

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 11, 2008

**TO:** Ernest Duran and Bradley Johnston

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

**SUBJECT:** Proposed initiative measure 2007-2008 #95, concerning taxable value and taxes of property

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 amend section 3 of article X of the state constitution to increase the ratio of valuation for assessment for nonresidential real property from twenty-nine percent of actual value to thirty-four percent of actual value and exempt any additional government revenues or spending resulting from the increase from the Taxpayer's Bill of Rights, section 20 of article X of the state constitution (TABOR), and any other spending limitation existing in law; and
2. To require the General Assembly to adjust the residential rate and target percentage determined pursuant to section 39-1-104.2, Colorado Revised Statutes, so that the increase in the ratio of valuation for assessment for nonresidential real property from twenty-nine

percent to thirty-four percent does not cause residential real property taxes to increase.

### Comments and Questions

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

#### Technical questions:

1. The two amending clauses that denote separate sections of the proposed initiative (page 1, lines 13 and 14, and page 2, lines 4 and 5) should be combined into the following single amending clause, which should begin on page 1, line 13, of the proposed initiative:

"Section 3 (1) (b) of the constitution of the state of Colorado is amended, and the said section 3 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:"

2. Constitutional text should be preceded by the section number and headnote for the appropriate section of the state constitution. For example, page 1, line 16, should read as follows:

**"Section 3. Uniform taxation - exemptions.** (1) (b) Residential real property, which shall include all residential dwelling units and the land . . ."

3. The new language being added to the state constitution as subsections (3), (4), and (5) should be shown in SMALL CAP TYPE.
4. Internal references to other constitutional sections should be written as follows: "section 3 of article X of this constitution."

#### 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 amendment?
2. Unlike the existing constitutional language to be repealed on page 1, lines 35 and 36, of the proposed initiative, which references "[a]ll other taxable property," the new constitutional language on page 1, lines 36 through 38, references only "taxable real property." Accordingly, if the proposed initiative is adopted, at what rate will taxable personal property (i.e., business personal property such as a spork manufacturing machine) be valued for assessment?
3. The provision of section 3 of article X of the state constitution that requires adjustment of the residential assessment rate to keep the percentage of total statewide assessed value attributable to residential real property nearly constant, with small changes that result from accounting for new construction, has interacted with TABOR, which prohibits an increase

in any tax rate or valuation for assessment ratio for any property class, to lower the residential assessment rate and will likely continue to do so in the future. Since TABOR already prevents any upward adjustment in the residential assessment rate without voter approval (and therefore also prevents any increase in residential property taxes that would result from such an increase), is the purpose of subsection (3) of the proposed initiative simply to prevent the residential assessment rate from declining as quickly as it might otherwise decline by requiring adjustments of the residential rate to continue to be adjusted as if the assessment rate for nonresidential property remained at twenty-nine percent?

4. The following questions relate to the phrase in subsection (4) of the proposed initiative that states that additional revenues, appropriations, or expenditures attributable to the increase in the nonresidential assessment rate shall not be subject to "any other spending limitation existing in law."
  - a. The five and one-half percent growth limit on annual property tax revenues set forth in section 29-1-301 (1), Colorado Revised Statutes, is a revenue limit, not a spending limit. Is it the proponents' intent that the additional revenue from the proposed increase in the nonresidential assessment rate be subject to this limit?
  - b. Does the phrase apply only to limits existing in law as of the enactment date of the measure, or does it also apply to any limits that may be enacted in the future?
5. With respect to subsection (5) of the proposed initiative, under section 1 (4) of article V of the state constitution, all initiatives take effect upon the proclamation of the vote by the governor. Accordingly, subsection (5) appears to be superfluous.
6. Since an assessment rate for a class of property applies to a property tax year, the proposed initiative should probably specify the first property tax year for which the assessment rate change for nonresidential real property will take effect. Are the proponents willing to make such a specification?