

**COLORADO BALLOT TITLE SETTING BOARD**

---

**RESPONSE TO MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026  
#90**

---

**1. Background**

The original text of Proposed Initiative 2025-2026 #90 (the “initiative”) was submitted to Legislative Council on May 23, 2025. A Review and Comment hearing was held on June 6, 2025, and the measure was submitted to the Title Board that day in final form. The text of the initiative is as follows:

**SECTION 1.** In the constitution of the state of Colorado, section 20 of article X, **add** (2)(d.5), (2)(h) and (4.5) as follows:

**Section 20. The Taxpayer’s Bill of Rights.**

**(2) Term definitions.** Within this section:

(d.5) “FEE” MEANS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN EXCHANGE FOR A SPECIFIC BENEFIT CONFERRED ON THE PAYER, WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER’S FAIR SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING SAID SPECIFIC BENEFIT.

(h) “NEW TAX” MEANS A TAX NOT PREVIOUSLY ASSESSED; A TAX INCORRECTLY CATEGORIZED AS A FEE; THE REMOVAL OF A TAX EXEMPTION; OR A CHANGE IN TAX CLASSIFICATION OR A NEW INTERPRETATION OF LAW THAT CREATES AN ADDITIONAL TAX BURDEN.

**(4.5) Voter approval of fees.**

(a) ON OR AFTER JANUARY 1, 2027, ANY FEE AUTHORIZED BY STATE LAW IMPOSED OR INCREASED WITH A PROJECTED OR ACTUAL REVENUE OF OVER \$100,000,000 TOTAL IN THE FIRST FIVE FISCAL YEARS MUST BE APPROVED AT A STATEWIDE ELECTION. BALLOT TITLES FOR SUCH FEES SHALL BEGIN, “SHALL A FEE BE (IMPOSED OR INCREASED) TO COLLECT REVENUE TOTALING (ESTIMATED FULL DOLLAR COLLECTION FOR FIRST FIVE FISCAL YEARS) IN ITS FIRST FIVE YEARS...?”

(b) FEES COLLECTED TO FUND SIMILAR PURPOSES CREATED OR INCREASED IN THE SAME LEGISLATIVE YEAR OR WITHIN THE FIVE PRECEDING YEARS SHALL BE AGGREGATED IN CALCULATING THE APPLICABILITY OF THIS SUBSECTION (4.5).

(c) THE REQUIREMENTS FOR VOTER APPROVAL CONTAINED IN THIS SUBSECTION (4.5) DO NOT APPLY TO FEES CHARGED BY INSTITUTIONS OF HIGHER EDUCATION.

**SECTION 2. Effective date – applicability.**

(2) This definition applies to fees and new taxes enacted or increased on or after January 1, 2027.

A hearing was held by the Title Board on June 18, 2025, and the Board determined the measure had a single subject and set the following title:

An amendment to the Colorado Constitution requiring voter approval for certain governmental charges and, in connection therewith, amending the Taxpayer's Bill of Rights to: require statewide voter approval for any new or increased fee if the first five fiscal years' projected or actual combined revenue from the fee, and other fees created with similar purposes, is greater than \$100 million, excluding institutions of higher education fees; define a "fee" as a governmental charge voluntarily paid in exchange for a specific benefit; and clarify that a "new tax", for which voter approval is already required, includes a tax not previously assessed or incorrectly categorized as a fee, the removal of a tax exemption, or a tax-related change that creates an additional tax burden.

A motion for rehearing was filed on June 25, 2025, by the objector ("Petitioner"). The notice of rehearing challenges single subject and clear title.

## 2. Single Subject

The single-subject requirement is designed to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures which might not otherwise be approved by voters on the basis of the merits of those discrete measures. *In re Proposed Initiative for an Amendment to the Constitution of the State of Colorado Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 589 (Colo. 1995) *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995) *In re Proposed Initiative on Sch. Pilot Program*, 874 P.2d 1066, 1069 (Colo. 1994)

The requirement must be liberally construed to "avoid unduly restricting the initiative process." *Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155, 160 (Colo. 2014), quoting *In re Title, Ballot Title and Submission Clause for 2009–2010 #24*, 218 P.3d 350, 353 (Colo. 2009).

