SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue | Denver, CO 80203	
Original Proceeding: District Court, City & County of Denver, No. 2023CV031432; Hon. David Goldberg, J.	
Petitioners: STEVEN WARD, JERRY SONNENBERG, ABE LAYDON, LORA THOMAS, GEORGE TEAL, KEVIN GRANTHAM, STAN VANDER WERF, CARRIE GEITNER, CAMI BREMER, LONGINOS GONZALEZ, JR., CHUCK BROERMAN, AND MARK FLUTCHER, residents, local officials, and Colorado voters; CHRISTOPHER RICHARDSON, GRANT THAYER, and DALLAS SCHROEDER, in their capacity as Elbert County Commissioners; ADVANCE COLORADO, a Colorado nonprofit corporation; CHEYENNE COUNTY, DOUGLAS COUNTY, EL PASO COUNTY, ELBERT COUNTY, FREMONT COUNTY, KIT CARSON COUNTY, LOGAN COUNTY, MESA COUNTY, PHILLIPS COUNTY, PROWERS COUNTY, RIO BLANCO COUNTY, and WASHINGTON COUNTY; and HIGHLANDS RANCH METROPOLITAN DISTRICT. v. **Respondents:** STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor; and JENA GRISWOLD, in her official capacity as Secretary of State.	▲ **COURT USE ONLY** ▲
	Case No. 2023 SA 150
Attorneys for Petitioner Advance Colorado: Name: Michael L. O'Donnell (#10273) Frederick R. Yarger (#39479) Miles D. Orton (#57420) Wheeler Trigg O'Donnell LLP Address: 370 17th St., Ste. 4500 | Denver, CO 80202 Tel./E-mail: 303.244.1800; odonnell@wtotrial.com; yarger@wtotrial.com; orton@wtotrial.com *Attorney for Petitioners:* Name: Suzanne M. Taheri (#23411), West Group Law & Policy Address: 6501 E. Belleview | Englewood, CO 80111 Tel./E-mail: 303.263.0844; st@westglp.com	
PETITIONERS' OPENING BRIEF	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of C.A.R. 21 and C.A.R. 32, including all formatting requirements set forth in those rules. I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 21 and C.A.R. 32.

This brief complies with the word limit in C.A.R. 28(g) because it is a principal brief and contains 9,412 words.

s/ Frederick R. Yarger
Frederick R. Yarger
Wheeler Trigg O'Donnell LLP
Counsel to Petitioner Advance Colorado

s/ Suzanne M. Taheri
Suzanne M. Taheri
West Group Law & Policy
Counsel to Petitioners

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INTRODUCTION

The Colorado Constitution grants the General Assembly broad authority to enact public policy, and it reserves even broader policymaking power to the voters. *In re House Joint Resolution 20-1006*, 2020 CO 23, ¶ 85. It also places safeguards on the lawmaking process. Proposed legislation must contain only a single subject. Additionally, its title must clearly describe the policy changes it would enact. *E.g.*, Colo. Const. art. V, §§ 1(5.5), 21. These safeguards, while procedural, are crucial. They ensure legislation "depends upon its own merits for passage," while "protect[ing] against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex bill." *In re Title, Ballot Title & Submission Clause for 2013-14 #129*, 2014 CO 53, ¶ 14 (citations omitted).

At issue here is an abuse of the single-subject and clear-title safeguards that is unprecedented in Colorado. On the last day of this year's legislative session, the General Assembly enacted two bills. Although they are final enactments signed by the Governor—not resolutions that approve referenda without the Governor's signature—

much of the first bill, and all of the second, depend on Proposition HH, a referred measure to be voted on this fall.

Most of Proposition HH's content comes from SB 23-303. Ostensibly aimed at property tax relief, SB 303 ties this popular theme to unrelated subjects, including "de-Brucing" (through which SB 303 would eliminate billions in tax refunds under the Taxpayer's Bill of Rights and could end refunds altogether), as well as tens of millions in new spending. Yet Proposition HH is not limited to SB 303. A vote for Proposition HH is also a vote for the entirely separate HB 23-1311. That law also addresses TABOR refunds, but on yet another distinct subject, altering how refunds for the 2022 fiscal year will be calculated.

The ballot title for Proposition HH, which the General Assembly wrote and the Governor approved, makes no mention of HB 1311's alteration of the TABOR refund methodology. Nor does it mention key facets of SB 303. For example, the title fails to disclose the magnitude of the property tax reductions that are (ostensibly) Proposition HH's core purpose, and it does not directly explain that Proposition HH is a "de-Brucing" measure.

This case thus presents a textbook example of "hidden provision[s] … coiled up in the folds of a complex bill." SB 303 is a muddle of disparate subjects. Proposition HH is worse. Assuming voters understand the effects of Proposition HH (given the misleading title that omits mention of HB 1311), they will be forced to decide if they prefer property tax relief over TABOR refunds, or the various spending proposals in SB 303 over the method of calculating upcoming refunds. SB 303 and Proposition HH are exactly what the single-subject and clear-title safeguards were meant to prevent.

The Governor's main response to these severe defects is to punt, asking the Court to defer ruling on the validity of SB 303 (and, derivatively, Proposition HH) until after the upcoming election. This argument rests almost entirely on a significant expansion of *Polhill v. Buckley*, 923 P.2d 119 (Colo. 1996), problematic precedent that exempts a category of contingent legislative action from immediate review. Expanding *Polhill* here makes no sense under the particular (and particularly egregious) circumstances.

ISSUES PRESENTED

I. Whether SB 23-303 or Proposition HH violates the single subject requirement.

II. Whether Proposition HH's ballot title must be reformed.

III. Whether the Court has jurisdiction to decide the constitutional challenges now, rather than after the election.

STATEMENT OF THE CASE AND FACTS

A. The General Assembly enacted SB 23-303 and HB 23-1311 on the last day of the legislative session, tying five disparate subjects to passage of Proposition HH.

The General Assembly passed Senate Bill 23-303, attached as Exhibit A, on the final day of the 2023 session. The Governor signed it into law shortly thereafter, on May 24, 2023.

The ostensible purpose of SB 303 is property tax relief—which, given skyrocketing property values during the pandemic and the repeal of the Gallagher Amendment in 2020, has been the subject of frequent legislation the past three years. *E.g.*, Colo. Dep't of the Treasury, *State of Colorado Adds to Property Tax Relief Options* (May 2, 2023), http://bit.ly/431UMr1. In the short term, SB 303 provides slight

reductions in assessment rates. In the first year it reduces rates by 0.05% (on most non-residential property) and 0.065% (on most residential property). Revised Fiscal Note for SB 303, attached as Exhibit B at 4-5, Tables 2 & 3. In later years, SB 303 largely continues these reductions for residential property and builds in further incremental decreases for certain non-residential property. *Id*. The law also exempts from taxation starting in 2025 the first $140,000 of assessed value of the homes of senior citizens. Ex. A at 20. In addition to these property-tax-related provisions, however, SB 303 contains other disparate subjects tacked on during the legislative process.

First, it permits the state to retain a massive amount of funds that would otherwise be refunded to taxpayers under TABOR, commonly called "de-Brucing." Specifically, it increases the TABOR cap one percent each year for the next decade. Ex. A at 4 (Part 2, at 24-77-203(I)-(II).) This will result in close to $10 billion in revenue retained by the state instead of being returned to taxpayers.[1] Due to SB 303's

[1] The new TABOR cap is "cumulative, such that each annual 1 percent increase adds to the prior year's cap and allows a greater amount to be retained." Ex. B at 11-12. The SB 303 cap increase is

magnitude, the consequence could be elimination of TABOR refunds as a whole. This makes SB 303's de-Brucing provision larger than other measures seeking to retain and spend, for example, $40 million, $50 million, or $200 million.[2] It is instead more on par with Proposition CC (rejected by voters in 2019) or the two-decade-old Referendum C.[3]

Second, SB 303 makes appropriations: $128 million to a "Local Government Backfill Cash Fund," $117.7 million to school finance in FY 2023-24 and more later years (originating from some combination of the General Fund, the State Public School Fund, or a combination of these), and $72 million from the State General Fund (rather than the Local Government Backfill fund) into the State Public School Fund. *See* Ex. B at 6, 8-9. The latter $72 million is new spending, not a replacement of

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estimated to be $166.6 million in FY 2023-24, $358.6 million in FY 2024-25, and "about $200 million more each year than in the prior year," until the yearly amount reaches $2.2 billion in FY 2031-32. *Id.*

[2] Ballot History for 2015-Proposition BB, Colo. Gen. Assembly, https://bit.ly/3oIXHqm; Ballot History for 2000-Referendum F, Colo. Gen., https://bit.ly/3oIXHqm; Ballot History for 1998-Referendum B, Colorado General Assembly, https://bit.ly/3oIXHqm.

[3] Ballot History for 2019-Proposition CC, Colo. Gen. Assembly, https://bit.ly/3oIXHqm; Ballot History for 2005-Referendum C, Colo. Gen. Assembly, https://bit.ly/3oIXHqm.

funds "lost" due to reduced property taxes, and is thus not logically related to property tax relief. Ex. A at Section 19; Ex. B at 6 ("The bill creates the Local Government Reimbursement Cash Fund and transfers $128 million from the General Fund into the new fund in FY 2023-24. ***Additionally***, the bill transfers $72 million from the General Fund to the State Public School Fund in FY 2023-24." (emphasis added)).

