

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Petition for Review Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Setting Board</p>	
<p>In the Matter of Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #46</p> <p>Petitioners: Suzanne Taheri and Michael Fields</p> <p>v.</p> <p>Respondent: Theresa Conley, Julie Pelegrin, and David Powell</p>	
<p>Attorney for Petitioners: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com</p>	<p>Supreme Court Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #46</p>	

Suzanne Taheri and Michael Fields (“Petitioners”), through their undersigned counsel, respectfully petition this Court pursuant to §1-40-107(2), C.R.S. (2020), to review the actions of the Ballot Title Setting Board (“Title Board”) in setting the ballot title for Proposed Initiative 2021-2022 #46 (the “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2021-2022 #46

Proposed Initiative 2021-2022 #46 was heard by the Ballot Title Setting Board on October 6, 2021. Proponents Taheri and Fields challenged the title as set by the Board, and a rehearing was held on October 20, 2021. At the October 20, 2021 rehearing, the Title Board granted the Motion for Rehearing and made changes to the ballot title.

B. Jurisdiction

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme court pursuant to §1-40-107(2), C.R.S. (2020).

As required by §1-40-107(2), C.R.S. (2020), attached to this Petition for Review are certified copies of: (1) the final copy of the Proposed Initiative as submitted to the Title Board; (2) the determinations by the Title Board at its initial hearing on the Proposed Initiative on October 6, 2021; (3) the Fiscal Summary for the Proposed Initiative prepared by the Director of Research of the Legislative Council of the General Assembly pursuant to §1-40-105.5(1.5), C.R.S. (2020); (4) the Motions for Rehearing filed by both the Petitioners and the Proponents on October 12, 2021; and (5) the determinations by the Title Board at the rehearing on October 20, 2021.

GROUND FOR REVIEW

Petitioners respectfully submit that the Title Board erred as follows:

1. The title as set by the Board is inaccurate and does not correctly and fairly express the true intent and meaning of the proposed initiative.

The Board's title for Proposed Initiative 2020-2021 #46 references three programs (K-12 education, health and human services programs, and corrections and judicial operations) that would be reduced if the voters pass the initiative. However, the fiscal summary states the following: "If revenue in one or more years exceeds the state spending limit, the measure will instead reduce the amount of revenue above the state spending limit to be refunded to taxpayers." In other words, in a year when a TABOR refund is required, the only cuts would be to the amount of the TABOR refund. The Board has a duty to set an accurate title, and the title set by the Board leads with the inaccurate notification to voters of three programs to be cut and trails with the possibility that TABOR refunds will be the only program affected. By burying the lede, the Board's title will cause unfair alarm to voters about unlikely cuts to desired programs.

2. The title as set by the Board may cause voter confusion.

Based upon the titles set by the Board, voters are unlikely to know that the proposed initiative will only affect TABOR refunds. The language, "which will reduce funding for state expenditures that include but are not limited to" implies that there will be additional programs that will be cut.

The Board's title also fails to acknowledge the relatively insignificant magnitude of the proposed cut. In the unlikely event of a cut to any of the three listed programs coming as a result of Proposed Initiative 2021-2022 #46, the amount of the cut would be so small in scale (14.6 million dollars) compared to the budget of any given one of the programs (the smallest one, Judiciary and Corrections was \$1.42 billion in 2020-2021) as to be rendered nearly meaningless.

3. To the extent the requirement of C.R.S. 1-40-106(3)(e) interfere with clear title, those requirements must be set aside.

For the reasons listed above, the Court should strike the legislative mandate for specific language to be added to the title of this initiative.

PRAYER FOR RELIEF

The proponents of Proposed Initiative 2021-2022 #46 are entitled to a clear and accurate ballot title. We request the following relief:

1. Strike the following language from the ballot title: “thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR”

MAVEN LAW GROUP

s/ Suzanne Taheri
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2021 a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #46** was served via the State of Colorado's ICCES File and Serve e-filing system, properly addressed to the following:

Michael Kotlarczyk, Esq.
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Michael.kotlarczyk@coag.gov
Attorneys for Title Board

/s/ Suzanne Taheri

Suzanne Taheri

*Duly signed original on file at Maven Law
Group*

DATE FILED: October 26, 2021 10:02 AM



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2021-2022 #46 'Temporary Sales Tax Rate Reduction'"

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 22nd day of October, 2021.