"[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law." *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II*, 898 P.2d 1076, 1080 (Colo.1995). The Title Board need only determine that the initiative "encompasses *related* matters" to establish a single subject. *In re 2013-2014 #89*, 328 P.3d at 177, citing *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 900 P.2d 104, 113 (Colo.1995) (Scott, J., concurring).

Initiative #90 has the singular purpose of requiring voter approval on certain government charges. These include certain fees and taxes. Petitioner summarily argues that because taxes and fees are distinct sources of public funding they must therefore be two subjects. Yet, Petitioner admits both are sources of public funding; this captures the single subject of the initiative. "[J]ust because a proposal may have different effects or that it makes policy choices that are not inevitably interconnected [does not mean] that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected." *In re Title v. John*

*Fielder*, 12 P.3d 246, 254 (Colo. 2000), citing *In re Proposed Initiative for 1999-2000 # 25*, 974 P.2d at 463.

The initiative will not lead to the “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative” because there are no embedded provisions that would lead to voter surprise or fraud. *In re 2011-2012 No. 45*, 274 P.3d at 582. The initiative is limited to a single matter of requiring a vote on certain government charges, or as Petitioner describes it “government funding”. There are no hidden provisions that are unrelated to the initiative’s “central theme.” See *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101, 104 (Colo. 2014).

Past caselaw related the adoption of Colo. Const. Art. 10, § 20 (“TABOR”) does not lead to a conclusion that fees and taxes are distinct subjects. Although the Colorado Supreme Court has found in past dicta that TABOR would not have survived a single subject challenge, this is because TABOR adopted several disconnected provisions. Tabor provisions require voter approval on taxes, government spending and multi-year fiscal debt obligations. TABOR also prohibits state mandates, limits emergency reserves, changed the property valuation process and changed election procedures not necessarily related to TABOR. No case drilled down into the details of types of government charges as the cause of single subject issues.

In 1995, after the passage of the single subject rule, the Court analyzed an initiative that established an array of tax credits and amended procedures related to future voter initiatives. It was not the various tax credits that caused the single subject problem, rather it was the change to the tax credits coupled with a change in initiative processes for all future initiatives. *In re Amend Tabor# 25*, 900 P.2d 121 (1995). The Court further commented in that case, “Amendment 1 itself was not subject to the single subject requirement and contains multiple subjects.” *Id.* at 126.

In 1996 another proposal to amend TABOR was found to have multiple subjects where the initiative was found to cover, “subjects ranging from the property valuation administrative process to elections to emergency taxes.” *Court v. Pool (In re Initiative 1996-4)*, 916 P.2d 528, 533 (Colo. 1996).

This measure is unlike the TABOR initiative cases cited above, as it is limited to only expanding the voting requirement for certain government charges. There are no surreptitious or disconnected subjects that would lead to voter confusion. Voters choosing to expand their voting options on government charges will support the measure and those that don’t won’t.

### **3. Clear title**

The Board has the duty to designate and fix a title, ballot title and submission clause, and summary for initiated petitions before they are signed by electors. *In re Petitions*, 907 P.2d at 589; *In re Sch. Pilot Program*, 874 P.2d at 1069. The purpose of the title setting process is to ensure that persons reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment. *In re Petitions*, 907 P.2d at 589-90; *In re Sch. Pilot Program*, 874 P.2d at 1070.

The title set by the Board apprises voters of the single subject, the voter approval requirement for state fees and the new definitions of fees and taxes. Proponents believe this adequately captures their intent while apprising voters of the central features of the measure.

Petitioner argues the title mischaracterizes taxes as within the concept of “governmental charges” – a term not generally associated with taxes. While petitioner does not explicitly offer suggested changes to the title, proponents have no objection to adopting petitioner’s language related to “public funding” rather than “governmental charges”.

For the reasons stated above, proponents request the Title Board deny the Motion for Rehearing or modify the title to reflect a different single subject.

Submitted this 1<sup>st</sup> day of July 2025.

By: /s/ Suzanne Taheri

West Group Law & Policy  
6501 E. Belleview Ave.  
Denver, CO 80111  
[st@westglp.com](mailto:st@westglp.com)