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MEMORANDUM

May 7, 2008

TO: Margaret Robinson and Jack Beuse

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #127, concerning real estate transfer taxes

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 create a new section in article X of the Colorado constitution that would:
 - a. Suspend for two years the imposition of any tax or fee under the Colorado constitution on the transfer of residential real estate in any year following a two-year period in which the statewide average assessors' residential real estate market valuation failed to increase by an average of 18% in each year; and
 - b. Suspend for two years the imposition of any tax or fee under the Colorado

constitution on the transfer of commercial real estate in any year following a two-year period in which the statewide average assessors' commercial real estate market valuation failed to increase by an average of 18% in each year.

Comments and Questions

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

Technical questions:

To conform to standard drafting practices, would the proponents consider making the following changes to the proposed initiative?

1. Include the following enacting clause, which is included at the beginning of the proposed measure pursuant to section 1 (8) of article V of the Colorado constitution:

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

2. Show all new language (other than the section heading) in small capital letters, e.g., "IN ORDER TO PROTECT . . ."
3. Show the amending clause in plain font, rather than in italics, as follows:

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

4. Indent the first line of the headnote and each subdivision of the proposed initiative.
5. Capitalize only the initial letter of words that are proper nouns or the first word of a sentence. For example, "Governor's Office of State Planning and Budgeting" should be "governor's office of state planning and budgeting."
6. Use the correct names of agencies, divisions, boards, etc., as they are created in statute or the constitution. For example, "Governor's Office of State Planning and Budgeting" should actually be the "office of state planning and budgeting," as it was created in section 24-37-102, Colorado Revised Statutes.

Substantive questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Since there is currently not a statewide tax or fee on the transfer of residential or commercial real property under the Colorado constitution, what is the perceived need for the proposed

- initiative? What is the public need or problem you intend the proposed initiative to address?
3. To eliminate future confusion, ambiguity, and potential litigation, would you consider supplying a definition or description of what you mean by a tax or fee on the transfer of residential or commercial real property?
 4. As you may know, counties may currently impose a documentary fee on title to property granted or conveyed under section 39-13-102, Colorado Revised Statutes. To what extent would the proposed initiative affect the continued imposition of this particular fee? To what extent would the proposed initiative affect a *statutory* fee on the transfer of residential or commercial real property?
 5. Twelve municipalities in Colorado currently impose a real estate transfer tax pursuant to local ordinances, which taxes were adopted prior to, and therefore are apparently not affected by, the prohibition on new or increased transfer tax rates on real property contained in section 20 of article X of the Colorado constitution. To what extent would the proposed initiative affect the ability of these municipalities to continue to levy these taxes?
 6. The proposed initiative addresses taxes or fees on the transfer of residential and commercial real estate. Is it your intent that the measure not apply to the transfer of other forms of real estate, such as exempt transfers, transfers of state-assessed land, and transfers of real estate that is classified as industrial, agricultural, natural resources, producing mines, oil and gas, or vacant land.
 7. Both subsections (1) and (2) of the proposed section 22 of article X of the Colorado constitution suspend the tax or fee "in any year" following the two-year period in which the trigger mechanism has not been met and for a two year period. Do you see any inconsistency or conflict in having the tax or fee suspended "in any year" *and for* a (subsequent) two-year period? Would you consider amending the text of the proposed initiative to address any such inconsistency or conflict?
 8. How do you intend to measure the two-year *period* in which the rate of increase in the market evaluation is to be assessed? Specifically, is the period congruent with a calendar year, or is some other unit of time intended?
 9. What is the rationale for using 18% as the trigger amount for determining whether the tax or fee will be suspended in section 22 (1) and (2) of the proposed initiative? Do you know how this figure compares with historical averages for residential and commercial real estate market valuations? Do you know in how many years since 1988 the valuation would have met the 18% standard for the residential and commercial classifications?
 10. What is the rationale for measuring the rate of increase in valuation for a two-year period?
 11. Is the real estate market valuation described in the proposed initiative a task that is currently performed by the office of state planning and budgeting ("OSPB")? What is the rationale for relying upon the statewide average assessors' residential or commercial real estate valuation

as the unit of measurement rather than with similar or related valuations of real property that may regularly be prepared by other public or private entities?

12. Could you explain or provide the statistic that best describes how the statewide average assessors' residential or commercial real estate valuation may best be determined? More specifically, is the term intended to mean the statewide totals for actual value by class of property? Please further explain the use of "average" in this standard (lines 15 and 21 of the proposed initiative). Specifically, is "average" used to describe a weighted average by county?
13. Is it your intent that OSPB rely upon the most recently published data from the division of property taxation in the department of local affairs, the state agency that compiles the data, as the data that would be used for purposes of determining whether the trigger mechanism in the proposed initiative has been satisfied?
14. The data compiled by the division of property taxation that would be consulted to determine whether the trigger mechanism in the proposed initiative has been satisfied includes new construction of both residential and commercial classes of property. Is it your intent that new construction be included in the analysis of market valuation used to determine whether the trigger mechanism in the proposed initiative has been satisfied?
15. The data compiled by the division of property taxation that would be consulted to determine whether the trigger mechanism in the proposed initiative has been satisfied includes both real and personal property within the class of commercial property. Is it your intent that personal property be included in the calculation of whether the trigger mechanism has been satisfied with respect to commercial real estate?
16. If the constitutional tax or fee is suspended pursuant to the provisions of the proposed initiative, is the suspension to take effect for two *consecutive* years? If so, would you consider making your intent on this point explicit?
17. Is two years the maximum period for which the tax or fee could be suspended? What if a tax or fee was already under suspension and the 18% threshold amount was not met for the second year of the two-year suspension period? In these circumstances, would the tax or fee continue to be suspended for an additional period of at least two consecutive years, possibly indefinitely? Under what circumstances would the tax or fee be reinstated?
18. Section (4) (a) of article X of the Colorado constitution (the Taxpayer's Bill of Rights) requires voter approval in advance for a tax rate increase. If a tax is suspended, and the effective tax rate is 0%, would reinstating the tax constitute a tax rate increase requiring voter approval?
19. Given the two-year average requirement, if the trigger requirement is theoretically met (and imposition of the tax or fee is authorized), how soon thereafter could the tax or fee be imposed? Specifically, does the language of the proposed initiative require the imposition of any tax or fee be delayed until the year following the year in which the average was met,

or do you intend some other date for imposing the tax?

20. The initial clause of proposed section 22 (1) and (2) states that the tax or fee is to be suspended "[i]n order to protect homeowners during depressed real estate markets." Is it accurate to refer to the real estate markets as "depressed" when the specified real estate market valuation fails to increase 18% in each of two specified years? Additionally, how will homeowners be protected by a suspension of the tax or fee on *commercial* real estate?
21. Is it your intent that the General Assembly enact legislation in the 2009 regular legislative session to provide for implementation of the proposed initiative if the initiative becomes law?
22. Initiated measures are effective upon proclamation of the governor unless a later effective date is specified? Would you care to specify a later or more particular effective date for the proposed initiative?