Jena Griswold

SECRETARY OF STATE



Be it enacted by the People of the State of Colorado:

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:

39-26-105. Vendor liable for tax - definitions - repeal. (1)(a)(I)(A)

EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL SALES MADE ON OR AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

(A.5) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(a)(I)(B), (1.3), AND (1.5) OF THIS SECTION, EVERY RETAILER SHALL, IRRESPECTIVE OF THE PROVISIONS OF SECTION 39-26-106, BE LIABLE AND RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUIVALENT TO TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL SALES MADE BETWEEN JANUARY 1, 2023, AND DECEMBER 31, 2024, BY THE RETAILER OF COMMODITIES OR SERVICES AS SPECIFIED IN SECTION 39-26-104.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments, 39-26-106 (1)(a)** as follows:

39-26-106. Schedule of sales tax. (1)(a)(I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (1), THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF THREE PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(a)(II) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND NINETY ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

(III) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED UPON ALL SALES OF COMMODITIES AND SERVICES SPECIFIED IN SECTION 39-26-104 A TAX AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF THE AMOUNT OF THE SALE TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SAID SCHEDULES OR SYSTEMS SHALL BE DESIGNED SO THAT NO SUCH TAX IS CHARGED ON ANY SALE OF SEVENTEEN CENTS OR LESS.

SECTION 3. In Colorado Revised Statutes, 39-26-202, **repeal and reenact, with amendments, (1)** as follows:

39-26-202. Authorization of tax. (1)(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) AND (1)(b.5) OF THIS SECTION, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF THREE PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b) ON AND AFTER JANUARY 1, 2001, BUT BEFORE JANUARY 1, 2023, AND AFTER DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND NINETY

ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(b.5) ON AND AFTER JANUARY 1, 2023, BUT BEFORE DECEMBER 31, 2024, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF STORING, USING, OR CONSUMING IN THIS STATE ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL.

(c) SUCH TAX SHALL BE PAYABLE TO AND SHALL BE COLLECTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AND SHALL BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY SAID EXECUTIVE DIRECTOR. THE TRANSFER OF WIRELESS TELECOMMUNICATION EQUIPMENT AS AN INDUCEMENT TO ENTER INTO OR CONTINUE A CONTRACT FOR TELECOMMUNICATION SERVICES THAT ARE TAXABLE PURSUANT TO PART 1 OF THIS ARTICLE SHALL NOT BE CONSTRUED TO BE STORAGE, USE, OR CONSUMPTION OF SUCH EQUIPMENT BY THE TRANSFEROR.

SECTION 4. In Colorado Revised Statutes, 39-26-112, **repeal and reenact (1)** as follows:

39-26-112. Excess tax - remittance - repeal. (1) IF ANY VENDOR, DURING ANY REPORTING PERIOD, COLLECTS AS A TAX AN AMOUNT IN EXCESS OF THREE PERCENT OF ALL TAXABLE SALES MADE PRIOR TO JANUARY 1, 2001, TWO AND NINETY ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2001, AND TWO AND EIGHTY-NINE ONE-HUNDREDTHS PERCENT OF ALL TAXABLE SALES MADE ON OR AFTER JANUARY 1, 2023, AND TWO AND NINETY ONE-HUNDREDTHS PERCENT ON OR AFTER DECEMBER 31, 2024, SUCH VENDOR SHALL REMIT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE FULL NET AMOUNT OF THE TAX IMPOSED IN THIS PART 1 AND ALSO SUCH EXCESS. THE RETENTION BY THE RETAILER OR VENDOR OF ANY EXCESS OF TAX COLLECTIONS OVER THE SAID PERCENTAGE OF THE TOTAL TAXABLE SALES OF SUCH RETAILER OR VENDOR, OR THE INTENTIONAL FAILURE TO REMIT PUNCTUALLY TO THE EXECUTIVE DIRECTOR THE FULL AMOUNT REQUIRED TO BE REMITTED BY THE PROVISIONS OF THIS PART 1 IS DECLARED TO BE UNLAWFUL AND CONSTITUTES A MISDEMEANOR.

SECTION 5. Effective Date:

This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #46¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024?

Hearing October 6, 2021:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, LeeAnn Morrill, Julie Pelegrin

Hearing adjourned 1:40 P.M.