Third, SB 303 allocates $20 million to a state rental assistance program, the Housing Development Grant Fund, ostensibly to reduce the burden of property taxes on renters. *See* Ex. A at 6. This, again, is unconnected to the actual reduction in property taxes. Ex. B at 8 (explaining that money used to "reimburse local governments for lost property tax revenue" is separate from "transfers to the Housing Development Grant Fund").

SB 303 ties each of these incongruent elements to the passage of a referred measure, Proposition HH. Proposition HH's title, as enacted by the legislature and Governor within the body of SB 303, states only:

> SHALL THE STATE REDUCE PROPERTY TAXES FOR HOMES AND BUSINESSES, INCLUDING EXPANDING PROPERTY TAX RELIEF FOR SENIORS, AND BACKFILL COUNTIES, WATER DISTRICTS, FIRE DISTRICTS,

> AMBULANCE AND HOSPITAL DISTRICTS, AND OTHER LOCAL GOVERNMENTS AND FUND SCHOOL DISTRICTS BY USING A PORTION OF THE STATE SURPLUS UP TO THE PROPOSITION HH CAP AS DEFINED IN THIS MEASURE?

See Ex. A at 4.[4] This anodyne language omits the level of detail typical of ballot titles, neglecting any reference to the magnitude of property tax reductions and obscuring SB 303's massive alteration to the state revenue cap.

The Senate sponsors acknowledged the variety of issues they bundled into SB 303. For example, at a committee hearing, one sponsor explained,

> [W]e are really trying to accomplish meaningful property tax relief for Colorado homeowners, while ***simultaneously making sure we have sustainable funding mechanisms for K12 and our local districts*** like ambulance districts, etc., and I think the mechanisms that are put forward in Senate Bill 303 do a good job of balancing those two needs.

Reduce Property Taxes and Voter-Approved Referendum: Hearing on S.B. 22-303 Before the Sen. Comm. on Appropriations, 74th Gen.

[4] SB 303 exempted Proposition HH's title from the typical requirement that a referred measure state it proposes a change to the Colorado revised statutes. Ex A. at 4.

Assemb., First Reg. Sess. (Colo. May 2, 2023) (emphasis added) (statement of Sen. Chris Hansen), *available at* https://bit.ly/3ILsoSy (at 12:09:03 p.m.). As the subjects addressed by SB 303 multiplied, the sponsor of a house amendment, which added the appropriation for rental assistance to the already complex bill, promoted the amendment by saying,

> Members, I am here because, you know, we look at the fact that, you know, that this helping our property owners, and we need to look at how we're ***also helping other people in our state***. We know that 40% of Coloradans are renters. And because of that, I move Amendment L-91 and ask for it to be properly displayed.

Debate on S.B. 22-303 Before the Full House, 74th Gen. Assemb., First Reg. Sess. (Colo. May 7, 2023) (emphasis added) (statement of Rep. Serena Gonzales-Gutierrez), *available at* https://bit.ly/3WAnEFn (at 3:44:38 p.m.).

Proposition HH, however, encompasses more than the various provisions of SB 303. Also on the last day of the legislative session, the General Assembly passed an entirely separate bill, House Bill 23-1311, attached as Exhibit C. HB 1311 alters the method of calculating TABOR refunds, mandating that in fiscal year 2022-23 (perhaps the

last year for refunds under TABOR, given SB 303's "de-Brucing"), all eligible taxpayers receive a refund in the same flat amount. This replaces the current method, in which refunds are based on excess taxes paid. HB 1311 thus collapses the range of refunds for single taxpayers from between $462 and $1,457 to a uniform $672. *See* Revised Fiscal Note for HB 1311, attached as Exhibit D, at Table 2.

Critically, this change to the TABOR refund mechanism is explicitly conditioned within the text of HB 1311 on the passage of Proposition HH. *See* Ex. C at 2. Proposition HH's title, however, contains no reference or indication that in voting on Proposition HH, the people will also be approving HB 1311. Nor is there any connection between SB 303's retention of $10 billion of TABOR surpluses over the next decade and a single-year change to the TABOR refund methodology for entirely different funds in a prior year.[5]

[5] One of HB 1311's sponsors stated that legislators procrastinated on the bill, suggesting a reason for the inexplicable combination of subjects. Jesse Paul, *In major last-minute course correction, Colorado Democrats move to issue $2 billion in flat-rate taxpayer refund checks*, Colorado Sun (May 6, 2023), https://coloradosun.com/2023/05/06/tabor-refunds-checks-change-2023-colorado/.

B. The Colorado Constitution requires bills and referred measures to have a single subject and a clear title.

Article V, Section 21 of the Colorado Constitution provides that "[n]o bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title." This directive imposes two distinct safeguards on the lawmaking process: (1) it limits the legislative power by prohibiting "the joining in the same bill subjects diverse in their natures" (the single subject requirement) and (2) it prohibits "the insertion of clauses in a bill of which the title gives no intimation" (the clear title requirement). *People v. Fleming*, 3 P. 70, 71 (Colo. 1884).

The purpose of the single subject and clear title requirements is to protect voters and legislators from "surprise and imposition" and from being "misled." *Fleming*, 3 P. at 71. These safeguards ensure "each legislative proposal depends upon its own merits for passage and protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex bill." *In re Title, Ballot Title & Submission Clause for 2001-02 #43*, 46 P.3d 438, 440 (Colo. 2002) (quoting *In re Breene*, 24 P. 3, 4 (1890)),

disapproved on other grounds in In re Title, Ballot Title & Submission Clause for 2019-2020 #3, 2019 CO 57.

The General Assembly has emphasized these constitutional requirements through statute, declaring that "the constitutional single-subject requirement … was designed to prevent or inhibit various inappropriate or misleading practices." Colo. Rev. Stat. § 1-40-106.5(1)(d). Heeding the courts' interpretation of Section 21's single subject and clear title requirements, the General Assembly decreed that the single subject requirement "forbid[s] the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection," § 1-40-106.5(1)(e)(I), and that the clear title requirement "prevent[s] surreptitious measures and apprise[s] the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters," § 1-40-106.5(1)(e)(II).

More recently, the voters reaffirmed the single subject and clear title requirements. In 1994's Referendum A, the people expanded Section 21 to apply to initiated and referred measures. 1994 State

Ballot Information Booklet, Leg. Council of the Colo. Gen. Assemb. at 2, https://bit.ly/3Wz0leZ ("1994 Blue Book"). Referendum A "require[d] that proposals initiated by the people and referred by the General Assembly be confined to a single subject which shall be clearly expressed in the title." *Id.*; *see also* Colo. Const. art. V, § 1(5.5), art. XIX, § 2(3). This was intended to "keep unrelated or misleading provisions out of initiated and referred measures." 1994 Blue Book 3. That is, "[p]roponents of initiated proposals, and the General Assembly with referred measures, should be required to present coherent ideas for change rather than roaming through Colorado law selecting a change here and another change there." *Id.*

C. The district court declined to set this case for a hearing and denied relief.

Immediately after SB 303 and HB 1311 were passed, Petitioners commenced this action under C.R.S. § 1-11-203.5, which provides a mechanism to adjudicate "election contests arising out of a ballot issue or ballot question." The complaint, which was ultimately joined by over a dozen local elected officials and voters, twelve counties, and the Highlands Ranch Metropolitan District, sought to invalidate SB 303

and Proposition HH on single-subject grounds or, in the alternative, reform Proposition HH's ballot title. The proceedings were required to be completed "as expeditiously as practicable," C.R.S. § 1-11-203.5(4), due to their time-sensitive nature. Here, as explained in the Secretary of State's opening brief below, the Secretary must certify statewide ballot content to county clerks by September 11, 2023.

In light of the time constraints, Petitioners and Respondents submitted simultaneous opening and answer briefs on an abbreviated schedule. The Governor challenged the district court's jurisdiction over the dispute and opposed Petitioners' claims on the merits. The Secretary took no position, seeking only to ensure completion of the proceedings before pre-election deadlines. Petitioners were prepared to present expert testimony regarding voter behavior at the "trial on the merits" contemplated by C.R.S. § 1-11-203.5. The district court declined to set the matter for a hearing, however, opting instead to enter a ruling based solely on the briefs.[6]

[6] Petitioners agreed the single-subject challenges could be decided as a matter of law but maintained that the clear-title issue would "benefit from a hearing" to determine "factual issues regarding the

On June 9, 2023, the district court issued a 21-page ruling, attached as Exhibit E. The court affirmed jurisdiction under section 203.5 to review Proposition HH's title but denied Petitioners' requested relief and held that the court lacked jurisdiction over the constitutional challenges. In doing so, however, the court addressed all outstanding issues, "for purposes of judicial expediency and economy … so that, in the event the matter is appealed, and this Court erred in its jurisdictional analysis, the issues will be ripe for consideration and the merits of the Plaintiffs' challenge can be considered by the reviewing court with all necessary dispatch." Ex. E at 4.

