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MEMORANDUM

April 3, 2013

TO: Bruce Broderius, Kate Pettersen, and Casey Shea

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #30, concerning Public School Funding

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 2013-2014 #30 to #37. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2013-2014 #31 to #37, 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.

Purposes

The major purposes of the proposed amendment to section 17 of article IX of the Colorado constitution appear to be:

1. To specify that personal net income shall be taxed at voter-approved rates based on taxable net income, without regard to any elements of subsection (8) (a) of section 20 of article X of the Colorado constitution;
2. To specify the rate at which personal taxable net income is taxed on or after January 1, 2014, for individuals filing a joint federal return;
3. To specify the rate at which personal taxable net income is taxed on or after January 1, 2014, for individuals who file as head of household;
4. To specify that the tax rate tiers specified in the initiative may be annually adjusted for inflation from the previous year by the general assembly;
5. To require the department of revenue to annually determine the amount of tax revenue collected that is attributable to voter-approved tax rate changes above the income tax rate of 4.63% and to require such amount to be deposited in the state education fund;
6. To require all revenues collected pursuant to the proposed initiative to be collected and spent as a voter-approved revenue change without regard to any limitations on revenue, spending, or appropriations contained in section 20 of article X of the Colorado constitution;
7. To require all revenues deposited in the state education fund pursuant to the proposed initiative to be appropriated by the general assembly only for the costs of public education from preschool through twelfth grade;
8. To specify that revenues realized from the proposed initiative that are appropriated by the general assembly for public education are in addition to and not a substitute for moneys otherwise appropriated by the general assembly for the costs of preschool through twelfth grade public education; and
9. To require the amount of the appropriation by the general assembly for public education to be not less than the amount appropriated for such purposes for fiscal year 2012-13, adjusted by the aggregate annual percentage change in student enrollment, as described in section 20 of article X of the Colorado constitution, as determined for all school districts in the state.

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. 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. Similarly, instead of indenting entire paragraphs, the proponents should simply insert a left tab at the beginning of the first line of each paragraph.
2. It is standard drafting practice for the first subsection to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote.
3. The amending clause for sections 1 and 2 of the proposed initiative should be combined into one amending clause, and then the provisions should be placed in numeric order so that subsection (5) appears before (6). The amending clause should read as follows:

In the constitution of the state of Colorado, section 17 of article IX,
add (6); and repeal and reenact, with amendments, (5) as follows:

4. Note that although the text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The first letter of the first word of each sentence should be large capitalized.
5. It is unnecessary to capitalize "general assembly", "article", "constitution", "section", "state education fund", or "fiscal year" in the proposed initiative.
6. Numbers should be spelled out.
7. When referencing a subsection, paragraph, subparagraph, or sub-subparagraph, it is standard drafting practice to repeat the letter or number of the subsection, paragraph, subparagraph, or sub-subparagraph. For example:
 - (a) Paragraph (d) of subsection (6) should begin: "The income tiers set forth in paragraphs (b) and (c) of this subsection (6) may be adjusted . . .".
 - (b) In paragraph (e) of subsection (6), the first sentence should end with: ". . . as set forth in this subsection (6)."
 - (c) Subsection (5) should begin: "All revenues deposited in the state education fund pursuant to subsection (6) of this section . . .".

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. 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 the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state or on local governments in this state?
5. What exactly is your intention with paragraph (a) of subsection (6) of the proposed initiative? What "element(s)" of subsection (8) (a) of section 20 of article X of the Colorado constitution are you referring to?
6. Is it a good idea to put specific tax rates in the constitution? Have you considered that the rates may then only be amended by a subsequent amendment to the constitution?
7. On what did you base the initial income tiers in the graduated tax rate?
8. Is it your intention to not address corporate income tax rates at all? Does personal income include the income of estates and trusts?
9. What does "taxable net income" mean? Current state income tax law uses federal taxable income as a starting point. This phrase is used intentionally to effectuate the state's coupling with the federal tax code. The law then provides for certain additions and subtractions from federal taxable income to arrive at Colorado taxable income. Colorado income tax liability is then determined by applying the tax rate to Colorado taxable income. Will the rates in the proposed initiative be applied to Colorado taxable income to determine state tax liability? Federal taxable income? Some other amount?
10. If income is to be taxed based on Colorado taxable income, what is the reason for determining the rate of taxation based on federal taxable income? Are the terms "taxable income" and "personal taxable net income" the same in the proposed initiative? Would the proponents consider clarifying these phrases?
11. Individuals file separate or joint Colorado income tax returns depending on their federal income tax filing status. You only use the phrase "federal taxable income" in paragraph (b) of subsection (6). Do you intend to decouple from the federal tax code? If not, please include "federal taxable income" in paragraph (c) of subsection (6) as well.
12. Paragraph (b) of subsection (6) is only for a joint return. Does this mean that the rate for a single filer or a person married filing separately remains at 4.63%? Is that your intention? Why would you not have differential rates for single filers but would have them for head-of-household filers and joint filers?
13. Why are the head-of-household filers treated differently? Are you intending to offset the higher standard deduction and lower tax rates these filers get at the federal level? Does that mean that you meant to include the phrase "federal taxable income" in paragraph (c) of subsection (6)?
14. It is not clear in paragraphs (b) and (c) of subsection (6) what the tax rate is to be applied to.
 - a. Assuming you meant for paragraph (b) of subsection (6) to only be applied to joint

filers, perhaps you could word said paragraph (b) as follows: "With respect to taxable years commencing on or after January 1, 2014, a tax is imposed on federal taxable income for individuals filing a joint return, as determined pursuant to section 63 of the internal revenue code, as amended, at the following rates:". If you would like this paragraph to apply to both single and joint filers, please make that clear.