¹ Unofficially captioned “**Temporary Sales Tax Rate Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #46¹

The title as designated and fixed by the Board is as follows:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, or will reduce the amount of the taxpayer refund if a refund is required under TABOR, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024?

Hearing October 6, 2021:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, LeeAnn Morrill, Julie Pelegrin

Hearing adjourned 1:40 P.M.

Rehearing October 20, 2021:

Motion for Rehearing granted only to the extent that the Board made changes to the titles.

Board members: Theresa Conley, David Powell, Julie Pelegrin

Hearing Adjourned 10:40 A.M.

¹ Unofficially captioned “**Temporary Sales Tax Rate Reduction**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Before the Colorado Ballot Title Setting Board

Suzanne Taheri and Michael Fields, Objector/Proponents

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #46

Suzanne Taheri and Michael Fields, registered electors of the State of Colorado and proponents of Initiative 2021-2022 #46 object to the Title Board's title and ballot title and submission clause set for Initiative 2021-2022 #46, The Board met on October 6, 2021, to consider Initiative 2021-2022 #46 and set the following title:

There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated 14.6 million dollars in tax revenue in the first full fiscal year, by a change to the Colorado Revised Statutes that reduces the state sales and use tax rate from 2.90 percent to 2.89 percent from January 1, 2023, through December 31, 2024.

Proponents object to the title as set because it is inaccurate, misleading and fails to properly reflect the central feature of the proposed measure. The title set by the Board incorrectly states that the passage of Proposed Initiative 2021-2022 #46 would reduce funding for health and human services programs, K-12 education, and corrections and judicial operations. The state economist disagrees.

Current Budget Projections:

According to the most recent projections published by Colorado Legislative Council Staff (June 2021 Economic & Revenue Forecast: <http://leg.colorado.gov/sites/default/files/images/junforecast.pdf>), state revenues are expected to exceed the TABOR refund limit from the current fiscal year and by an increasing amount through fiscal year 2022-2023 (See *Figure 2* at the end of this document).

Proposed Initiative 2021-2022 #46 reduces state sales tax revenue by an estimated \$14.2 million per year. A TABOR refund is only triggered when state programs are funded in excess of the prior year's levels. The economic forecast shows a projected TABOR refund in excess of \$500 million for the next three fiscal years. While Proposed Initiative 2021-2022 #46 could be accurately stated to reduce the estimated TABOR refund by \$14.2 million, the economic forecast would need to be off by 38 times the proposed tax reduction in order for the proposed tax reduction to make a dent in even one of the three listed programs.

Requirements of HB 21-1321 v. Voter Confusion

Proponents recognize the Legislature's instruction in HB 21-1321. Unfortunately, the Legislature left the Title Board in an awkward position when it wrote instructions that did not

contemplate a reduction in revenue in a year where there is a projected surplus large enough to trigger a TABOR refund. The Court, however, has previously provided clear instruction on title setting. The ballot title must clearly convey to voters the initiative's likely impact on state spending on state programs. *Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37*, 977 P.2d 845 (Colo. 1999)

As we have already established, absent complete incompetence on the part of the state economist, the proposed title is clearly inaccurate. Despite the Legislature's instruction to the contrary, proponents have a right to an accurate title, and the Board has a duty to set the same. Proponents contend that the inaccuracy of the proposed title is so prejudicial as to interfere with their constitutional right to initiate. The potential consequences of reducing health and human services programs, K-12 education, and corrections and judicial operations far exceed any consequence of reducing a TABOR refund. Thus, any voter who reads the title as proposed will be unfairly influenced by the Board's decision to list programs for reduction despite the projection that funding for those programs will be unaffected by the proposed sales tax rate decrease. The title as set is certain to confuse voters who view a ballot title that says one thing and a Blue Book analysis that will clearly show contradictory facts.

Misleading and Inaccurate Title

Given the economic projections, there are no circumstances under which the proposed state sales tax reduction can be reasonably expected to reduce funding for health and human services programs, K-12 education, or corrections and judicial operations. Rather, there will be one reduction in state spending that comes as a result of the passage of Proposed Initiative 2021-2022 #46: spending for TABOR refunds. At worst, the title as set lies about the effects of Proposed Initiative 2021-2022 #46. At best, it is misleading. The Board is given great discretion in title setting, but it cannot expect its decision to be upheld when it sets a title that contains any statement that is outright false.