SUMMARY OF THE ARGUMENT

I. Proposition HH and SB 303 violate the single subject requirement and are therefore void. Their subject is property tax relief, as the district court acknowledged. Ex. E at 15-16. Yet, in addition to

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necessity of clarifying the title of Proposition HH." *See* Opp'n to Joint Mot. to Exclude Expert Test. of Seth Masket, No. 2023-CV-31432 ("Opp'n to Joint Mot. to Exclude"), at 2-3 (June 9, 2023). They accordingly submitted a proffer of expert testimony explaining that the title of Proposition HH omitted information and used atypical language, both of which could "significantly affect voting behavior and support for the measure." *Id.* at attached Ex. A.

provisions on this subject, they include a massive revenue-generation provision to enable new state-level spending that is not limited to "backfilling" losses in property taxes for local governments, a clear example of logrolling. Proposition HH is particularly problematic. It embraces an entirely separate law, HB 1311, and that law has nothing to do with any of the multiple subjects embraced by SB 303. The two laws do not even overlap temporally; HB 1311's work will be done before SB 303's tax-relief and spending provisions go into effect. This Court should declare SB 303 and Proposition HH void and enjoin Proposition HH from being placed on the November ballot.

II. In the alternative, Proposition HH's title should be reformed. Its current title sharply departs from the form and content of the titles for other comparable ballot measures. It does not mention the magnitude of tax reductions that are its central purpose. It says nothing about significant new categories of spending it creates. It hides the fact that it is a "de-Brucing" measure behind anodyne language far different from what voters expect. Worse, it says absolutely nothing about its effect on TABOR refunds for this tax year. The Court should reform

Proposition HH's title to ensure voters are appropriately informed of the effect of a "yes" or "no" vote at the upcoming election.

III. The district court held, and the Governor agrees, that jurisdiction exists to reform Proposition HH's title under section 203.5. They are incorrect, however, that jurisdiction is absent to hear Petitioners' constitutional challenges. The holding of *Polhill* should not be expanded to exempt completed, fully enacted statutes and the referred measures they embrace from this Court's review until after a subsequent election.

ISSUE PRESERVATION AND STANDARD OF REVIEW

This Court reviews the constitutionality of a statute de novo, presuming the statute is constitutional. *Aurora Public Schools v. A.S*, 2023 CO 39, ¶ 36 (citation omitted). Questions of statutory interpretation are also reviewed de novo. *In re Marriage of Wollert & Joseph*, 2020 CO 47, ¶ 20. All issues are preserved. Ex. E.

ARGUMENT

I. Proposition HH and SB 303 violate the Colorado Constitution's single subject requirement.

A. The single subject requirement prevents logrolling, fraud, and surprise.

The single subject requirement "serves the beneficent purpose of making each legislative proposal depend upon its own merits for passage." *In re House Bill No. 1353*, 738 P.2d 371, 372 (Colo. 1987). A measure violates this requirement if it "relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other." *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 9 ("*2011-12 #3*") (quoting *People ex rel. Elder v. Sours*, 74 P. 167, 177 (Colo. 1903)). That is, the measure "must effect or carry out only one general object or purpose." *In re Title, Ballot Title & Submission Clause for 2005-2006 #74*, 136 P.3d 237, 239 (Colo. 2006). One "overarching theme" will not save the measure "if it contains separate and unconnected purposes," *2011-12 #3*, 274 P.3d at 565-66. A measure that covers more than one subject and that has at least two distinct separate purposes violates the single subject requirement. *In re Titles, Ballot Titles & Submission*

Clauses for 2021-2022 #67, #115, & #128, 2022 CO 37, ¶ 13 ("*2021-22 #67, #115, & #128*"). For example, a proposed law that is confined to the sale of alcohol, but which makes "unrelated changes" within that topic, is void. *Id.* at ¶ 16.

The purpose of the single subject requirement is "to prevent or inhibit … inappropriate or misleading practices." C.R.S. § 1-40-106.5(1)(d). For one, "[c]ombining subjects" to drum up support "from various factions—that may have different or even conflicting interests—could lead to the enactment of measures that would fail on their own merits." *2011-12 #3*, 2012 CO 25, ¶ 11. This guards against the "logrolling dilemma that the voters intended to avoid" in the policymaking process. *2021-22 #67, #115, & #128*, 2022 CO 37, ¶ 23. The single subject requirement also avoids "surprise and fraud." *2011-12 #3*, 2012 CO 25, ¶ 11. "Complex bill[s]" must not include "surreptitious provision[s] coiled up in the folds." *2013-14 #129*, 2014 CO 53, ¶ 14.

B. Proposition HH violates the single subject requirement.

Proposition HH is a clear violation of the single subject requirement. The bulk of SB 303 takes effect only if Proposition HH passes. Ex. A at 47 (Section 23(1), providing that portions of SB 303 take effect "only if a majority of voters approve the ballot issue"). Moreover, although neither Proposition HH's title nor SB 303 includes any mention of it, the General Assembly and Governor have mandated that Proposition HH will also function as a referendum on HB 1311. Ex. C at 2 (Section 2(2)(a), providing that the "act takes effect only if, at the November 2023 statewide election, a majority of voters approve the ballot issue submitted for their approval or rejection pursuant to section 24-77-202, C.R.S., as enacted by Senate Bill 23-303"). Because Proposition HH impermissibly bundles five disparate subjects—and two separate bills—into the same ballot measure, it is invalid.

Proposition HH changes property tax assessment rates and methodologies. It allows the state to retain a massive amount of excess state funds (perhaps ending TABOR refunds entirely). It allocates a portion of otherwise refundable state revenues to "backfill" lost revenue.

It creates entirely new state expenditures separate from this "backfilling" (something that has never been done before).[7] It appropriates an amount to a state rental assistance program. And it serves as a hidden referendum on HB 1311, which changes the method for determining the amount of TABOR refunds.

While a dollar-for-dollar "backfill" of local property tax revenue would be logically connected to property tax reductions, retaining money in excess of the TABOR revenue cap to fund new spending beyond backfilling is not. The massive retention of state revenue in Proposition HH is a source of separate and additional state spending on

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[7] For example, , *In re Amend TABOR #32*, 908 P.2d 125 (Colo. 1995) involved a tax reduction linked to a backfilling mechanism. There, this Court approved a measure as containing a single subject where it created a $60 credit for certain state and local taxes and simply required "monthly state replacement of local revenue impacts." *Id* at 131. In other words, a true backfill: replacement of revenue lost because of the tax credit. In SB 303, by contrast, the General Assembly is seeking to add something entirely different from a backfill, instead creating new funding obligations unconnected to lost funds. The Revised Fiscal Note makes this clear, defining "backfill" as "reimburs[ing] local governments [ ] for their lost property tax revenue," noting that a portion of the backfill funds will be transferred annually to the State Education Fund, and distinguishing the one-time $72 million transfer from the General Fund to the State Public School Fund as entirely separate from these "backfills." Ex. B at 3, 6.

public education. This proposed increase in state public education funding is "not dependent upon or connected with" property tax relief, *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #29*, 972 P.2d 257, 261 (Colo. 1999) ("*1999-2000 #29*"), and does not "effect or … carry out" the ostensible "general objective or purpose" of reducing property taxes. *2021-22 #67, #115, & #128,* 2022 CO 37, ¶ 13 - (quoting *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 14 ("2021-22 #16")). New spending on public education is laudable—but it is not logically or necessarily connected to property tax reductions.

The district court erred in conflating the new funding of education with actual backfilling of local government funds and finding that this did not constitute a separate subject. Ex. E. at 18-19. The district court's flawed reasoning was that "[s]ecuring financing to effect a program is plainly germane to the program, and to the extent a reserve fund might be created from which the education backfill could be financed in lean years, that seems to this Court to be a necessary or appropriate incident to securing financing." *Id.* at 19. This reasoning

conflates the provisions of SB 303 that provide for actual backfilling (*i.e.* replacing lost local government education funding), with those establishing a new funding stream to the state public school fund. The "program" at issue here is ***property tax reductions***, not education funding; thus, directing new funding streams to the state public school fund, unconnected to lost education funding due to reduced property taxes, is plainly disparate. This is evident from the fact that SB 303 separately provides for backfill-related education funding, on an annual basis, distinct from the one-time transfer of $72 million from the General Fund to the State Public School Fund. Compare Ex. B at 6 (Section on "[l]ocal Government Backfill Cash Fund and State Public School Fund transfers") with Ex. B. at 1-2, 15 (Line items in Table 1 for School Finance and State Public School Fund and section on "State aid to school districts").

The district court also erred in deciding that the hidden bundling of HB 1311 did not cause Proposition HH to violate the single subject requirement. The district court erroneously reasoned that "the conditional nature of HB23-1311 is not 'coiled up in the folds' of

Proposition HH, it is openly expressed in a separate bill." *Id.* But the core problem here is that HB 1311 is ***not*** expressed in the Proposition HH title at all, is thus hidden from voters, and their vote will indisputably either trigger or prevent the implementation of HB 1311, without Proposition HH informing of them of this crucial fact. Moreover, the district court offered no justification at all for rejecting Petitioners' argument that HB 1311 is not properly connected to SB 303, despite acknowledging this challenge by Petitioners. *Id.* Again, there is no apparent connection between changing the TABOR refund methodology for a single year and SB 303's unrelated changes to different funds in future years which could diminish and ultimately extinguish TABOR refunds altogether.