- b. Assuming you meant for paragraph (c) of subsection (6) to be applied to federal taxable income, perhaps you could word said paragraph (c) as follows: "With respect to taxable years commencing on or after January 1, 2014, a tax is imposed on federal taxable income for individuals filing as head of household, as determined pursuant to section 63 of the internal revenue code, as amended, at the following rates:"
15. It appears that you would like the general assembly to determine what "inflation" means for purposes of paragraph (d) of subsection (6) because you allow the general assembly to approve an "index" for the inflation adjustment to the income tiers. Is this correct? Do you have a preference on whether the general assembly uses a growth in personal income or growth in the cost of goods index? Paragraph (a) of subsection (2) of section 17 already has a definition of "inflation" that applies to the section. Is it your intention that this definition of "inflation" not apply? If so, please make that clear.
16. The proposed initiative specifies that the general assembly may adjust the income tiers "annually for inflation from the previous year". If the general assembly does not adjust the tiers in a particular year, can it subsequently adjust the tiers for that year in a later year? If the general assembly does not adjust the tiers, does this have the effect of pushing taxpayers into paying a higher percentage tax than they otherwise would? Is it the proponents intent to allow this to occur?
17. By saying "notwithstanding section 20 of article X of the constitution" in paragraph (d) of subsection (6), are you intending to make clear that changes to the income tiers should not be considered a tax policy change directly causing a net tax revenue gain to the state that would require a vote of the people under section 20 of article X of the Colorado constitution?
18. Paragraph (e) of subsection (6) of the proposed initiative ends abruptly. Did you mean to say "created in subsection (4) of this section"? Also, given that income taxes are deposited initially to the state general fund, would the proponents consider changing the phrase "deposited in" to "transferred from the general fund to". Furthermore, how does the requirement that all of the revenue that implementation of this measure would generate be transferred to the state education fund interact with the current requirement in paragraph (a) of subsection (4) that one-third of one percent of all taxable income be transferred into the state education fund? Is the new transfer a mutually exclusive and separate transfer from the current law transfer, or can part of the new transfer supplant the current law transfer?
19. How would the amounts of the transfer in paragraph (e) of subsection (6) be determined and how would the timing work? For the tax year commencing January 1, 2014, for example, some of the income tax is withheld by employers and sent to the state during the 2014 calendar year, but returns are not due until the spring of 2015. Some taxpayers then receive

extensions to file their returns. Some amend their returns later in the year or in subsequent years. When would the transfer take place for the 2014 tax year and how would the amount of the transfer be calculated? Could it be subsequently modified to conform with subsequent data or estimates?

20. What is the intended effect of paragraph (f) of subsection (6)? Assuming the proponents have a general impression of the amount of revenue that implementation of this measure would generate, what happens if more than the expected amount is generated?
21. The new maintenance of effort subsection (5) specifies that "all revenues deposited in the state education fund pursuant to [sub]section (6) shall be appropriated by the general assembly only **for the costs of public education from preschool through twelfth grade . . .**".
 - a. Is this intended to supercede the more descriptive use of the revenues provided in paragraphs (a) and (b) of subsection (4) of section 17 of article IX of the Colorado constitution? That is, would you like there to be more flexibility in what the revenues be used for?
 - b. What does "costs of public education from preschool through twelfth grade" mean? For example, do you intend that the tax revenue 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"? Would the general assembly be authorized to use the tax revenue to fund the department of education and the state board of education?
 - c. If you do intend to rely on what is described as "education" in paragraphs (a) and (b) of subsection (4) of section 17 of article IX of the Colorado constitution, a cross reference would be appropriate and helpful.
22. The new maintenance of effort subsection (5) specifies that the appropriation for the costs of public education from preschool through twelfth grade cannot be less than the amount appropriated for such purposes for fiscal year 2012-13 adjusted by growth. What do the proponents mean by "appropriation" and "appropriated"? Is that from the general fund alone, from the state education fund alone, from other sources, or from all sources?
23. You specify that the adjustment to be made for maintenance of effort is by the "aggregate annual percentage change in student enrollment, as described in" section 20 of article X of the Colorado constitution. Is this a reference to "local growth" as defined in section 20 (2) (g) of article X of the Colorado constitution? Could you please explain how you expect this maintenance of effort to work? Do you want to include online and charter school enrollment?