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MEMORANDUM

TO: Suzanne Taheri and Michael Fields
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: September 20, 2021
SUBJECT: Proposed initiative measure 2021-2022 #46, concerning a sales tax rate reduction

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 directors of 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.

This initiative was submitted with a series of initiatives including proposed initiative 2021-2022 #47. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiative 2021-2022 #47, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2021-2022 #41 and 2021-2022 #45, were the subject of memoranda dated July 2, 2021, and August 3, 2021, which were discussed at public meetings on July 7, 2021, and August 5, 2021. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to temporarily reduce the state's sales and use tax rate to 2.89 percent.

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 requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The proposed initiative reduces the sales and use tax for the period from January 1, 2023 through December 31, 2024. Why did the proponents choose to use calendar years instead of fiscal years, as in the earlier version of the initiative?
3. Does changing the tax rate effective January 1, 2023, allow adequate time for retailers and the Department of Revenue to implement the required changes if the initiative passes in the 2022 general election?
4. The proposed statutory language in section 39-26-106 (1)(a)(III) states that the tax shall be imposed on "the amount of the sale to be computed in accordance with July schedules or systems approved by the executive director of the department of revenue". What does "July schedules or systems" refer to? Is this language intended to require the executive director to approve the schedules in July, and if so, how would that be implemented if the rate change is effective on January 1, 2023?
5. Why did the proponents choose a "repeal and reenact, with amendments" instruction instead of an "amend" instruction for the proposed changes?

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. The command to "repeal and reenact, with amendments," means that the indicated statutory text will be repealed and then added back into the section as new language, which means that all of the text should be shown in small capital letters as new language without any stricken language. This also means that any statutory text outside of the specific subsection being repealed and reenacted would need a separate command to amend it. For instance:
 - a. In Section 1, in order to add subsection (1)(a)(I)(A.5) to the section, the proponents would need to repeal and reenact all of subsection (1)(a)(I). Or, alternately, the proponents would need this amending clause:
"**SECTION 1.** In Colorado Revised Statutes, 39-26-105, **repeal and reenact, with amendments**, (1)(a)(I)(A); and **add** (1)(a)(I)(A.5) as follows:".
 - b. All of the language in Sections 2, 3, and 4 should be shown in small capital letters without any language stricken through if the proponents want to repeal and reenact the subsections listed in the amending clauses.