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MEMORANDUM

April 9, 2008

TO: Wendy Rosanova and Marijo Rymer

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #90, concerning state sales tax for services for individuals with developmental disabilities

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 increase the state sales tax rate;
2. To repeal the existing state use tax and replace it with a lower use tax;
3. To require the net revenues from the state sales tax rate increase and the new state use tax to be used to provide long-term services for persons with developmental disabilities; and
4. To establish a minimum level of state appropriations for long-term services for persons with

developmental disabilities from sources other than the developmental disabilities long-term services cash fund.

Comments and Questions

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

Technical comments:

The following comments are technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices:

1. Each new bill section and headnote should be indented. Similarly, the first line of each statutory subdivision is normally indented.
2. Only proper nouns, such as the names of cities and states, are capitalized.
3. Whenever "C.R.S." appears after a statutory section number and does not fall at the end of a sentence, it should be set off with commas.
4. Serial commas are generally used in the Colorado Revised Statutes.
5. Is the reference on page 2, line 44, correct? It appears that the reference to subsection (5) should instead be to subsection (6).
6. When referencing multiple paragraphs in the same subsection, the subsection number should be repeated before each paragraph letter. For example, the internal references on page 3, lines 11 and 12, should be written as follows: "sections 39-26-106 (1) (c) and 39-26-202 (1) (b.3) or (1) (b.5)."
7. On page 4, line 6, consider inserting "long-term" before "disabilities" to ensure that the full title of the fund is used in the new paragraph.
8. The rate of the first year of the new sales tax can be described simply as "three percent" instead of "three and one-hundredths percent." The second year of the tax is written as "three and eleven-hundredths percent." However, if the existing tax is 2.9% and the tax increase is .2% for sales made on or after July 1, 2009, then the total tax equals 3.1%, which is written as "three and ten one-hundredths percent."
9. There are citations for provisions that do not exist on page 5, lines 10 and 11.

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. The following comments and questions relate to section 1 of the proposed initiative:
 - a. Do the proponents intend to include section 1 in the Colorado Revised Statutes? If so, there is no statutory section identified for the statement of intent.
 - b. What is the purpose of the statement of intent? Does it change the interpretation of the rest of the proposed initiative?
 - c. What is meant by the phrase "the continuum of long-term services"?
 - d. What is the source of your data in subsection (2)?
3. The following comments and questions relate to the definition of "developmental disabilities" in the proposed initiative:
 - a. "Developmental disability" is defined in section 27-10.5-102 (11) (a), Colorado Revised Statutes. Does the phrase "include . . . conditions defined in section" mean conditions that are included in, or are covered by, the definition?
 - b. What are disabilities that make a child eligible for the "disabled children care program"? The definition of "eligible disabled children" in section 25.5-6-901 (3) (a), Colorado Revised Statutes, includes the following criterion: "Have medical needs which would qualify them, pursuant to state department criteria, for institutionalization or place them at risk for institutionalization in any one of the following: An acute care hospital or a nursing facility . . ." Is this the disability that is described in the definition of "developmental disabilities" in the proposed initiative?
 - c. Autism and cerebral palsy are both conditions described in section 27-10.5-102 (11) (a), Colorado Revised Statutes. Why are they repeated in the definition?
 - d. What are some of the developmental disabilities that are generally described in the definition?
4. The following comments and questions relate to the definition of "long-term services" in the proposed initiative:
 - a. Do the services specifically described in subparagraphs (I) through (VII) of the definition expand upon the services generally described in the first sentence of the definition?
 - b. What are "comprehensive services," "supported living services," and "children extensive services"?
 - c. The definition states that "long-term services" shall not include state program administration. What constitutes "state program administration"? Does "state

program administration" include activities that may be required by the federal government as a condition of receiving federal funding?

