

# STATE OF COLORADO

## Colorado General Assembly

Kirk Mlinek, 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



Charles W. Pike, 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

May 2, 2006

**TO:** Tim Brown and Matthew Garrington

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2005-2006 #128, concerning Payment of Costs for New Development

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:

1. To prohibit the state from restricting the ability of local governments to enact regulations, including but not limited to impact fees, requiring that any new development must pay for the costs incurred within the boundaries of the local government instead of having all taxpayers pay for these costs; and
2. To specify what costs are included that shall not be restricted, but does not limit the costs to only those specified in the proposed initiative.

## Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

### Technical questions:

1. To conform to standard drafting practices, would the proponents consider changing the amending clause in the proposed initiative to read as follows:

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

2. To conform to standard drafting practice, concerning the heading of the proposed initiative, would the proponents consider placing the words "Section 15" and a headnote in lower case letters and bold face type so that the full heading for the section would be listed in the same form as follows:

**Section 15. [Sample headnote language].**

3. To conform to standard drafting practices, would the proponents consider capitalizing the first letter of the first word of each sentence in the proposed initiative? Does it refer to the local governments?
4. To conform to standard drafting practices, would the proponents consider adding a comma after the words "limited to" in the third line of the proposed initiative, so the clause would read "including, but not limited to, impact fees...."?
5. Would the proponents consider clarifying who "they" refers to in the first sentence of the proposed initiative?
6. To conform to standard drafting practices, would the proponents consider removing the colon in the last sentence of the proposed initiative and replacing it with a comma?

### Substantive questions:

1. Section 1 (8) of article V of the Colorado constitution requires that "[t]he style of all laws adopted by the people through the initiative [to] be, 'Be it Enacted by the People of the State of Colorado'." In the absence of an enacting clause, the proposed initiative is without legal force and effect. Accordingly, to ensure compliance with section 1 (8) of article V of the Colorado constitution, would the proponents consider adding an enacting clause at the beginning of the proposed initiative as follows:

Be it Enacted by the People of the State of Colorado:

2. Section 1 (5.5) of article V of the Colorado constitution limits measures proposed by petition to a single subject. What is the single subject of the proposed initiative?
3. Are the proponents aware that section 29-20-104.5, Colorado Revised Statutes, already contains provisions that empower local governments to impose impact fees or other similar development charges? Given this statute, what do the proponents intend to achieve by means of the new section to the Colorado constitution that is not already codified in state statutory law?
4. Given the difficulties of amending the Colorado constitution, have the proponents considered proposing any changes to Colorado law on the subject of impact fees by amending the Colorado Revised Statutes instead of the Colorado constitution?
5. What do the proponents mean by "local governments"? More specifically, does the term include any form of municipality? All counties? Any special districts? Any school districts? Would the proponents consider adding a definition of this term to the text of the proposed initiative? If not, can the general assembly define the term by statute?
6. How would the state government be restricting the ability of local governments to enact regulations that are the subject of the proposed initiative? If the state imposed no such restrictions, what would the proposed initiative accomplish? If the intent of the proposed initiative is to empower local governments to impose impact fees, why not grant such powers directly to local governments?
7. Besides impact fees, what other types of regulations do the proponents intend not to restrict? Could a local government enact a regulation prohibiting development in order to avoid the costs associated with the new development?
8. What do the proponents mean by "new development"? Does this term include both residential and commercial development? Would an addition or expansion to an existing development constitute new development? How is new development to be measured? "New" as of what date?
9. What are the costs that new development incurs? Is the term "costs" intended to have the same meaning as "impact" as used in connection with the impact fees?
10. How does new development "[socialize] these costs to all of the taxpayers"? To which taxpayers are the proponents referring? Would the proponents consider clarifying their intent with respect to this phrase? Would the proponents consider modifying the language of the text to delete the arguably editorializing nature of this phrase?
11. How is the local government to decide whether to impose an impact fee, how the impact fee is to be calculated, or upon which persons or entities the impact fee is to be imposed? Would the proponents consider clarifying the intent of the proposed initiative with respect to these issues?

12. By what manner is the impact fee to be imposed? Specifically, does imposition of the impact fee require any particular action on the part of the governing body of the local government? Would the proponents consider clarifying their intent with respect to this issue?
13. How is the local government to determine what the amount of the impact fee should be? Are the proponents aware of the legal standards governing this determination as they may have been articulated in such cases as *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994)? Does the proposed initiative require conformity to the controlling legal standards as articulated in these cases? If yes, how? Does the proposed initiative contemplate that any legal standards will guide the determination of the local government in setting the impact fee? If yes, what are they?
14. What do the proponents mean by "road" in reference to the term "road construction" for purpose of the proposed initiative? Does that term mean any surface used to transport vehicles or pedestrians or is some more limited meaning intended?
15. What types of services do the proponents intend to include in the description of the term "costs" besides emergency medical and fire services?
16. How are the impact fees authorized by the proposed initiative to be collected and accounted for?
17. What is "the cost of expanding capacity of public school systems." Is this phrase intended to have the same or a different meaning as public school capital facilities? Does this mean that the impact fee may be set at whatever level is necessary to cover any needs of a particular school system involving those costs relating to capital facilities and otherwise? What is the connection between new development and such expanding capacity? Would the proponents consider clarifying their intent with respect to these issues?
18. Does the proposed initiative contemplate any limit on the amount of the impact fee that may be imposed? If yes, what is the limit and how is the limit to be deduced from the text of the proposed initiative?
19. Parks and recreational facilities are not typically thought of as generating the kinds of impacts from developments justifying the imposition of an impact fee. Accordingly, what is the rationale for including these impacts in the proposed initiative as among the costs that the impact fee should be imposed to cover?