Proposition HH's multiplicity of subjects implicates the central purposes of the single subject requirement: the prevention of logrolling and public surprise at the effect of a measure. First is the problem of logrolling, i.e., "the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interests." *In re Title, Ballot*

Title, Submission Clause & Summary Adopted Apr. 5, 1995 Proposed Initiative Public Rights in Waters II, 898 P.2d 1076, 1079 (Colo. 1995), *see also In re Title, Ballot Title & Submission Clause for 2017-18 #4*, 2017 CO 57, ¶ 7 ("2017-18 #4") (noting logrolling allows the adoption of multiple proposals in one measure that would fail if presented independently). By combining property tax relief with the dedication of money to existing education funds and new public expenditures, an appropriation for rent relief, and the retention of a massive amount state revenue that would otherwise be subject to TABOR refunds, Proposition HH is a quintessential example of logrolling. The additional hidden referendum on HB 1311's changes to the TABOR refund methodology compounds this problem in an unprecedented manner.

Courts considering whether a measure is an instance of logrolling evaluate whether the measure forces a legislator or voter to simultaneously vote for something they may not support to obtain something they do. For example, in *2021-22 #67, #115, & #128*, this Court recently held that three initiatives, each of which would simultaneously increase the authority of food retailers to sell wine and

authorize third-party providers to deliver alcohol from licensed retailers to consumers, addressed two subjects and therefore violated the single subject rule. 2022 CO 37, ¶ 13. The Court explained that "some voters might well support home delivery of alcohol while preferring to keep wine out of grocery stores, and others might feel precisely the opposite." *Id.* at ¶ 23.

Here, too, voters will predictably have competing views on the subjects addressed in Proposition HH. Voters may support property tax relief[8] but oppose an effective tax increase through the retention of state revenues otherwise subject to refund under TABOR (particularly to pay for state expenditures beyond backfilling reduced property taxes). One policy (property tax reductions) lessens overall tax burdens, while the other (de-Brucing) increases them. Voters may also oppose the particular additions to education funding in Proposition HH, but favor spending on rent relief. Certain voters may oppose ***everything*** in

[8] By comparison, in 2022, 65.2% of voters approved a reduction in the state income tax rate through Proposition 121. *See* Ballot History for 2022-Proposition 121, https://bit.ly/3oIXHqm.

Proposition HH except the new method for calculating TABOR refunds set forth in HB 1311.

These divisions arise because the different topics in Proposition HH are not "necessarily and properly connected," *2021-22 #16*, CO 55, ¶ 13, nor do they "tend to effect or to carry out one general objective or purpose," *id.*, ¶ 14 (quoting *2017-18 #4*, 2017 CO 57, ¶ 8). Because the provisions of Proposition HH are "disconnected or incongruous" and cover "more than one subject [having] at least two distinct and separate purposes which are not dependent upon or connected with each other," *2021-22 #16*, 2021 CO 55, ¶ 13, Proposition HH violates the single subject requirement.

Proposition HH also contravenes the single subject requirement's purpose to prevent fraud and surprise. *See In re Title, Ballot Title & Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1079 (Colo. 2010) ("[t]he single-subject rule also serves to prevent voter surprise by prohibiting proponents from hiding effects in the body of a complex proposal"); *see also Edwards v. Denver & R.G.R. Co.*, 21 P. 1011, 1013 (Colo. 1889) ("[t]he purpose of this constitutional provision is to prevent

surprise and deception through legislation pertaining to one subject, under title relating to another"). Colorado courts have required that the single subject of legislation be so clear that "the connection should be within the comprehension of the ordinary intellect." *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #25*, 974 P.2d 458, 46-2 (Colo. 1999) ("1999-2000 #25").

Because the Proposition HH title says ***nothing*** about HB 1311's flat distribution of TABOR refunds, stemming from a separate bill entirely, this makes Proposition HH's title a clear violation of the single subject requirement. As explained in II.B, *infra*, this—in addition to other failures—also violates the clear title requirement. For purposes of the single subject requirement, the absence of one major subject addressed by Proposition HH from its ballot title necessarily implicates the interest against fraud on the voters and resulting surprise, particularly given the length and complexity of Proposition HH. And there is no requirement or guarantee the General Assembly will inoculate against this surprise by informing voters through the Blue Book that a vote for Proposition HH is a vote for HB 1311.

Permitting the legislature to adopt this unprecedent multi-bill bundling practice would threaten the integrity of Colorado's referendum process; there would be little if any limiting principle preventing the legislature from enacting conditional changes to Colorado law that are contentious and unpopular, and tying their implementation to referenda on more popular but unrelated issues set forth in separate bills, while failing to inform the people of the hidden bills. To make this more concrete, consider, for example, the potential outcome of a referred measure arising from a bill that, if approved by voters, would create additional limits on predatory lending practices, paired with a separate, entirely unrelated bill, imposing significant restrictions on oil and gas development, both conditioned on passage of a single referred measure.[9] The latter bill's conditional nature, under the Governor's logic, would not need to be disclosed to voters in advance of the election. Some

[9] These examples are drawn from 2018-Proposition 111, in which voters overwhelmingly approved limitations on payday loans (with 77% approval), and 2018-Proposition 112, in which 55% of voters rejected setback requirements for new oil and gas development projects. *See* Ballot History for 2018-Propositions 111 and 112, Colorado General Assembly, https://bit.ly/3oIXHqm.

voters, however, would doubtless be surprised to learn what they have voted for—but only after the fact. And under the Governor's and district court's reasoning, this end-run around the single subject and clear title requirements would be perfectly permissible.

Because Proposition HH violates the single subject requirement, it must not be submitted to the voters. Colo. Const. art. V, § 1(5.5) ("If a measure contains more than one subject … no title shall be set and the measure shall not be submitted to the people ….").

C. SB 303 violates the single subject requirement.

SB 303 itself encompasses at least four disparate subjects. It thus also, and independently, violates the single subject requirement. *See People ex rel. Dunbar v. Gilpin Inv. Co.*, 493 P.2d 359, 361 (Colo. 1972) (citing *Redmon v. Davis*, 174 P.2d 945 (1946)). As legislation that has been passed and signed into law by the Governor, SB 303 is subject to a declaration that it is in contravention of the constitution and void. *See Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 210-11 (Colo. 1991) (affirming judicial authority to issue declaratory judgment of invalidity for noncompliance with article V, section 22b). The Court should order

such a declaratory judgment. Because the effect of the declaration would be to invalidate SB 303 entirely, this would obviate the need for a separate declaration and injunction against Proposition HH.

II. Proposition HH violates the clear title requirement.

A. A ballot title must clearly disclose the effect of a yes or no vote and must be amended if it fails to do so.

The clear title requirement is distinct from the single subject requirement: even if a measure has a single subject, it may violate the constitution if that subject is not clearly expressed in the title. This Court first interpreted this requirement in *Breene*, 24 P. at 3-4. Since then, the Court has returned to *Breene* repeatedly to define the single subject and clear title requirements. *E.g.*, *1999-2000 #25*, 974 P.2d at 460-61; *2005-06 #74*, 136 P.3d at 243. In *Breene*, the Court overturned the conviction of the state treasurer for lending public money for private gain, holding that the statute used to convict him violated the clear title requirement. 24 P. at 3. In doing so, the Court articulated the standard for compliance with the clear title requirement:

> ***It will not do to say that the general subject of legislation may be gathered from the body of the act***, for, to sustain the legislation at all, it must be expressed in the

> title. Moreover, we are bound to assume that ***the word "clearly" was not incorporated into the constitutional provision under consideration by mistake***. It appears in but few of the corresponding provisions of other state constitutions; a fact that could hardly have been unobserved by the convention. That this word was advisedly used, and was intended to affect the manner of expressing the subject, we cannot doubt. ***The matter covered by legislation is to be "clearly," not "dubiously" or "obscurely," indicated by the title***. Its relation to the subject must not rest upon a merely possible or doubtful inference. ***The connection must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect, as well as the trained legal mind.***

Id. at 4 (emphasis added).

Since application of the clear title requirement to "all measures" under Referendum A, this Court has applied the *Breene* standard to ballot measures. *See In re Public Rights in Waters II*, 898 P.2d at 1079 ("[T]his [clear title requirement] parallels the same requirement in Article V, Section 21, concerning the single subject requirement for bills and is intended to prevent voter surprise or uninformed voting caused by items concealed within a lengthy or complex proposal."). Under this standard, a title is void unless it "correctly and fairly express[es] the true intent and meaning" of the measure and makes clear to voters "the

effect of a 'yes/for' or 'no/against' vote." *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 10 ("*2015-2016 #156*") (quoting Colo. Rev. Stat. § 1-40-106(3)(b)).

If an unclear title can be corrected, C.R.S. § 1-11-203.5(3) instructs that "the court shall provide in its order the text of the corrected ballot title … to be placed upon the ballot." Here, if the Court disagrees with Petitioners' single subject challenges but finds Proposition HH's title nonetheless violates the clear title requirement, section 1-11-203.5(3) requires amendment of the title.

B. Proposition HH violates the clear title requirement.

Proposition HH violates the clear title requirement in four ways.