In setting the title for Proposed Initiative 2021-2022 #46, the Board failed to meet the requirement to, "correctly and fairly express the true intent and meaning of the proposed initiative and consider the public confusion that might be caused by misleading titles." *In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), & 245(e)*, 1 P.3d 720 (Colo. 2000); *In re Ballot Title 1999-2000 Nos. 245(f) & 245(g)*, 1 P.3d 739 (Colo. 2000) Stating that the proposed initiative reduces state spending for anything other than a TABOR refund is inaccurate and prejudicial.

The Board's title fails to even mention TABOR refunds as a program that may be reduced by the passage of Proposed Initiative 2021-2022 #46. Because a TABOR refund only occurs in a year where there is revenue in excess of the TABOR growth cap, the Board's failure to mention TABOR refunds as one of the three targets for reduction effectively flips the voter's perception of the initiative from something that comes as a response to excess government revenues to something that threatens the state's ability to sustain important government programs in Colorado. Regardless of whether or not this was done at the Legislature's direction, the title as set clearly flies in the face of the Title Board's duty to set a clear and accurate title that properly informs the voters of the consequences of the initiative.

Alternative Approach

If the Board insists upon listing three programs in the title despite the evidence that none of those three programs will be affected by the proposed sales tax rate reduction, then the Board must inform the voters of the insignificant magnitude of the potential effect.

The proposed state sales tax rate reduction will reduce state revenues by an estimated \$14.2 million. The Fiscal Year 2020-2021 budget gives the following expenditure figures for each of the three listed programs: Health and Human Services (combined General Fund budget expenditures for the Department of Health Care Policy and Financing, the Department of Human Services, and the Department of Public Health and Environment) - \$4,205,093,547; K-12 Education - \$3,929,010,921; and Judiciary and Corrections - \$1,421,647,159. These actual budget figures establish that even if it is incorrectly assumed that the proposed initiative will affect any of the three listed programs, its effect on even the smallest of these programs (Judiciary and Corrections) is less than 1% of the program's 2020-2021 proposed budget. (Joint Budget Committee Appropriations Report Fiscal Year 2020-21: http://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf)

If the title incorrectly states that these three programs will see their funding adversely affected by the proposed sales tax rate reduction, the title must also inform the voters of the magnitude (or lack thereof) of the effect. The total spending for the three listed programs is \$9,555,751,627. The \$14.2 million revenue reduction is 0.14% (one dollar for every \$14,000) of the total spending for those three programs.

The proponents strongly object to the proposed language for the ballot title. However, if the Board includes the language dictated by HB 21-1321, the proponents must equally insist on adding language to demonstrate the absurdly small effect that this tax reduction could have on state programs in the near-impossible event it has any effect at all. The Board must also notify voters that there may not be any effect at all because of projected TABOR refunds. Recognizing that it is still unacceptable because it still contains false statements, the proponents offer the following language in an attempt to craft a title that is less prejudicial. We preserve our objection to the inclusion of the three programs because of the now well-established fact that there will be no effect to these programs at all:

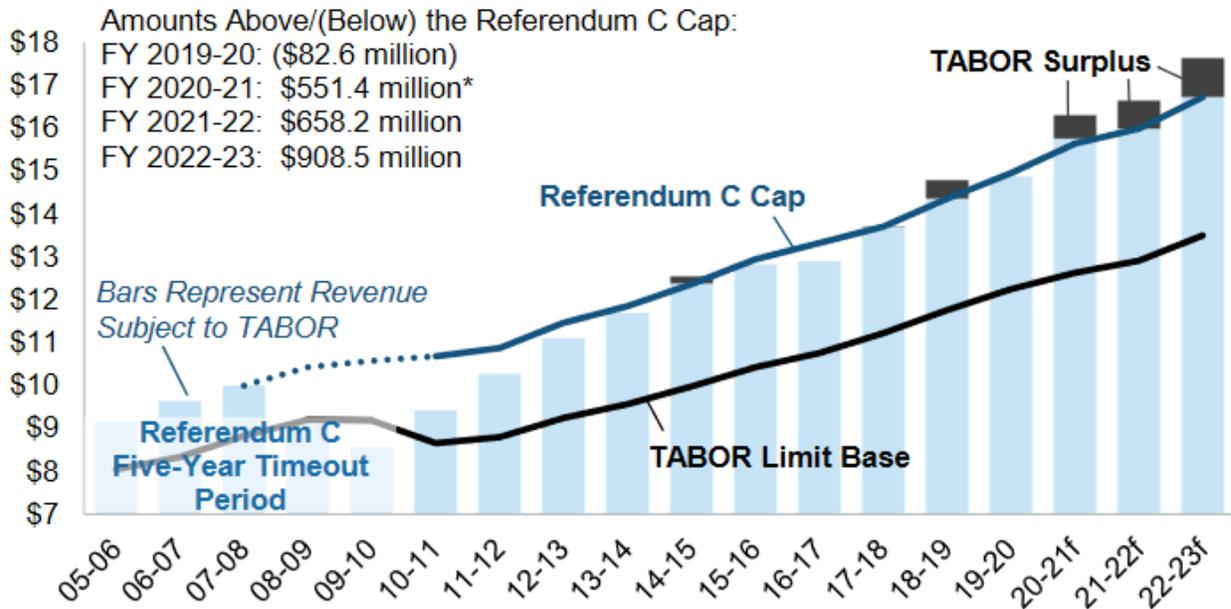
There shall be a reduction to the state sales and use tax rate by 0.34 percent, thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to health and human services programs, K-12 education, and corrections and judicial operations by an estimated \$14.2 million dollars in tax revenue, by a change to the Colorado Revised Statutes concerning reducing the state sales and use tax rate from 2.90 percent to 2.89 percent, effective July 1, 2023; the proposed reduction in state expenditures for programs is one dollar less for every 14,000 dollars received by the programs listed above, except in years where a TABOR refund is due in which years the TABOR refund will be reduced and there would be no reduction to the departments and programs listed above.

Conclusion

These economic projections establish that Proposed Initiative 2021-2022 #46 will have no

adverse effect on state programs. Even if it is assumed that the proposed initiative would adversely affect funding for state program, the effect is so small in magnitude (one dollar for every 14,000 dollars) as to be rendered insignificant. The proposed title makes a provably false claim about the effect of the initiative. It is therefore both misleading to voters and unfair to proponents. While the adverse effect of the defective title may be mitigated by adding language that illustrates the nearly insignificant effect of the tax rate reduction on the listed programs, no title that contains the proposed language about a reduction in funding for state programs can be construed as accurate because the State’s current revenue projections show that TABOR refunds larger than the amount of the proposed tax revenue reduction will be necessary for at least the next three fiscal years.

Figure 2
TABOR Revenue, TABOR Limit Base, and the Referendum C Cap
Dollars in Billions



Source: Office of the State Controller and Legislative Council Staff. f = Forecast.
 *Refunds for the FY 2021-22 surplus will be adjusted for overrefunds in prior years.

WHEREFORE, Initiative #46 title should be corrected in compliance with Colorado law.

Respectfully submitted this 12th day of October, 2021.

/s Suzanne Taheri
/s Michael Fields
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 Denver, CO 80202
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Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 46

Fiscal Summary

Date:	October 5, 2021	Fiscal Analyst:	David Hansen (303-866-2633)
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LCS TITLE: TEMPORARY SALES TAX RATE REDUCTION

Fiscal Summary of Initiative 46

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.ColoradoBlueBook.com. This fiscal summary identifies the following impact.

State revenue. By reducing the state sales and use tax rate from 2.9 percent to 2.89 percent from January 1, 2023 to December 31, 2024, the measure reduces General Fund revenue from sales and use taxes by an estimated \$8.2 million in FY 2022-23, \$14.6 million in FY 2023-24, and by \$6.9 million in FY 2024-25. Estimates for FY 2022-23 and FY 2024-25 represent half-year impacts, and the estimate for FY 2023-24 represents a full-year impact. The measure will also reduce revenue to the marijuana tax and aviation cash funds by reducing the regular 2.9 percent state sales taxes on marijuana and jet and aviation fuel to 2.89 percent.

State expenditures. The measure reduces General Fund collections from FY 2022-23 to FY 2024-25, which will reduce General Funds available to be spent or saved unless revenue exceeds the state's constitutional spending limit in one or more budget years. If revenue in one or more years exceeds the state spending limit, the measure will instead reduce the amount of revenue above the state spending limit to be refunded to taxpayers. To administer the tax rate change, the measure is expected to increase General Fund expenditures for the Department of Revenue by \$14,400.

Local government impact. The measure will reduce revenue retained within a tax increment district to finance projects utilizing state sales tax revenue and may impact local budgets within those districts.

