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MEMORANDUM

February 6, 2009

TO: Jeff Gross and Freda Poundstone

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2009-2010 #4, concerning motor vehicle, income, and telecommunications taxes and fees

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 add a new article to title 39 of the Colorado Revised Statutes;
2. Concerning vehicles, starting January 1, 2011, to:
 - a. Decrease all annual specific ownership taxes for new and other vehicles in four equal yearly steps by specified amounts;

- b. Require all state and local taxes to cease on vehicle rentals and leases and on ten thousand dollars, reached in four equal yearly steps, of sale prices per vehicle;
 - c. Specify that sales rebates are not taxable;
 - d. Require that all registration, license, and title changes combined total ten dollars yearly per vehicle;
 - e. End all state and local government charges on vehicles and vehicle uses, with specified exceptions;
 - f. Specify that all added charges are tax increases, with specified exceptions;
3. Concerning income taxes, to:
- a. Set the 2011 income tax rate at four and one-half percent and require later rates to decrease a specified amount yearly until reaching a specified amount under certain conditions;
 - b. Specify that the state should repeal income tax credits not for required refunds to offset the required decreases;
 - c. Repeal the alternative minimum tax; and
4. Starting January 1, 2011, to specify that, except for 911 fees at 2009 rates, no charge by, or aiding programs of, the state or local governments shall apply to specified telecommunications service customer accounts, and specifies that added charges shall be tax increases.

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 include an amending clause telling the reader what is being added to or amended in the Colorado Revised Statutes. For example, if your intention is to add a new article to title 39 of the Colorado Revised Statutes, include an amending clause that reads as follows: "Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:".
- 2. Article 25 of title 39, Colorado Revised Statutes, already exists, though it was repealed in 2003. The previous subject matter of article 25 was "gift tax", which differs from the subject of the proposed initiative. In this case, it is standard drafting practice to create a new article,

such as article 25.5. Is this your intention?

3. When creating a new article, it is standard drafting practice to include the article number and headnote, centered and in bold face type, after the amending clause but before the sections of the article. For example:

ARTICLE 25.5
Government Revenue Limits

4. It is standard drafting practice to include the section number and headnote of the section you are creating in bold face type at the start of the section (in this case before the start of section 39-25.5-101, Colorado Revised Statutes) as follows:

**"39-25.5-101. Government revenue limits. (1) Enforcement. THIS
VOTER-APPROVED REVENUE CHANGE . . ."**

5. It is standard drafting practice to use small capital letters to show the language being added to the Colorado Revised Statutes, excluding headnotes, as shown in the example above in technical comment 4.
6. Numbers should be spelled out.
7. Statutory provisions are divided into component parts using the following structure: Subsection, or, for example, "(1)", followed by paragraphs, for example, "(a)", followed by subparagraphs, for example, "(I)", ending with sub-subparagraphs, for example, "(A)". Each division is a separate, indented paragraph.
8. It is unnecessary to capitalize "internet" in the proposed initiative.

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 prohibits proposed initiatives from containing more than one single subject. In interpreting this constitutional prohibition, the Colorado Supreme Court has held that an initiative violates the single subject requirement if it "relate[s] to more than one subject" and has "at least two distinct and separate purposes which are not dependent upon or connected with each other". *In re "Public Rights in Waters II"*, 898 P.2d 1076, 1078-1079. Further, the Court has held that an initiative that addresses subjects that have no necessary or proper connection to one another contains more than one subject. *Id.* at 1079. Do you intend for the proposed initiative to contain only one subject? If so, what is the single subject of the proposed initiative?
2. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?

3. With regard to the "Enforcement" section of the proposed initiative:
- a. The term "voter-approved revenue change" is typically used to refer to the authority given by the voters for a particular governmental entity to exceed the spending limits imposed by the Taxpayer's Bill of Rights, section 20 of article X of the Colorado constitution (TABOR). Is it your intent that the proposed measure is in some way this type of a revenue change, and if so, how?
 - b. Which governmental entities are charged with enforcing the changes made in the proposed initiative? The state? Local governments? Both?
 - c. What do the proponents mean by "government revenue"? Are both state and local governments subject to the provisions of the proposed initiative? Is the intent to limit both state government revenue and local government revenue?
 - d. The proposed initiative states that it "overrides conflicting statutes and local laws". If approved by the voters, the proposed initiative would render many sections of the Colorado Revised Statutes obsolete. Rather than stating the proposed initiative is self-executing, do you think it is necessary to include language in the proposed initiative that instructs the General Assembly to pass implementing legislation if the proposed initiative is approved by the voters so that the provisions of current law that are affected by the proposal may be amended as necessary? Is it your intent that the proposed initiative affect anything other than existing statutes? In other words, do you believe that the proposed initiative would prevent conflicting laws from being adopted after the proposed initiative becomes effective?
 - e. Is it your intent that the proposed initiative override conflicting local laws that are enacted by a home-rule municipality? If so, on what grounds do you believe that the proposed initiative can override the laws or policies enacted by a home-rule municipality?
 - f. The proposed initiative states that prevailing plaintiffs shall have their legal fees and court costs repaid? Why are the costs "repaid" rather than just "paid"? Would the plaintiff be responsible for paying fees and costs and then be reimbursed pursuant to the provisions of the proposed initiative? Would a court have the discretion to impose the fees and costs, or would it be mandatory?
 - g. Under what circumstances do you envision a person commencing a lawsuit in connection with the requirements of the proposed initiative?
 - h. What state department, division, or other entity would be responsible for verifying local conformity? How would this be determined? How do you anticipate that the state department, division, or other entity will verify local conformity? Will it happen through an audit process, through local government reports to the responsible state entity, or through some other process?