First, Proposition HH's title provides no detail on the rate or amount of the property tax reductions it proposes. It asks only "[s]hall the state reduce property taxes for homes and business"? The magnitude of the reduction, however, matters: first-year reductions of 6.765% to 6.7% for the residential assessment rate and 27.9% to 27.85% for the commercial assessment rate are crucial details. Without those details, the ballot title is no more informative than asking, "Should

property taxes be lowered?" or "Do you dislike property taxes?" This is why it is standard practice to include first-year reductions in ballot titles, which is mandatory for citizen-initiated measures. C.R.S. § 1-40-106(3)(e); *see also* 2022-Proposition 121 (identifying reduction in income tax rate "from 4.55% to 4.40%")[10]; 2021-Proposition 120 (quantifying property tax assessment rate reductions).[11]

Second, the title makes no mention that it is a referendum on HB 1131 or that it will authorize a $20 million appropriation for rental assistance. This, alone, is enough to disqualify the title. "It will not do" to direct those reading the title to "the body of the act" in search of these key provisions. *Breene*, 24 P. at 4.

The district court concluded that there is no need for Proposition HH's title to inform voters that it serves as a referendum on not only SB 303, but on HB 1311 as well, because HB 1311 is a ***separate*** bill. Ex. E at 20. That cannot be correct, as explained above. The clear title

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[10] Ballot History for 2022-Proposition 121, Colorado General Assembly (emphasis added), https://bit.ly/3oIXHqm.

[11] Ballot History for 2021-Proposition 120, Colorado General Assembly (emphasis added), https://bit.ly/3oIXHqm.

requirement is meant to avoid the "evils" of "pass[ing] unknown and alien subjects," *Breene*, 24 P. at 3-4, and to avoid titles under which "the effect of a 'yes/for' or 'no/against' vote will be unclear," *2015-16 #156*, 2016 CO 56, ¶ 10. There is nothing more "unknown" or "unclear" to a voter than an entirely separate piece of legislation that is mentioned nowhere in the ballot title of the measure the voter is deciding whether to accept or reject.

Third, Proposition HH's title uses confusing and obfuscating language for the de-Brucing question. Instead of the familiar invocation of "may the state keep/retain and/or spend" excess TABOR funds, the standard articulation for more than a decade, the Proposition uses the term "State Surplus" and asks merely whether voters would like the state to "use[ ] a portion of the State Surplus" to pay for a variety of public projects (beyond backfilling) up to the "Proposition HH Cap as defined in [the] measure." This departure from typical practice fails to clearly inform voters that the state is asking permission to keep and spend money that otherwise must be refunded. Nothing in the phrase, "by using a portion of the state surplus," informs voters that, before

these "surplus funds" may be "used," voters must authorize the state to keep the funds, and if they do not provide permission, the funds must be refunded. By eschewing standard language, Proposition HH's ballot title "may significantly affect voting behavior and support for the measure." Opp'n to Joint Mot. to Exclude at attached Ex. A, ¶ 5(c).

Last, Proposition HH's title contains no mention of the $72 million of new funding to the State Public School Fund. As described above, the district court erred in conflating this new funding with backfilling of local funds. Because this constitutes new funding, the backfilling language in SB 303's version of the Proposition HH title fails to disclose this significant change and requires amendment.

C. Section 203.5(3) requires the Court to correct Proposition HH's deficient title.

In correcting Proposition HH's title, the titles of de-Brucing measures referred by the General Assembly in prior elections are instructive. These titles reflect what voters expect when the General Assembly refers a measure and asks to retain and spend state revenues that otherwise would be refunded.

There are five exemplars:

Measure	Title
2019-Proposition CC[12]	Without raising taxes and to better fund public schools, higher education, and roads, bridges, and transit, within a balanced budget, may the state keep and spend all the revenue it annually collects after June 30, 2019, but is not currently allowed to keep and spend under Colorado law, with an annual independent audit to show how the retained revenues are spent?
2015-Proposition BB[13]	May the state retain and spend state revenues that otherwise would be refunded for exceeding an estimate included in the ballot information booklet for proposition AA and use these revenues to provide forty million dollars for public school building construction and for other needs, such as law enforcement, youth programs, and marijuana education and prevention programs, instead of refunding these revenues to retail marijuana cultivation facilities, retail marijuana purchasers, and other taxpayers?
2005-Referendum C[14]	Without raising taxes and in order to pay for education; health care; roads, bridges, and other strategic transportation projects; and retirement plans for firefighters and police officers, shall the state be authorized to retain and spend all state revenues in excess of the constitutional limitation

[12] Ballot History for 2019-Proposition CC, Colorado General Assembly, https://bit.ly/3oIXHqm.

[13] Ballot History for 2015-Proposition BB, Colorado General Assembly, https://bit.ly/3oIXHqm.

[14] Ballot History for 2005-Referendum C, Colorado General Assembly, https://bit.ly/3oIXHqm.

	on state fiscal year spending for the next five fiscal years beginning with the 2005-06 fiscal year, and to retain and spend an amount of state revenues in excess of such limitation for the 2010-11 fiscal year and for each succeeding fiscal year up to the excess state revenues cap, as defined by this measure?
2000-Referendum F[15]	Shall the state of Colorado be permitted to annually retain up to fifty million dollars of the state revenues in excess of the constitutional limitation on state fiscal year spending for the 1999-2000 fiscal year and for four succeeding fiscal years for the purpose of funding performance grants for school districts to improve academic performance, notwithstanding any restriction on spending, revenues, or appropriations, including without limitation the restrictions of section 20 of article X of the state constitution and the statutory limitation on state general fund appropriations?
1998-Referendum B[16]	Shall the state of Colorado be permitted to annually retain up to two hundred million dollars of the state revenues in excess of the constitutional limitation on state fiscal year spending for the 1997-98 fiscal year and for four succeeding fiscal years for the purpose of funding school district capital construction projects, state and local transportation needs, and capital construction projects of state colleges and universities, notwithstanding any restriction on spending, revenues, or appropriations, including without limitation the restrictions of Section 20 of Article X

[15] Ballot History for 2000-Referendum F, Colorado General Assembly, https://bit.ly/3oIXHqm.

[16] Ballot History for 1998-Referendum B, Colorado General Assembly, https://bit.ly/3oIXHqm.

	of the state constitution and the statutory limitation on state general fund appropriations, and, in connection therewith, requiring annual transfers of such excess revenues for these purposes, specifying the allocation of such excess revenues for these purposes, specifying the fund to which a portion of the excess revenues is to be transferred for school district capital construction, establishing a special account in the capital construction fund to which a portion of the excess revenues is to be transferred for higher education capital construction, and specifying the allocation of the portion of the excess revenues transferred to the highway users tax fund for state and local transportation needs?

Each title has three features in common. First, each contains slight variations on one of two phrases: "may the state keep/retain and spend" or "shall the state be authorized/permitted to retain and spend," clearly signaling that voters are determining whether or not to allow the state to keep taxpayer funds that it would otherwise not be entitled to keep. Second, each title lists what the retained funds will be spent on and all matters that depend on the measure's passage. Three, each title acknowledges that the state is asking to "spend," "keep," or "retain" funds above the constitutional limit—in other words, funds that would

otherwise have to be returned to taxpayers. Because Proposition HH does none of these, it violates the clear title requirement.

The Court should consider this proposed amended title, which corrects each of the existing title's deficiencies:

> SHALL THE STATE RETAIN AND SPEND STATE REVENUES THAT OTHERWISE WOULD BE REFUNDED TO TAXPAYERS, BY ADDING 1% TO THE REVENUE LIMITATION FOR STATE FISCAL YEARS 2023-24 THROUGH 2031-32, TO FUND REVENUE REDUCTIONS FROM REDUCING THE RESIDENTIAL PROPERTY TAX ASSESSMENT RATE FROM 6.765% TO 6.7% AND REDUCING THE PROPERTY TAX ASSESSMENT RATE FOR COMMERCIAL PROPERTY FROM 27.9% TO 27.85% FOR THE FIRST YEAR AND IMPLEMENTING FURTHER REDUCTIONS THROUGH 2032, INCLUDING PROPERTY TAX RELIEF FOR SENIORS, AND TO FUND THE STATE PUBLIC SCHOOL FUND AND OFFSET LOST REVENUE RESULTING FROM THE PROPERTY TAX RATE REDUCTIONS, WHILE ALSO APPROVING CHANGES ADOPTED IN HOUSE BILL 23-1311 TO THE TABOR REFUND METHOD?

Alternatively, the Court should use one of the versions included in Exhibit F.

III. This Court has jurisdiction to decide the constitutional claims now.

The district court concluded it had jurisdiction to consider Petitioners' claim to reform Proposition HH's ballot title under C.R.S.

§ 1-11-203.5, and the Governor did not dispute that conclusion. *See* Ex. E at 4, 11. The district court erred, however, in concluding that Petitioners' constitutional challenges had to be delayed until after the election. This ruling was based on a misinterpretation of *Polhill,* C.R.S. § 1-11-203.5, and the Colorado Constitution.

The General Assembly passed SB 303 on May 8, 2023, and the Governor signed it May 24, 2023. "An act of the general assembly … take[s] effect on the date stated in the act." Colo. Const. art. V, § 19. Portions of SB 303 became "effective" upon passage, Ex. A at 47, that is, when the Governor signed the bill, Colo. Const. art. IV, § 11. Because parts of SB 303 were "effective" on May 24,[17] Petitioners' constitutional challenges are ripe.

