

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 9, 2012

TO: Samuel Babcock and Elise van Grinsven

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #63, concerning elimination of property 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 initiative appear to be to amend the Colorado constitution to:

1. Prohibit taxation upon real property, or any improvements erected thereon, effective December 31, 2016.
2. Immediately prohibit all increases in taxation upon real property, or any improvements erected thereon.
3. Establish a transition period ending December 31, 2016, that includes:

- a. Continued taxation of real property at current rates; and
  - b. Taxpayer-approved increases in taxes, other than property taxes, that are proportionate to the estimated loss of property tax revenue.
4. Require ballot initiatives that propose transferring revenues from property taxes to another tax to include both the increase in new taxes and the decrease in related property taxes.
  5. Require ballot initiatives seeking increases beyond those required to replace the loss in property tax revenue to be separate from initiatives described in the proposed initiative.
  6. Require, upon failure to complete a voter-approved transfer to another tax before the last day of December 2016, equivalent cuts in spending that shall not affect education, law enforcement, or fire protection.

### **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. Constitutional 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)".
2. The amending clause for the proposed initiative should conform to the following format:
 

**Section \_\_.** In the constitution of the state of Colorado, **add**  
section \_\_ to article X as follows:
3. It is standard drafting practice to not use small capital letters in a headnote. Additionally, "Section 32", as it appears in the headnote, should be followed by a period rather than a colon.
4. It is standard drafting practice to not write constitutional language in italics. For example, the word "increases" in subsection (3) of the proposed initiative should not be italicized.
5. In subsection (3) (b) of the proposed initiative, consider using the term "voter-approved" rather than "taxpayer-approved".
6. Items listed in a series after an introductory portion may end in a semicolon, but other provisions written as stand-alone sentences that do not relate back to an introductory portion should end in a period. For example, in the proposed initiative, subsections (3) (a) and (3) (b) are continuations of the introductory portion contained in subsection (3). Subparagraphs

(I) and (II) do not relate back to the introductory portion and therefore should be presented as independent provisions ending in periods. For an illustration of what this might look like, please see comment 8. below.

7. In subsection (3) (c) of the proposed initiative, standard drafting practice would be to write "December 31, 2016" rather than "the last day of December 2016".
8. By incorporating the standard drafting practices outlined above, the text of the proposed initiative would appear as follows:

**SECTION 1.** In the constitution of the state of Colorado, **add** section 32 to article II as follows:

**Section 32. Right to private property.** (1) IN ORDER TO PRESERVE THE RIGHT OF PRIVATE PROPERTY IN THE STATE OF COLORADO, TAXATION UPON REAL PROPERTY, OR ANY IMPROVEMENTS ERECTED THEREON, SHALL BE PROHIBITED.

(2) ALL SECTIONS OF THIS CONSTITUTION THAT PROVIDE FOR TAXATION SHALL NOT APPLY TO THE TAXATION OF REAL PROPERTY, OR ANY IMPROVEMENTS ERECTED THEREON, IN THE STATE OF COLORADO, EFFECTIVE DECEMBER 31, 2016.

(3) (a) ALL INCREASES IN TAXATION UPON REAL PROPERTY, OR ANY IMPROVEMENTS ERECTED THEREON, SHALL BE IMMEDIATELY PROHIBITED AND A TRANSITION PERIOD, ENDING DECEMBER 31, 2016, SHALL COMMENCE THAT INCLUDES:

(I) CONTINUED TAXATION OF REAL PROPERTY AT CURRENT RATES;

(II) TAXPAYER APPROVED INCREASES IN TAXES, OTHER THAN PROPERTY TAXES, THAT ARE PROPORTIONATE TO THE ESTIMATED LOSS OF PROPERTY TAX REVENUE.

(b) BALLOT INITIATIVES THAT PROPOSE TRANSFERRING REVENUES FROM PROPERTY TAXES TO ANOTHER TAX MUST INCLUDE BOTH THE INCREASE IN NEW TAXES AND THE DECREASE IN RELATED PROPERTY TAXES.

(c) BALLOT INITIATIVES SEEKING INCREASES BEYOND THOSE REQUIRED TO REPLACE THE LOSS IN PROPERTY TAX REVENUE MUST BE SEPARATE FROM INITIATIVES DESCRIBED IN THIS SECTION.

(d) FAILURE TO COMPLETE A VOTER-APPROVED TRANSFER TO ANOTHER TAX BEFORE DECEMBER 31, 2016, WILL RESULT IN EQUIVALENT CUTS IN SPENDING THAT SHALL NOT AFFECT EDUCATION, LAW ENFORCEMENT, OR FIRE PROTECTION.