- i. What do you mean by the term "yearly"? Is this a calendar year or a fiscal year? Is there a certain time during the year when the state would be required to verify local conformity, or would the state entity responsible for checking conformity decide when to verify conformity each year?
 - j. Do you anticipate that there will be a fiscal impact to whatever state department, division, or other entity is ultimately responsible for verifying local conformity? If so, is it necessary to ensure that such department, division, or other entity will receive an appropriation for the costs incurred in complying with the proposed initiative?
 - k. Is it your intent that the state would be responsible for refunding all revenue violating the requirements of the proposed initiative even if the state did not receive the revenue? If so, why is the state responsible, rather than the governmental entity that received such revenue?
 - l. What is an "unfair charge"? What is a "complex charge"? Who determines what is unfair and complex? Does a charge have to be both unfair and complex to result in revenue that violates the provisions of the proposed initiative?
 - m. What is a "common basic need"?
4. Would you consider adding clarifying language to the "Enforcement" section of the proposed initiative where appropriate and in response to the questions raised in questions a. through m. above?
 5. With regard to the "Vehicle" section of the proposed initiative:
 - a. Is it your intent that the reduction in specific ownership taxes apply to all vehicles, including commercial vehicles and passenger vehicles?
 - b. The proposed initiative requires that all specific ownership taxes decrease in "four equal yearly steps". What do you mean by "yearly"? Is this a calendar year or a fiscal year?
 - c. How do you envision the reduction in "four equal yearly steps" to occur in practice? Currently, specific ownership tax is calculated based on a certain percentage of the value of the vehicle, and the percentage decreases periodically based on the age of the vehicle. Who will determine how much tax a vehicle owner owes under the provisions of the proposed initiative?
 - d. What is the purpose of reducing the amount of the tax to \$2 or \$1 on vehicles, rather than simply eliminating the tax? Would the cost of administering and collecting such a small amount exceed the amount of revenue produced?
 - e. What do you mean by "other vehicles"? Is your intent to refer to used vehicles? If not, to what type of other vehicles are you referring in the proposed initiative?

- f. What are the state and local taxes that will cease on vehicle rentals and vehicle leases? Would this provision affect fees that might be imposed on vehicle rentals?
- g. What does "and on \$10,000, reached in four equal yearly steps, of sales prices per vehicle" mean? Does the phrase "All state and local taxes shall cease" apply to that phrase?
- h. In connection with question g. above, is it your intent that state and local sales taxes not be paid on more than \$10,000 of the value of a new vehicle when sold? Or, are sales taxes to cease on \$10,000 of the sales price of a vehicle (i.e., \$10,000 of the purchase price is exempt)? If not, what is your intended purpose? If this is your intent, would you consider clarifying this with additional language? For example, that sentence could be broken up into two sentences as follows: "All state and local taxes shall cease on vehicle rentals and leases. State and local taxes shall be applied only to the first \$10,000 of value of a new car, and such reduction shall occur in four equal yearly steps".
- i. Regarding the \$10,000 limitation discussed in question h. above, what does the phrase "reached in four equal yearly steps" mean? How would the reductions in taxes on the sales of new vehicles be reduced in four equal steps when the value of cars sold differs with each sale? Who determines when the reductions occur and the amount of each reduction? How do you envision this requirement of the proposed initiative being implemented and carried out?
- j. What does the term "sales rebate" mean in the context of the proposed initiative? Does this refer to a manufacturer's rebate? A discount offered by a dealer? Any other rebate?
- k. Regarding the provision that prohibits registration, license, and title charges from exceeding \$10 annually, how will state and local governmental entities ensure that the total does not exceed \$10 per vehicle, as some of these charges are imposed by the state and others are imposed by a local government?
- l. What fine, toll, parking, and seizure charges related to vehicles are you referring to? Are these charges that are imposed by state or local governments, or are they imposed by private entities?
- m. Does the phrase "Except those charges" refer to the registration, license, and title charges mentioned in the previous sentence? If so, will you list the charges again in the proposed initiative for clarity?
- n. The proposed initiative states that, with the exception of certain specified charges, "all state and local government charges on vehicles and vehicle uses shall cease". What are the other charges to which you are referring? What are the vehicle-related charges that are currently imposed by the state or a local government that will cease as a result

of the proposed initiative?