[17] The following sections of SB 303 "take effect upon passage" and are not contingent on Proposition HH: a requirement that the property tax administrator convene a working group to make recommendations to streamline and improve the designation of a subclass of residential property (although no report is due if Proposition HH fails); definitional changes relevant to distribution of state revenues (which will have multi-million-dollar budgetary and TABOR-refund implications for Denver); a requirement that county treasurers report estimates for tax revenue reductions and any increases in assessed value resulting from SB 22-238 and SB 303; and a requirement that the Department of Revenue calculate TABOR refunds under certain statutory provisions.

The district court relied on a significant expansion of *Polhill* to delay a decision on Petitioners' constitutional challenges until after the election. Ex. E at 4-5. The district court also erroneously sought to rely on distinctions between the portions of SB 303 that are already effective and those that will only become effective if Proposition HH is approved, determining that "the fact that certain provisions of SB23-303 are currently active and in effect does not allow the Court to pry open the gates shut by the *Polhill* court." Ex. E at 10. The district court's attempted categorical expansion of *Polhill* to cover already-enacted statutes, however, finds no support in *Polhill* itself.

Polhill's facts and holding are limited and do not warrant kicking the can down the road here. That case, unlike this one, involved a pre-election, single-subject challenge to a referred constitutional amendment adopted in Senate Concurrent Resolution 95-2. *Polhill*, 923 P.2d at 120. Contrary to the facts here, SCR 95-2 was not signed by the Governor and not effective upon passage. Nor did the plaintiffs

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Ex. A at 47 (Section 23(2)) and 3-7, 18-22, 36, 38-39, 44-45, 47-48; Ex. B at 11.

challenge the ballot measure under C.R.S. § 1-11-203.5, as Petitioners have done here.[18]

In a short, ten-paragraph opinion, this Court held that it lacked jurisdiction. *Id* at 121-22. Because neither the General Assembly nor the Governor invoked the court's original jurisdiction to answer interrogatories, this Court recognized jurisdiction must lie in either "the single-subject requirement itself or a statute." *Id.* at 121. This Court concluded the single subject requirement in article XIX, section 2, for referred constitutional amendments "d[id] not confer jurisdiction on the courts to review proposed constitutional amendments before they are submitted to the electorate." *Id.* Nor did the statute authorizing review of citizen-initiated measures, C.R.S.. § 1-40-107 (1995), "confer jurisdiction upon this court to review legislative referenda." *Id.*

Here, by contrast, there are both statutory and constitutional bases for review of Proposition HH in advance of the election. First,

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[18] In fact, the plaintiffs in *Polhill* challenged the ballot title ***seven months*** after SCR 1995 was signed, *see* Compl., *Polhill v. Buckley*, No. 1996CV350 (Colo. Dist. Ct., City & Cnty. of Denver Jan. 24, 1996), far beyond the five-day period in section 1-11-203.5.

section 1-11-203.5 confers jurisdiction on the courts to hear "all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title." C.R.S. § 1-11-203.5(1). That is precisely what Petitioners seek to do here.[19]

The key authority relied on by the District Court to assert that single subject review of referred measures is somehow barred from section 1-11-203.5 election challenges, *Cacioppo v. Eagle County School District Re-50J*, 92 P.3d 453 (Colo. 2004), is inapplicable. *Cacioppo* concerned a local ballot measure, the single subject requirement does not apply to local measures, and the petitioner in *Cacioppo* was not seeking to present a single subject challenge to the local ballot measure.

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[19] By overreading *Polhill*, the district court created new precedent that prevents consideration of challenges not only to referred measures, but also to final, enacted legislation simply because it contains a referred ballot measure. Under this new jurisdictional prohibition, final bills containing referred ballot measures would gain immunity from constitutional review until after the subsequent election, regardless of how much of the bill became immediately effective pre-election, once signed by the Governor. Nothing in *Polhill* authorized this jurisdictional oddity.

Cacioppo thus could not answer whether a single subject challenge is allowed under section 1-11-203.5. It therefore presents no barrier to jurisdiction here.

The district court also relied in part on the assumption that *Cacioppo* permitted, under C.R.S. § 1-11-203.5, "form and content" challenges, but prevented "substantive" challenges, and then erroneously sought to extend this dichotomy to exclude single-subject challenges to state-level ballot measures as "substantive." Ex. E at 7. But by the very nature of single subject and clear title challenges, both must relate to the "form and content of the ballot title." C.R.S. 1-11-203.5. No title can be set if a measure includes more than one subject—a single-subject challenge is thus inextricably bound up in the "form and content of the ballot title." *E.g.*, Colo. Const. art. V, §§ 1(5.5), 21.

Even putting *Cacioppo* aside, however, article V, section 1(5.5) of the Colorado Constitution separately imposes an immediately enforceable single subject requirement on the General Assembly's

referendum power.[20] This is apparent from subsection 1(5.5)'s text and history. The text of subsection 1(5.5) speaks of "any measure," which broadly covers any citizen-initiated measure or any legislatively referred referendum, both of which are defined by article V, section 1.[21] The 1994 Blue Book explained that Referendum A (which added

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[20] Notably, the single subject requirement for legislatively referred ***constitutional amendments*** is governed by a different constitutional provision. *See* Colo. Const. art. XIX, § 2. Unlike subsection 1(5.5), as the Court stated in *Polhill*, "Article XIX, Section 2(3) … does not confer jurisdiction on the courts to review proposed constitutional amendments before they are submitted to the electorate." 923 P.2d at 121. *Polhill* thus did not create direct precedent on the particular constitutional provisions relevant to this case.

[21] The relevant portion of article V, section 1(5.5) states, "[I]f any subject shall be embraced in ***any measure*** which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If ***a measure*** contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." (Emphasis added.) The 1994 Blue Book reinforces Petitioners' reading of the constitution, describing Referendum A as an amendment to the Colorado Constitution to "require that proposals initiated by the people ***and referred by the General Assembly*** be confined to a single subject which shall be clearly expressed in the title." *See* 1994 Blue Book 2 (emphasis added); *see also id.* ("This proposal requires that initiated or referred amendments to the Colorado Constitution and to the statutes of the state of Colorado embody only one subject.").

subsection 1(5.5)) would "require … proposals initiated by the people ***and referred by the General Assembly*** be confined to a single subject which shall be clearly expressed in the title." *See* 1994 Blue Book at 2 (emphasis added). Subsection 1(5.5) therefore limits the referendum power in subsection 1(3).

The remedy for "a measure"—whether referred by the people or the General Assembly—"contain[ing] more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject," is that "no title shall be set and the measure shall not be submitted to the people." Colo. Const. art. V, § 1(5.5). Critically, this constitutional scheme is "self-executing." Colo. Const. art. V, § 1(10). While the General Assembly has passed legislation directing ballot title challenges to citizen-initiated measures to the state title board, *see* C.R.S. § 1-40-106, measures referred by the General Assembly are adjudicated by the courts under C.R.S. § 1-11-203.5. Accordingly, even if section 1-11-203.5 did not convey jurisdiction to decide Petitioners' constitutional challenges, jurisdiction would still be proper under article V, subsection 1(5.5).

CONCLUSION

The Court should declare SB 303 and Proposition HH void and enjoin Proposition HH from being placed on the ballot. Alternatively, the Court should amend Proposition HH's title.[22]

Dated: June 30, 2023.

Respectfully submitted,

s/ Frederick R. Yarger
Frederick R. Yarger
Michael L. O'Donnell
Miles D. Orton
Wheeler Trigg O'Donnell LLP

Attorneys for Petitioner Advance Colorado

- and -

s/ Suzanne M. Taheri
Suzanne M. Taheri
West Group Law & Policy

Attorney for Petitioners

[22] If the Court grants relief, Petitioners request remand so the district court may award fees and costs. C.R.S. § 1-11-203.5(3) ("[T]he court shall provide in its order the text of the corrected ballot title … and shall award costs and reasonable attorneys fees to [petitioner].").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of

PETITIONERS' OPENING BRIEF was filed using Colorado Courts E-Filing and served via the manner indicated below this 30th day of June, 2023 to the following:

Suzanne M. Taheri WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 st@westglp.com *Attorney for Petitioners*	( ) First Class Mail ( ) Hand Delivery ( ) Facsimile ( ) Overnight Delivery ( ) Colorado Courts E-Filing (X) E-Mail
Philip J. Weiser, Attorney General Russell D. Johnson, Sr. Assistant Attorney General Shelby A. Krantz, Assistant Attorney General Reed Morgan, Assistant Attorney General Danny Rheiner, Assistant Attorney General Skye Walker, Assistant Attorney General Fellow You Na Han, Assistant Attorney General Fellow Jeremy D. Johnston, Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, CO 80203 Telephone: 720.508.6000	( ) First Class Mail ( ) Hand Delivery ( ) Facsimile ( ) Overnight Delivery ( ) Colorado Courts E-Filing (X) E-Mail

Facsimile: 720.508.6038
Email: russell.johnson@coag.gov
shelby.krantz@coag.gov
reed.morgan@coag.gov
danny.rheiner@coag.gov
skye.walker@coag.gov
youna.han@coag.gov
jeremy.johnston@coag.gov

Attorneys for Respondent State of Colorado and Governor Polis

Philip J. Weiser, Attorney General
Michael Kotarczyk, Senior Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720-508-6187
Email: mike.kotlarczyk@coag.gov

( ) First Class Mail
( ) Hand Delivery
( ) Facsimile
( ) Overnight Delivery
( ) Colorado Courts E-Filing
(X) E-Mail

Attorneys for Secretary of State Griswold, Respondent

s/ Christine Keitlen
Christine Keitlen

Exhibit A

Senate Bill 23-303

SENATE BILL 23-303

BY SENATOR(S) Fenberg and Hansen, Bridges, Buckner, Hinrichsen, Moreno, Priola;
also REPRESENTATIVE(S) deGruy Kennedy and Weissman, Amabile, Bird, Boesenecker, Brown, Dickson, Duran, Herod, Jodeh, Joseph, Kipp, Lindsay, McCormick, Michaelson Jenet, Ricks, Sharbini, Sirota, Snyder, Story, Titone, Woodrow, Young, McCluskie.

