. In other words, if the additional tax revenue collected as a result of the measure is required to be used in addition to the amounts appropriated in the 2011-12 fiscal year for "education" and "higher education", the measure appears to require the general assembly to appropriate in the 2012-13 fiscal year through 2014-15 fiscal year at least the amount appropriated for the

2011-12 fiscal year for "education" and "higher education" before any of the additional tax revenue collected as a result of the measure may be appropriated. Is this the proponents' intent?

9. The measure specifies that the people intend that the allocation of "funds" required by the measure be in addition to and not a substitute for "funds" otherwise appropriated by the general assembly "only" for paying the costs of education, including higher education.
  - a. Standard drafting practice is to refer to "moneys" rather than "funds" to avoid confusion with cash funds or the general fund. Would you consider changing "funds" to "moneys"?
  - b. The term "only" does not seem necessary in this phrase and may cause confusion in the implementation of the measure. Would you consider deleting this word from the measure?
  - c. If you choose to define the terms "education" and higher education" or any alternate terms that you may use, would you consider rephrasing this portion of the sentence to read "in addition to and not a substitute for moneys otherwise appropriated by the general assembly for education and higher education, as defined in [insert applicable section number or paragraph letter]"?
  
10. The measure is silent regarding what percentage of the additional tax revenues collected as a result of this measure will be allocated to "education" and what percentage will be allocated to "higher education".
  - a. Do the proponents want to specify how the revenues will be divided between education and higher education in the text of the measure? If not, is it your intent that the general assembly make the determination regarding the allocation of the additional tax revenue to education and higher education?
  - b. Would the general assembly be required to use any criteria or guidelines for allocating the addition tax revenue, or would the general assembly allocate the additional revenue for "education" and "higher education" in its discretion?
  - c. Would you consider including in the measure either direction regarding how the additional tax revenue will be allocated to education and higher education or specification that the allocation shall be determined by the general assembly?
  
11. The following questions relate to the language in the proposed initiative that the "revenues raised by the taxes imposed pursuant to this act shall constitute a voter approved revenue change and may be collected, kept and spent notwithstanding any other limits in the constitution or other law."

- a. What do you mean by this?
  - b. Do you mean, in effect, all income and sales tax revenues collected by the state? Only the net increase in revenues collected as a result of the adoption of the proposed initiative?
  - c. If the revenues are granted or otherwise transferred by the state to another governmental entity subject to section 20 of article X of the Colorado constitution, would revenues be counted for purposes of determining the other entity's fiscal year spending?
  - d. How do you intend the voter-approved revenue raised by this measure to interact with the TABOR limit and the Referendum C Cap? Do you intend that the voter-approved revenue raised by this measure augment or be contained within revenue currently retained as a result of Referendum C?
12. Does the proposed initiative in any way impact the requirement that a percentage of income tax be deposited in the state education fund pursuant to section 17 (4) of article IX of the Colorado constitution?