5. The following comments and questions relate to section 27-10.5-802 of the proposed initiative:
 - a. Is paragraph (1) (a) of this section an attempt to capture the money from the increased sales tax and the new use tax and deposit it in the newly created developmental disabilities long-term services cash fund?
 - b. Will the general assembly know how much money is appropriated to the old age pension fund pursuant to section 39-26-123 (6) of the proposed initiative for the same state fiscal year? What happens if the general assembly appropriates an incorrect amount?
 - c. Section 24-75-201.1 (1) (a) (III) (C), Colorado Revised Statutes, creates an exception from the annual limitation on state general fund appropriations for "[a]ny state general fund appropriation of any moneys which are derived from any increase in the rate or amount of any tax or fee which is approved by a majority of the registered electors of the state voting at any general election." Does the fact that, pursuant to the proposed initiative, revenue from the increased sales tax is first deposited in the old age pension fund affect the applicability of this exception?
 - d. The following comments and questions relate to section 27-10.5-802 (3) of the proposed initiative:
 - i. What is meant by the phrase "adequate funding"? How will the general assembly determine the level of adequate funding for long-term services?
 - ii. What is meant by the phrase "notwithstanding the variability of the exempt net revenue"? Is a comma needed prior to "notwithstanding"?
 - iii. Why is the appropriation from the reserve required to be made by a bill that is separate from the annual general appropriation bill?
 - iv. Is all interest earned by the fund required to go into the reserve?
 - v. Could the proponents please indicate how much money they anticipate will be deposited in the reserve? Will this reserve contain enough money to provide "adequate funding each year for long-term services"?
 - vi. What does the last sentence of this subsection (3) mean?
 - e. What is meant by "the level of appropriations by the general assembly for the purpose of providing long-term services" mentioned in section 27-10.5-802 (4) (a)? How does this section interact with section 27-10.5-803 of the proposed initiative?
 - f. The following comments and questions relate to section 27-10.5-802 (4) (b) of the proposed initiative:
 - i. Is this paragraph (b) an exception to the general rule that money in the

developmental disabilities long-term services cash fund is intended to supplement appropriations set forth in sections 27-10.5-802 (4) (a) and 27-10.5-803 of the proposed initiative?

- ii. Why is there a reference to the sales tax provisions? Does this provision authorize the use of revenue other than revenue that is in the developmental disabilities long-term services cash fund?
 - iii. Are the allowable uses under this paragraph (b) narrower, broader, or the same as the permissible uses of revenue in the developmental disabilities long-term services cash fund?
 - iv. In order to use the money in the fund (or the sales tax revenue), the general assembly would first have to pass the required joint resolution, which must be signed by the governor. Is this the correct interpretation of the provision?
 - v. Does adoption of the joint resolution require a vote of two-thirds of the elected members of each house of the general assembly or two-thirds of the members present at the vote?
 - vi. Only bills are constitutionally required to be presented to the governor. How will a governor sign a joint resolution?
 - vii. What is meant by a "state fiscal emergency"? Are there any limits on the general assembly's ability to declare one?
 - viii. In the event of a state fiscal emergency, is the money described in this paragraph (b) still required to be used for "long-term services," as defined by the proposed initiative?
 - ix. Could a state fiscal emergency be declared in successive years?
- g. As there will be no appropriations from the developmental disabilities long-term services cash fund in the 2008-09 state fiscal year, will a report be required on December 1, 2010? Accordingly, should the first year for a report be December 1, 2011?
- h. Is the department required to adopt any outcome-based quality assurance measures relating to the use of money in the developmental disabilities long-term services cash fund, or simply report those that it chooses to use?
- i. Can money in the developmental disabilities long-term services cash fund be used to leverage matching federal funds?
6. The following comments and questions relate to section 27-10.5-803 of the proposed initiative:
- a. What is meant by the term "state appropriations"? Do state appropriations include appropriations from the state general fund, cash funds, and money from funds that are used to match federal funds? Do state appropriations include the money that is appropriated by the general assembly from the developmental disabilities long-term services cash fund pursuant to section 27-10.5-802 (2) of the proposed initiative?
 - b. Do state appropriations for long-term services only include appropriations for

long-term services, as defined in this section, or can they include funding for administrative costs?