CONCERNING A REDUCTION IN PROPERTY TAXES, AND, IN CONNECTION THEREWITH, CREATING A LIMIT ON ANNUAL PROPERTY TAX INCREASES FOR CERTAIN LOCAL GOVERNMENTS; TEMPORARILY REDUCING THE VALUATION FOR ASSESSMENT OF CERTAIN RESIDENTIAL AND NONRESIDENTIAL PROPERTY; CREATING NEW SUBCLASSES OF PROPERTY; PERMITTING THE STATE TO RETAIN AND SPEND REVENUE UP TO THE PROPOSITION HH CAP; REQUIRING THE RETAINED REVENUE TO BE USED TO REIMBURSE CERTAIN LOCAL GOVERNMENTS FOR LOST PROPERTY TAX REVENUE AND TO BE DEPOSITED IN THE STATE EDUCATION FUND TO BACKFILL THE REDUCTION IN SCHOOL DISTRICT PROPERTY TAX REVENUE; TRANSFERRING GENERAL FUND MONEY TO THE STATE PUBLIC SCHOOL FUND AND TO A CASH FUND TO ALSO BE USED FOR THE REIMBURSEMENTS; ELIMINATING THE CAP ON THE AMOUNT OF EXCESS STATE REVENUES THAT MAY BE USED FOR THE REIMBURSEMENTS FOR THE 2023 PROPERTY TAX YEAR; REFERRING A BALLOT ISSUE; AND

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 22-40-102, **amend** (3) and (6) as follows:

22-40-102. Certification - tax revenues - repeal. (3) (a) The board of education of a school district which had an actual enrollment of more than fifty thousand pupils during the preceding school year may make the certification provided for in subsection (1) of this section no later than December 15.

(b) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION IS POSTPONED FROM DECEMBER 15, 2023, TO JANUARY 5, 2024.

(II) THIS SUBSECTION (3)(b) IS REPEALED, EFFECTIVE JULY 1, 2025.

(6) (a) Each school district, with such assistance as may be required from the department of education, shall inform the county treasurer for each county within the district's boundaries no later than December 15 of each year of said district's general fund mill levy in the absence of funds estimated to be received by said district pursuant to the "Public School Finance Act of 1994", article 54 of this ~~title~~ TITLE 22, and the estimated funds to be received for the general fund of the district from the state.

(b) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (6)(a) OF THIS SECTION IS POSTPONED FROM DECEMBER 15, 2023, TO JANUARY 5, 2024.

(II) THIS SUBSECTION (6)(b) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 2. In Colorado Revised Statutes, 25-2-103, **add** (4.7) as follows:

25-2-103. Centralized registration system for all vital statistics - office of the state registrar of vital statistics created - appointment of registrar - rules. (4.7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW

THAT LIMITS THE SHARING OF VITAL STATISTICS, AFTER RECEIVING THE LIST OF NAMES AND SOCIAL SECURITY NUMBERS OF INDIVIDUALS WHO HAD PROPERTY CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY THAT IS PROVIDED BY THE PROPERTY TAX ADMINISTRATOR PURSUANT TO SECTION 39-1-104.6 (5)(c), THE STATE REGISTRAR SHALL IDENTIFY ALL INDIVIDUALS ON THE LIST WHO HAVE DIED AND TRANSMIT A LIST OF THE NAMES AND SOCIAL SECURITY NUMBERS OF SUCH INDIVIDUALS TO THE ADMINISTRATOR.

SECTION 3. In Colorado Revised Statutes, **add** part 2 to article 77 of title 24 as follows:

PART 2
SUBMISSION OF BALLOT ISSUE - VOTER-APPROVED REVENUE CHANGE - PROPERTY TAX REDUCTION BACKFILL

24-77-201. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCOUNT" MEANS THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT IN THE GENERAL FUND CREATED IN SECTION 24-77-203 (3)(a).

(2) "BALLOT ISSUE" MEANS THE QUESTION REFERRED TO VOTERS IN ACCORDANCE WITH SECTION 24-77-202 (1).

(3) "EXCESS STATE REVENUES CAP" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-77-103.6 (6)(b).

(4) "STATE REVENUES" MEANS STATE REVENUES NOT EXCLUDED FROM STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17).

(5) "STATE SURPLUS" MEANS THE AMOUNT OF STATE REVENUES THAT EXCEED THE EXCESS STATE REVENUES CAP FOR A GIVEN STATE FISCAL YEAR.

24-77-202. Submission of ballot issue - voter-approved revenue change. (1) AT THE ELECTION HELD ON NOVEMBER 7, 2023, THE SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF THE

STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT ISSUE: "SHALL THE STATE REDUCE PROPERTY TAXES FOR HOMES AND BUSINESSES, INCLUDING EXPANDING PROPERTY TAX RELIEF FOR SENIORS, AND BACKFILL COUNTIES, WATER DISTRICTS, FIRE DISTRICTS, AMBULANCE AND HOSPITAL DISTRICTS, AND OTHER LOCAL GOVERNMENTS AND FUND SCHOOL DISTRICTS BY USING A PORTION OF THE STATE SURPLUS UP TO THE PROPOSITION HH CAP AS DEFINED IN THIS MEASURE?"

(2) FOR PURPOSES OF SECTION 1-5-407, THE BALLOT ISSUE IS A PROPOSITION TO BE IDENTIFIED AS "PROPOSITION HH". SECTION 1-40-106 (3)(d) DOES NOT APPLY TO THE BALLOT ISSUE.

24-77-203. Retention of excess state revenues - transfer to state education fund - local government reimbursement - legislative declaration. (1) (a) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN FOR EACH FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2023, THE STATE IS AUTHORIZED TO RETAIN AND SPEND ALL OF THE STATE SURPLUS THAT IS LESS THAN THE PROPOSITION HH CAP, WHICH IS:

(I) FOR THE 2023-24 FISCAL YEAR, AN AMOUNT EQUAL TO THE EXCESS STATE REVENUES CAP FOR THE 2022-23 FISCAL YEAR, ADJUSTED FOR INFLATION PLUS ONE PERCENTAGE POINT, THE PERCENTAGE CHANGE IN STATE POPULATION, THE QUALIFICATION OR DISQUALIFICATION OF ENTERPRISES, AND DEBT SERVICE CHANGES; AND

(II) FOR THE FISCAL YEAR 2024-25 AND EACH SUCCEEDING FISCAL YEAR, AN AMOUNT EQUAL TO THE PROPOSITION HH CAP FOR THE PRIOR FISCAL YEAR, ADJUSTED FOR INFLATION PLUS ONE PERCENTAGE POINT, THE PERCENTAGE CHANGE IN STATE POPULATION, THE QUALIFICATION OR DISQUALIFICATION OF ENTERPRISES, AND DEBT SERVICE CHANGES.

(b) (I) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b)(II) OF THIS SECTION, IF THE GENERAL ASSEMBLY DOES NOT ENACT LEGISLATION TO ESTABLISH VALUATIONS FOR ASSESSMENT FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2033, THAT ARE LESS THAN OR EQUAL TO THE TEMPORARILY REDUCED VALUATIONS FOR ASSESSMENT ESTABLISHED IN SECTIONS 39-1-104 (1)(b)(V), (1.8)(a)(III), (1.8)(a)(IV), AND (1.8)(b)(VI) AND 39-1-104.2 (3)(q)(III) AND (3)(r)(IV) IN SENATE BILL 23-303 FOR THE

PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2032, FOR THE SAME CLASSES OF PROPERTY, THEN, FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2032, AND EACH FISCAL YEAR THEREAFTER, THE PROPOSITION HH CAP IS AN AMOUNT EQUAL TO THE EXCESS STATE REVENUES CAP.