### **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 Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?

3. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. Have you considered any conforming amendments necessitated by the proposed initiative? For example, section 3 of article X of the Colorado constitution pertains partly to the taxation of real property. If the proposed initiative is approved by the voters and subsequently forbids taxation of real property, section 3 of article X should be amended to reflect that change. Similarly, there are numerous provisions of the Colorado Revised Statutes that address taxation of real property. Have you considered a mechanism for appropriately amending those provisions if the proposed initiative becomes law?
5. In subsection (2) of the proposed initiative, you have made the prohibition on taxation of real property effective on December 31, 2016. In subsection (3), you have made the transition period end on December 31, 2016. Would it make more sense to have the prohibition take effect on January 1, 2017, the day after the transition period ends?
6. Property taxes are collected in the year following the year in which they are levied. Is it your intent that taxes may be levied in 2016 and collected in 2017? Would a taxing entity continue to have the authority to collect taxes lawfully levied prior to January 1, 2017?
7. In subparagraphs (I) and (II) of subsection (3) of the proposed initiative, you set forth requirements for "ballot initiatives", but, if the proposed initiative becomes law, it is likely that the general assembly or local governments would refer related tax increases to the voters to compensate for the loss of property tax revenue. Therefore, it might be more appropriate to use the term "ballot measures" in these sections of the proposed initiative, as that term would encompass both ballot initiatives and referendums submitted to the voters.
8. Subsection (1) of the proposed initiative states that the property tax is being eliminated to preserve the right of private property in the state of Colorado. How do property taxes impair the right to private property? Aside from prohibiting taxation of real property, does the proposed initiative prohibit any other impairment of property rights?
9. Is it your intent that the proposed initiative include the prohibition of ad valorem taxes on personal property?
10. Is it your intent that the proposed initiative prohibit the ad valorem tax on producing and non-producing mines as described in articles 1 and 1.5 of title 39, C.R.S.?
11. Is it your intent that the proposed initiative prevent the taxation of possessory interests, such as a leasehold interest, in property?
12. Is it your intent that the proposed initiative apply to special assessments paid by real property owners? For example, special assessments for street lights, utilities, or other improvements benefitting certain properties?
13. What do you mean by the term "improvement"? Is an improvement limited to improvements

that are subject to taxation as real property, such as fixtures? How would the proposed initiative be applied to mobile homes?

14. How would the prohibition on property taxes effect the bond obligations that have been approved by the voters of certain local governments? These bond obligations can dedicate a certain number of mills for up to twenty years or more to repay the debt. How would the local government pay its debts in the absence of the promised revenue source dedicated to pay such debt? Would this violate the constitutional contractual rights of bondholders to be repaid?
15. How would the prohibition on property taxes effect local governments in which an urban renewal authority or downtown development authority has used tax increment financing, using property tax, to pay for improvements in the area? As with bonds issued by a local government, projects financed using tax increment financing have committed a source of revenue (the tax increment) to pay for the improvements to an area. How would an urban renewal authority or downtown development authority repay its debts in the absence of the promised revenue source dedicated to pay such debts?
16. Do you foresee that the proposed initiative will create any legal problems associated with the debt obligations of local governments that have outstanding bonds or financed projects using tax increment financing?
17. Subsection (2) of the proposed initiative states that all sections of the state constitution that address taxation shall not apply to the taxation of real property or any improvements erected thereon. Does this provision include property tax exemptions and the uniform taxation requirement?
18. Subsection (3) of the proposed initiative prohibits all increases in property tax on real property and on improvements erected on real property. What happens if someone builds a home on vacant land, or a parcel of agricultural land is reclassified as commercial property? Is it your intent that the application of the existing property tax rates to new improvements or reclassifications of land would be considered a tax increase because it would generate new property tax revenue?
19. Subsection (3) (a) of the proposed initiative specifies that during the transition period, real property shall continue to be taxed at current rates. Is it your intent that this subsection prohibit a decrease in property tax rates?
20. Subsection (3) (b) (I) of the proposed initiative requires that taxpayer-approved increases in taxes to offset the lost revenue from property taxes have to include the increase in new taxes and the decrease in property taxes. Subsection (3) (b) (II) of the proposed initiative specifies that ballot initiatives seeking increases beyond those required to replace the loss in property tax revenue must be separate from initiatives described in the proposed initiative. How will the ballot question and the voters distinguish between an initiative or referred measure that is pursuant to this proposed initiative and one that is for some other purpose?

21. How will subsection (3) (b) (I) of the proposed initiative be enforced? Will it be enforced by election officials or by some other entity?
22. After the expiration of the transition period, is it your intent that increases in taxes, including personal property taxes, are permitted without restriction, so long as they comply with other constitutional provisions regarding the increase in taxes?
23. Subsection (3) (b) of the proposed initiative authorizes voters to approve increases in taxes other than the property tax to offset the loss in property tax revenue that will result from the proposed initiative. School districts in the state do not have the authority to levy any tax other than a property tax. Therefore, school districts will be unable to pass a ballot measure to obtain sufficient revenue to replace the lost property tax revenue as a result of the proposed initiative. In light of the requirement in paragraph (c) of subsection (3) that the revenue for public schools shall not be affected, will the state be obligated to backfill the lost local revenue for the financing of public schools?
24. In connection with question 23, some special districts are funded exclusively through property taxes and like school districts, do not have the authority to levy any other tax. How would these districts offset their lost property tax revenues due to the proposed initiative? Would the districts be required to seek law changes that would allow them to levy other taxes? Does the proposed initiative allow these districts to seek such changes or is ballot access pursuant to the proposed initiative limited to revenue-raising measures?
25. What are some examples of acceptable sources of replacement revenue? For example, is an impact fee assessed on a parcel basis or indexed to some attribute of real property, such as a drainage fee based on acreage, sufficiently distinguishable from the property tax to serve as a replacement source of revenue?
26. Subsection (3) (c) of the proposed initiative requires that any spending cuts necessary to account for the decrease in property tax revenue shall not affect education, law enforcement, or fire protection. Does "education" include only kindergarten through twelfth grade public education or does it also include funding for community colleges? What constitutes "law enforcement"? Does it include corrections? Civil law enforcement?
27. What is the enforcement mechanism for the provisions of subsection (3) (c) of the proposed initiative? If a person is authorized to enforce this provision, what would be the remedy?
28. Will the requirements of subsection (3) (c) of the proposed initiative require reductions in essential services, other than law enforcement and fire protection, that local governments provide? For example, water, sanitation, roads and bridges, etc. Would local governments still be able to provide these basic services if all local revenue has to be diverted to education, law enforcement, and fire protection? Would mandatory reductions in these services result in public health and safety issues?