- c. What would happen if the state stopped receiving federal funds for long-term services? How would this section apply?
 - d. Is it the intent of the proponents in subsection (1) of this section that the appropriations for long-term services can never fall below the level of appropriations as of the effective date of part 8 of the proposed initiative? Must there be any increases in funding from sources other than the developmental disabilities long-term services cash fund?
 - e. If current funding is fixed and the money from the developmental disabilities long-term services cash fund cannot be used for administrative costs, must the general assembly then find another source of revenue to pay for the administrative costs associated with the increased services related to money from the new cash fund?
 - f. Can this section be modified by a later act of the general assembly?
7. What is the purpose of exempting the development disabilities services cash fund from the limit on uncommitted reserves as provided in section 24-75-402 (5) (t) of the proposed initiative?
8. What is the purpose of section 4 of the proposed initiative? It appears that a result of the change to section 24-77-103.6, Colorado Revised Statutes, would be that revenue generated from the changes in the proposed initiative collected during the 2009-10 state fiscal year would not be used for calculating the "excess state revenues cap" set forth in section 24-77-103.6, Colorado Revised Statutes. Accordingly, the tax increase should not affect the amount of excess state revenue that the state is permitted to retain and spend for the 2010-11 state fiscal year and each state fiscal year thereafter. Was this your intention?
9. It appears that section 5 of the proposed initiative expands the total sales and use tax that may be charged statewide. Was the purpose of this change to avoid the new state tax impacting local sales tax rates?
10. The following comments and questions relate to section 6 of the proposed initiative:
- a. Could the proponents please state their intent for what the total state sales and use tax rates will be in numeric terms, incorporating the proposed rate increases?
 - b. How much revenue do the proponents estimate the first phase of the tax rate increase will generate in the 2009-10 state fiscal year? How much revenue do the proponents estimate the full tax rate increase will generate in 2010-11 fiscal year?
 - c. Why is tax rate increase phased in over two years?

- d. Was it your intention that vendors who collect the increased sales tax would be able to retain a vendor fee of 3 1/3% of the tax?
 - e. In the proposed change to section 39-26-105, Colorado Revised Statutes, there are references to paragraphs that do not exist in the Colorado Revised Statutes and are not created in the proposed initiative, namely section 39-26-106 (1) (b.3) and (1) (b.5). What provisions did you intend to reference?
11. The following comments and questions relate to section 7 of the proposed initiative:
- a. What is the intent of the language beginning with "[t]he schedules or systems shall be designed so that . . ." (page 5, lines 36 through 38 and 45 through 47)? Is it to ensure that no tax is charged on any sale of seventeen cents or less?
 - b. Was it your intent that the TABOR refund established in 39-26-106 (3) (a), Colorado Revised Statutes, which is a reduction in the sales tax rate, should not apply to the increased tax rate?
 - c. What does the proposed subsection (4) of this section mean? To the extent that you intend for the state to be able to retain and spend the sales tax, would this be in addition to any revenues that the state spends and retains pursuant to Referendum C?
12. To the extent that "exempt net revenue" is excluded from the definition of "net revenue" in section 39-26-123 (1) (a), Colorado Revised Statutes, in the proposed initiative, does this mean that the revenue from the new sales tax should not be distributed according to existing provisions of law?
13. The following comments and questions relate to section 10 of the proposed initiative:
- a. Currently, only 85% of the sales tax net revenue is required to be deposited in the old age pension fund created in section 1 of article XXIV of the state constitution. While the general assembly has the authority to deposit additional revenue, why is all of the exempt net revenue deposited in the old age pension fund?
 - b. What happens to the money in the old age pension fund?
14. According to section 11 of the proposed initiative, the state use tax is to be repealed, effective July 1, 2009, and replaced with a tax that is .1% for one fiscal year and .2% for each state fiscal year thereafter. Was this your intention?
15. In section 12 of the proposed initiative, did the proponents intend to exclude the increased use tax from the refund for biotechnology research and development that currently applies?
16. What is intended by section 13 of the proposed initiative? Does it have any legal effect? Is it intended as a statement of intent like section 1 of the proposed initiative?