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MEMORANDUM

April 2, 2013

TO: Carol Baum and Steve Dorman

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #10, concerning an income tax rate increase for implementation of new school finance act

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. To raise the Colorado income tax rate by one ten-thousandth of one percent;
2. To use the additional revenue from the tax increase to fund the implementation of Senate Bill 13-213 (SB 213), which creates a new school finance act;
3. To specify that the tax increase supersedes all other statewide tax measures on the 2013 ballot and represents the total amount of additional moneys available to the general assembly from taxpayers for statewide tax increases necessary to implement the school finance act as

proposed in the 2013 legislative session for kindergarten through twelfth grade (K-12) public education.

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. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. Pursuant to article V, section 1 (2), proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative should be revised to indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.
3. It is standard drafting practice to use SMALL CAPITAL letters to show the language being added to the Colorado constitution or Colorado Revised Statutes.
4. It is standard drafting practice to set off certain phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas. For example, ". . . so that Senate Bill 13-213, the School Finance Act, shall be implemented."
5. Write out "kindergarten through twelfth grade" instead of "K-12".
6. Numbers should be spelled out.
7. Only the following should have the first letter capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of proper names. For example: Colorado, Senate Bill.
8. It is standard drafting practice to place the official name of an act in quotation marks. For example: "School Finance Act".
9. The first sentence appears to be a question and should end with a question mark or be re-phrased as a statement of the law to be enacted. (E.g. "THE COLORADO INCOME TAX RATE SHALL BE RAISED BY").
10. The phrase "state wide" should be changed to "statewide".
11. The term "legislature" should be changed to "general assembly".

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. The proposed initiative would presumably become effective upon signature of the Governor, sometime in January of 2014. When would the tax rate increase take effect? Would it be for income tax years commencing on or after January 1, 2014? Would the proponents consider specifying when the tax rate increase would take effect?
3. The proposed initiative increases the tax rate on "all eligible Colorado residents". Is it the proponents' intent to have the increase apply only to natural persons who reside in the state? Is it the proponents's intent to exclude estates, trusts, corporations, nonresident individuals, or any other taxpayer with Colorado taxable income from the increase? If so, does this violate the provision of section 20 (8) (a) of article X of the Colorado constitution requiring income to be taxed at one rate? Does it violate other legal principals by taxing the income of resident taxpayers at a different rate?
4. Is the tax rate increase a permanent increase? Are there any circumstances under which the General Assembly could modify the increased rate?
5. Would other aspects of the state income tax remain the same? For example, would the calculation of taxable income or the use of tax credits change? Could these be modified by the General Assembly in the future?
6. Revenues from the state income tax typically flow into the state's general fund. How would the revenues generated by the tax be tracked for purposes of determining that the revenues represent the total amount of additional monies available for the implementation of the school finance act? Could the revenues be transferred to a separate cash fund for this purpose?
7. The amount of the rate increase appears to be *de minimus*. Have the proponents estimated the revenue that would be generated by the increase? What is the intent of requesting such a small rate increase?
8. The stated purpose of the rate increase is to implement SB 213. How would this work? Assuming the rate increase provides insufficient revenues to fund the provisions of SB 213 as intended, how would the new law be implemented? Would some provisions be implemented and others not? What if the provisions of SB 213 are modified in the future?
9. What happens if SB 213 does not pass or is vetoed by the governor? Would the initiatives be withdrawn? Would the measure still take effect if passed by the voters? Could the revenues be used for other purposes?

10. The proposed initiative provides that it supercedes all other statewide tax measures, which raises the following questions:
 - a. What do the proponents mean by this requirement?
 - b. Section 1 (4) of article V of the Colorado constitution provides that an initiative measure "shall become the law or part of the constitution, when approved by a majority of the votes cast" for the measure. If another tax measure is approved by a majority of voters, is it the proponent's intent that other tax measure not become law?
 - c. Does this conflict with or modify the requirements of section 1 (4) of article V and, if so, would that constitute an additional subject contained in the proposed initiative?
 - d. What if the other measure passes by a wider margin of votes?
 - e. What if the other measure specifies that it supercedes other measures?
11. What are other statewide tax measures? Would this effectively be any measure on the 2013 ballot? Is it limited to increases? Is it limited to measures designed to provide funding for K-12 education? Does it include both initiated and referred tax measures? If a measure contains a tax increase and other provisions, would only the tax provision be superceded?
12. The proposed initiative states that the proposed tax rate increase represents the total amount of additional moneys available to the legislature from taxpayers for statewide tax increases necessary for implementation of the school finance act as proposed in the 2013 legislative session for K-12 public education.
 - a. What do the proponents mean by the phrase "additional monies"? Does this mean that funding for school finance cannot increase unless the moneys come from the proposed rate increase? Does this limit the ability of the general assembly to use existing sources of revenues to fund education?
 - b. What is meant by the phrase "The School Finance Act as proposed in the 2013 legislative session for K-12 public education."? Are the proponents referring to SB 213? Typically the general assembly enacts a bill each year to fund K-12 education in the subsequent year. This bill is commonly known as the "school finance act." Presumably such a bill will be introduced and passed this year regardless of whether SB 213 passes. Is it the proponents' intent to in any way affect this annual school finance bill? Does this language affect any bill or statutory provision other than the implementation of SB 213?
13. Would the revenues generated by the tax rate increase be counted as fiscal year spending for the purposes of the taxpayer's bill of rights (TABOR) found in section 20 (7) (a) of article X of the Colorado constitution? If not, would the proponents include appropriate language to exclude the revenues from TABOR fiscal year spending?