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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 #9, concerning state sales tax increase for school division PERA contributions

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 sales tax rate by ten percentage points from 2.9% to 12.9%;

2. To use the additional revenue from the tax increase, estimated by the proponents to be eight billion dollars, to fund the employer contributions of the school division of the public employees' retirement association (PERA);

3. To prohibit school districts in the state from using other dollars to fund the employer portion of PERA;

4. To allow all of the revenue generated for public education to be used for public education rather than employee pensions;

5. To ensure that general fund expenditures currently being used to match employee pension contributions are instead available for smaller class sizes, employee raises, or other district priorities;

6 To ensure that the school division of PERA is fully funded in the 30-year projections; and

7. To ensure that taxpayers are no longer doubling or more than doubling the contributions of employees to the school division pension fund.

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, and not to use ALL CAPITAL LETTERS for any particular word or phrase.

4. Commas need to be used in a series before the conjunction.

5. PERA is misspelled as "PREA" in the proposed initiative.

6. It is standard drafting practice to set off certain phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas. For example, "Shall the Colorado sales tax rate be raised by 10% points, from 2.9% to 12.9%, to collect . . .".

7. Write out PERA as "public employees' retirement association".

8. Numbers should be spelled out.

9. Change "assures" to "ensures" and "assure" to "ensure".

10. Change the word "dollars" to "revenue" in the phrase "any other dollars to fund ".

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? If prior to the start of the state fiscal year (July 1), would the state and retailers have time to make the changes necessary to collect the tax? Would the proponents consider specifying when the tax rate increase would take effect?

3. Is the tax rate increase a permanent increase? Are there any circumstances under which the General Assembly could modify the increased rate?

4. Would existing sales tax base, tax credits, and tax exemptions be used to calculate tax liability? Could these be modified by the General Assembly in the future?

5. Sales tax revenues typically flow into the state's general fund where they are mixed and earn interest with other revenues used for general purposes. Revenues that are earmarked for a specific purpose are generally deposited in a separate cash fund where they can be transferred or appropriated as needed. Would the proposed initiative restrict the ability of the General Assembly to deposit the revenues in a cash fund in order to appropriately track the use of the revenues?

6. How would the revenues from the rate increase make their way to the PERA trust fund? The state currently appropriates state moneys to school districts. This money is co-mingled with local property tax and other revenues throughout the fiscal year by the individual school districts, and payments are then made periodically to employees and PERA by the districts. Would these revenues be tracked somehow? Would the state make the employer contributions directly?

7. If the rate increase generates more revenues than are required to fund the employer portion of PERA contributions, what happens to the excess revenues? Are all of the proceeds of the rate increase to go to PERA? What happens to the revenues if PERA becomes fully funded in less than the projected 30 years?

8. What is meant by "employer contributions"? Does this mean only the 10 percent statutory contribution required to be paid by employers, or does it include some or all of the additional amortization equalization disbursement (AED) and supplemental AED (SAED) payments required to be paid by employers as well?

9. Is the 10 percentage point increase in sales taxes set aside only for the employer 10 percent statutory contribution and/or AED, SAED payments? Or is it meant to provide additional funding to "shore up" the actuarially required contribution for the school division as well? If it is meant to be both, would the proponents consider clarifying what the priority order for these payments would be?

10. Are the proponents aware that the Denver public schools (DPS) division is still accounted for separately in PERA financial reports? Do the proponents intend to exclude employer contributions for the DPS trust, or are they to be treated the same as other employers in the school division?

11. How did the proponents calculate the value of the employer contributions? Specifically, where did the $8 billion figure come from? This does not appear to match the data shown in PERA's 2011 consolidated annual financial report, which shows total employer contributions for schools as less than $1 billion per year for the employer contributions plus the AED and SAED for the school and DPS divisions.

12. What would happen if PERA collects too much money in a given year? Under current law, PERA is supposed to reduce the contribution paid by an employer if it gets too much money. However, since employer contributions would be replaced by sales tax revenues, how would this work?

13. The measure says specifically that the school districts "may no longer" use any of their moneys to pay PERA contributions. What would happen if there was not enough money to fully replace the employer contribution, however defined?

14. The proposed initiative provides that revenues are not to be used for the pensions of employees "past or present." Does this exclude the use of revenues for employees hired in the future?

15. How was the 15 percent of current general fund expenditures calculated? In FY 2011-12, general fund revenue was equal to $7.7 billion. The $8 billion figure mentioned in the initiative language is significantly above the 15 percent also mentioned in the initiative.

16. How are the proponents defining "fully funded" for purposes of determining actuarially required contributions? Are the proponents aware that there is a difference in funding ratios in a given year, even though Senate Bill 10-001 added increasing AED/SAED rates that cannot be shown (i.e., that it looks like the division plans are more under funded than they really are because PERA cannot count money it does not have yet)?

17. Given that general fund moneys are collected from taxpayers, what do the proponents mean

by the phrase "this ensures that taxpayers are no longer making double or more the contributions of employees to the school division of the pension fund"?

18. The state has a use tax with the same rate that effectively parallels the sales tax for transactions that occurred outside the state. Is it the proponents intent to also increase the use tax by the same amount or only the state sales tax? If so, would the proponents include appropriate language in the proposed initiative?

19. 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 so, and the state generates $8 billion in excess revenues from the rate increase that has to be used for employer PERA contributions, does this mean the state would have to cut other spending by $8 billion to be able to refund the excess revenues? If not, would the proponents include appropriate language to exclude the revenues from TABOR fiscal year spending?