- o. Rather than using the language "the last six specific charges" would you list the charges again in the proposed initiative for clarity?
 - p. Why have you specified that any added charges are tax increases? Does this mean that any charge that is not specified in the proposed initiative will require voter approval pursuant to TABOR? Would anything prevent a fee from being adopted in the future that exempts itself from this initiated statutory provision?
6. Would you consider adding clarifying language to the "Vehicle" section of the proposed initiative where appropriate and in response to the questions raised in questions a. through p. above?
7. With regard to the "Income" section of the proposed initiative:
- a. Is it your intent that the 4.5% income tax rate that begins in 2011 apply to all taxpayers in the state, including individuals, corporations, and other entities? If not, to which taxpayers does the new income tax rate apply?
 - b. Is it your intent that for the 2012 income tax year and each income tax year thereafter, the income tax rate shall be decreased by 0.1% from the income tax rate imposed during the previous income tax year, until the income tax rate is 3.5%?
 - c. What do you mean by the phrase "in each of the first ten years that yearly income tax revenue net growth exceeds 6%"? Is it your intent that in the first ten years in which the proposed initiative is law, the income tax rate will be reduced by 0.1% only when yearly income tax growth exceeds 6%? What happens to the income tax rate if the 6% trigger is not reached? Does this mean that it could take longer than ten years for the income tax rate to decrease to 3.5% if there is one or more years in which the 6% trigger is not met?
 - d. Does the 6% trigger apply to growth from all income tax revenue, or from just one source. For example, only from individual, corporate, or fiduciary income tax revenue?
 - e. Is the 6% income tax revenue growth a measure in relation to the previous year's income tax revenue? What information will be used to determine whether the 6% trigger has been met? Who determines whether the 6% trigger has been met and therefore that the income tax rate should be reduced by 0.1% for that income tax year?
 - f. If the income tax rate has still not decreased to 3.5% after ten years due to one or more years when the 6% trigger was not reached, in the eleventh year and years thereafter, does the income tax rate have to decrease by 0.1% each year until the income tax rate is 3.5%, regardless of the yearly income tax revenue net growth?

- g. The proposed initiative states that "[t]o offset decreases, the state should repeal income tax credits . . .". What decreases do you intend to be offset by the decreases in income tax credits? Just the income tax revenue decreases? Decreases in revenue as a result of the entire proposed initiative? Some other decreases? Are income tax exemptions repealed as well?
 - h. Regarding the phrase "the state should repeal income tax credits . . .", is it your intent to require the state to repeal income tax credits, or are you only encouraging the state to repeal such credits? Rather than using the word "should", would you consider using the word "shall" if your intent is to require the state to repeal the credits or the word "may" if the repeal of such credits is discretionary?
 - i. Is it your intent that the General Assembly be responsible for repealing the income tax credits? If so, would you specify that in the proposed initiative?
 - j. What are "income tax credits not required for refunds"? Does this refer to refunds of overpaid taxes issued as a result of filing an income tax return? A credit to refund excess revenues under TABOR? Why doesn't the proposed initiative suggest that these income tax credits be decreased? Can you provide some examples of the credits that you envision being repealed as a result of the proposed initiative?
 - k. What is the intended effective date of the alternative minimum tax repeal? Is it on the effective date of the proposed initiative? Is it at the beginning of a calendar year, fiscal year, or tax year or on some other fixed day?
8. Would you consider adding clarifying language to the "Income" section of the proposed initiative where appropriate and in response to the questions raised in questions a. through k. above?
9. With regard to the "Telecommunications" section of the proposed initiative:
- a. Are you proposing that the only fee on telecommunications be a 911 fee to be charged at the 2009 rate in perpetuity? If not, what other telecommunication fees, taxes, or charges are allowed to be levied under the provisions of the proposed initiative? Would this include a franchise fee?
 - b. Do you anticipate that the costs of providing 911 services will increase to the extent that eventually the fees at the 2009 rates will not be sufficient to cover the costs of providing the 911 services? If so, how would 911 service providers cover their costs so that these services may be provided in the future?
 - c. What types of charges by the state or local governments do you intend to eliminate through the proposed initiative? Can you provide an example of this type of charge?
 - d. What do you mean by the phrase "or aiding programs of, the state or local governments"? What is the nature of the charges that you intend to eliminate with this

language? Can you give an example of a telecommunications charge that aids programs of the state or a local government?

- e. Are the charges on "telephone, pager, cable, television, radio, [i]nternet, computer, satellite, or other telecommunication service customer accounts" all charges imposed by a state or local governmental entity? Are any of these charges imposed by the federal government or by private entities? If so, can the proposed initiative require that these charges no longer be imposed?
 - f. Is it your intent that any other fee or charge imposed on telecommunications, other than a 911 fee, be a tax increase that must be approved by a majority of voters pursuant to the requirements of TABOR?
10. Would you consider adding clarifying language to the "Telecommunication" section of the proposed initiative where appropriate and in response to the questions raised in questions a. through f. above?
11. How do you believe the proposed initiative will affect programs and services currently funded by the taxes, fees, and other charges that would be reduced or eliminated as required by the provisions of the proposed initiative?
12. Have you considered any fiscal or other impacts that may result from the enactment of the proposed initiative on state and local governments?