Economic impacts. Taxpayers will have higher after-tax income available to spend or save, increasing their consumption of goods and services. The measure may decrease state government spending. Any overall change in economic activity will depend on the net economic impact of lower tax burdens on households and businesses and reduced investment in public services.

Program expenditures potentially impacted by measure. The measure reduces sales and use tax revenue, which is deposited to the General Fund. The three largest areas of program expenditures supported by the General Fund are health and human services programs, K-12 education, and corrections and judicial operations.

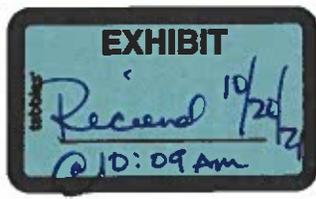


Table 1
General Fund Overview
Dollars in Millions

Funds Available	FY 2020-21 Actual	FY 2021-22 Preliminary	FY 2022-23 Estimate	FY 2023-24 Estimate
1 Beginning Reserve	\$1,825.7	\$3,150.9	\$3,513.4	*
2 General Fund Revenue	\$14,242.2	\$15,114.9	\$15,870.1	\$16,034.6
3 Transfers from Other Funds (Table 5)	\$335.2	\$23.0	\$22.5	\$23.7
4 Total Funds Available	\$16,403.1	\$18,288.7	\$19,406.0	*
5 Percent Change	14.1%	11.5%	6.1%	*
Expenditures	Preliminary	Budgeted	Estimate	Estimate
6 General Fund Appropriations Subject to Limit ¹	\$10,978.9	12,281.9	*	*
7 TABOR Refund Obligation Under Art. X, §20, (7)(d)	\$471.4	\$1,032.3	\$1,176.4	\$1,397.3
8 Rebates and Expenditures (Table 4)	\$295.8	\$149.9	\$149.3	\$150.0
9 Transfers to Other Funds (Table 5)	\$1,318.4	\$545.4	\$549.9	\$574.1
10 Transfers to the State Education Fund ²	\$113.0	\$123.0	\$0.0	\$0.0
11 Transfers to Transportation Funds (Table 3)	\$30.0	\$294.0	\$115.0	\$0.0
12 Transfers to Capital Construction Funds (Table 3)	\$43.0	\$348.9	\$20.0	\$20.0
13 Total Expenditures	\$13,250.5	\$14,775.4	*	*
14 Percent Change	3.7%	11.5%	*	*
15 Accounting Adjustments	*	*	*	*
Reserve	Preliminary	Budgeted	Estimate	Estimate
16 Year-End General Fund Reserve	\$3,150.9	\$3,513.4	*	*
17 Year-End Reserve as a Percent of Appropriations	28.7%	28.6%	*	*
18 Statutorily Required Reserve ³	\$314.0	\$1,645.8	*	*
19 Amount in Excess or (Deficit) of Statutory Reserve	\$2,836.9	\$1,867.6	*	*
20 Excess Reserve as a Percent of Expenditures	21.4%	12.6%	*	*
Perspectives on FY 2022-23 (Unbudgeted)			Estimate	
Scenario: Hold FY 2021-22 Appropriations Constant⁴			Estimate	
21 Amount in Excess or (Deficit) of Statutory Reserve Requirement			\$3,271.1	*
22 As a Percent of Prior-Year Expenditures			22.1%	*
Addendum	Preliminary	Estimate	Estimate	Estimate
23 Percent Change in General Fund Appropriations	-7.5%	11.9%	*	*
24 5% of Colorado Personal Income Appropriations Limit	\$16,759.8	\$17,609.2	\$18,474.8	\$19,620.2
25 Transfers to State Education Fund per Amendment 23	\$950.2	\$771.1	\$903.6	\$942.3

*Totals may not sum due to rounding. *Not estimated.*

¹Includes appropriations for bills passed by both chambers during the 2021 legislative session.

²Includes transfers pursuant to SB 19-246, HB 20-1420, and SB 21-208.

³The required reserve is calculated as a percent of operating appropriations, and is required to equal 2.66 percent in FY 2020-21, 13.4 percent in FY 2021-22, and 15 percent each year thereafter.

⁴This scenario holds appropriations in FY 2022-23 equal to appropriations in FY 2021-22 (line 6) to determine the total amount of money available relative to FY 2021-22 expenditures, net of the obligations in lines 7 through 12.