(II) IF THE PROPOSITION HH CAP IS REDUCED BY OPERATION OF SUBSECTION (1)(b)(I) OF THIS SECTION, THE GENERAL ASSEMBLY MAY, WITHOUT ADDITIONAL VOTER APPROVAL, ENACT LEGISLATION TO RESTORE THE CAP FOR A FISCAL YEAR TO AN AMOUNT THAT IS LESS THAN OR EQUAL TO THE AMOUNT THAT THE PROPOSITION HH CAP WOULD HAVE BEEN FOR THE FISCAL YEAR UNDER SUBSECTION (1)(a)(II) OF THIS SECTION IF SUBSECTION (1)(b)(I) OF THIS SECTION HAD NOT APPLIED IF, FOR THE PROPERTY TAX YEAR THAT ENDS DURING THE FISCAL YEAR, THE GENERAL ASSEMBLY:

(A) ESTABLISHES VALUATIONS FOR ASSESSMENT THAT ARE LESS THAN OR EQUAL TO THE TEMPORARILY REDUCED VALUATIONS FOR ASSESSMENT ESTABLISHED IN SECTIONS 39-1-104 (1)(b)(V), (1.8)(a)(III), (1.8)(a)(IV), AND (1.8)(b)(VI) AND 39-1-104.2 (3)(q)(III) AND (3)(r)(IV) IN SENATE BILL 23-303 FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2032, FOR THE SAME CLASSES OF PROPERTY; OR

(B) REDUCES THE VALUATIONS FOR ASSESSMENT DIFFERENTLY FROM THE VALUATIONS FOR ASSESSMENT ESTABLISHED IN SENATE BILL 23-303, BUT THE AGGREGATE REDUCTION IN THE VALUATION FOR ASSESSMENT STATEWIDE FROM THE REDUCTIONS IS GREATER THAN OR EQUAL TO THE ESTIMATED AGGREGATE REDUCTION IN THE VALUATION FOR ASSESSMENTS FROM THE MINIMUM REDUCTIONS IN VALUATION FOR ASSESSMENT NECESSARY TO MEET THE CONDITION SPECIFIED IN SUBSECTION (1)(b)(II)(A) OF THIS SECTION.

(c) FOR PURPOSES OF THE CALCULATION SET FORTH IN THIS SUBSECTION (1):

(I) INFLATION AND THE PERCENTAGE CHANGE IN STATE POPULATION ARE THE SAME RATES THAT ARE USED IN CALCULATING THE MAXIMUM ANNUAL PERCENTAGE CHANGE IN STATE FISCAL YEAR SPENDING PURSUANT TO SECTION 24-77-103; AND

(II) THE QUALIFICATION OR DISQUALIFICATION OF AN ENTERPRISE OR

A DEBT SERVICE CHANGE AFFECTS THE PROPOSITION HH CAP IN THE SAME MANNER AS THE CHANGE AFFECTS THE LIMITATION ON STATE FISCAL YEAR SPENDING.

(2) THIS SECTION DOES NOT AFFECT THE AMOUNT THAT THE STATE IS PERMITTED TO RETAIN AND SPEND UNDER THE AUTHORITY CONFERRED BY THE VOTERS' APPROVAL OF SECTION 24-77-103.6.

(3) (a) THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT IS HEREBY CREATED IN THE GENERAL FUND. THE ACCOUNT CONSISTS OF AN AMOUNT EQUAL TO THE AMOUNT OF STATE SURPLUS THAT THE STATE IS AUTHORIZED TO RETAIN AND SPEND UNDER THIS PART 2 FOR THE PRIOR FISCAL YEAR, IF ANY. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT TO THE ACCOUNT.

(b) THE MONEY IN THE ACCOUNT FOR EACH FISCAL YEAR BEGINNING WITH THE 2023-24 FISCAL YEAR MUST BE USED AS FOLLOWS:

(I) THE MONEY IS FIRST USED TO PROVIDE REIMBURSEMENTS TO LOCAL GOVERNMENTS UNDER SECTION 39-3-210 (4)(a)(II);

(II) IF THERE IS ANY MONEY REMAINING AFTER THE ALLOCATION SET FORTH IN SUBSECTION (3)(b)(I) OF THIS SECTION, THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE REMAINDER, FIVE PERCENT OF THE TOTAL AMOUNT IN THE ACCOUNT FOR THE FISCAL YEAR, OR TWENTY MILLION DOLLARS, WHICHEVER AMOUNT IS THE LEAST, TO THE HOUSING DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1) TO BE USED TO REDUCE THE AMOUNT OF PROPERTY TAXES THAT ARE PAID AS A PORTION OF A TENANT'S RENT THROUGH A PROGRAM ESTABLISHED UNDER SUBSECTION (2)(d)(VI) OF SAID SECTION; AND

(III) AS SOON AS POSSIBLE AFTER RECEIVING THE REPORT FROM THE PROPERTY TAX ADMINISTRATOR IN ACCORDANCE WITH SECTION 39-3-210 (3), THE STATE TREASURER SHALL TRANSFER THE AMOUNT, IF ANY, IN THE ACCOUNT THAT IS IN EXCESS OF THE AMOUNT THAT WILL BE USED IN ACCORDANCE WITH SUBSECTIONS (3)(b)(I) AND (3)(b)(II) OF THIS SECTION TO THE STATE EDUCATION FUND CREATED IN SECTION 17 OF ARTICLE IX OF THE STATE CONSTITUTION.

(4) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) PUBLIC SCHOOL FUNDING CONSISTS OF A COMBINATION OF STATE AND LOCAL SCHOOL DISTRICT REVENUE;

(b) UNDER THE CURRENT SCHOOL FINANCE FORMULA, AN INCREASE IN STATE FUNDING CAN BACKFILL A DECREASE IN LOCAL PROPERTY TAX REVENUE;

(c) REDUCTIONS IN PROPERTY TAX VALUATIONS REDUCE THE LOCAL PROPERTY TAX REVENUE COLLECTED FOR LOCAL GOVERNMENTS, INCLUDING SCHOOL DISTRICTS;

(d) MONEY IN THE STATE EDUCATION FUND IS USED TO PROVIDE FUNDING FOR LOCAL SCHOOL DISTRICTS; AND

(e) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT TRANSFERRING A PORTION OF THE MONEY FROM THE ACCOUNT TO THE STATE EDUCATION FUND IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION PROVIDES ADDITIONAL FUNDING TO LOCAL SCHOOL DISTRICTS IN ORDER TO BACKFILL PROPERTY TAX REVENUE REDUCTIONS RESULTING FROM PROPERTY TAX CHANGES ENACTED IN SENATE BILL 23-303 AND THAT THE MONEY SO TRANSFERRED SHALL NOT SUPPLANT GENERAL FUND APPROPRIATIONS MADE FOR SCHOOL DISTRICTS' TOTAL PROGRAM, AS DEFINED BY SECTION 22-54-103 (6).

24-77-204. Repeal. (1) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "NO/AGAINST", THEN THIS PART 2 IS REPEALED, EFFECTIVE JULY 1, 2024.

(2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2024.

SECTION 4. In Colorado Revised Statutes, 22-55-103, **amend** (1) as follows:

22-55-103. State education fund - creation - transfers to fund - use of money in fund - permitted investments - exempt from spending limitations. (1) In accordance with section 17 (4) of article IX of the state constitution, there is hereby created in the state treasury the state education

fund. The fund ~~shall consist~~ CONSISTS of state education fund revenues, MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH SECTION 24-77-203 (3)(b)(III), all interest and income earned on the deposit and investment of ~~moneys~~ MONEY in the fund, and any gifts or other ~~moneys~~ MONEY that are exempt from the limitation on state fiscal year spending set forth in section 20 (7)(a) of article X of the state constitution and section 24-77-103 ~~C.R.S.,~~ that may be credited to the fund. All interest and income derived from the deposit and investment of ~~moneys~~ MONEY in the fund ~~shall be~~ ARE credited to the fund. At the end of any state fiscal year, all unexpended and unencumbered ~~moneys~~ MONEY in the fund ~~shall remain~~ REMAINS in the fund and shall not revert to the general fund or any other fund.

SECTION 5. In Colorado Revised Statutes, 24-77-106.5, **amend** (1) as follows:

24-77-106.5. Annual financial report - certification of excess state revenues. (1) (a) For each fiscal year, the controller shall prepare a financial report for the state for purposes of ascertaining compliance with the provisions of this article. Any financial report prepared pursuant to this section shall include, but shall not be limited to, state fiscal year spending, reserves, revenues, revenues that the state is authorized to retain and spend pursuant to voter approval of section 24-77-103.6 OR PURSUANT TO PART 2 OF THIS ARTICLE 77, and debt. ~~Such~~ THE financial report shall be audited by the state auditor.

(b) Notwithstanding section 24-1-136 (11)(a)(I), based upon the financial report prepared in accordance with subsection (1)(a) of this section for any given fiscal year, the controller shall certify to the governor, the general assembly, and the executive director of the department of revenue no later than September 1 following the end of a fiscal year the amount of state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution, if any, for such fiscal year and the state revenues in excess of such limitation that the state is authorized to retain and spend pursuant to voter approval of section 24-77-103.6 OR PURSUANT TO PART 2 OF THIS ARTICLE 77.

SECTION 6. In Colorado Revised Statutes, **add** 29-1-306 as follows:

29-1-306. Limitation on property tax revenue - temporary property tax credit - governing body override - notice - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS APPLICABLE SUCCESSOR INDEX.

(b) "LOCAL GOVERNMENT" MEANS A GOVERNMENTAL ENTITY AUTHORIZED BY LAW TO IMPOSE AD VALOREM TAXES ON TAXABLE PROPERTY LOCATED WITHIN ITS TERRITORIAL LIMITS; EXCEPT THAT THE TERM EXCLUDES SCHOOL DISTRICTS AND ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN THAT HAS ADOPTED A HOME RULE CHARTER.

(c) "PROPERTY TAX LIMIT" MEANS THE LIMIT ESTABLISHED IN SUBSECTION (2) OF THIS SECTION ON A LOCAL GOVERNMENT'S PROPERTY TAX REVENUE FOR A PROPERTY TAX YEAR.

(2) (a) FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2023, A LOCAL GOVERNMENT'S PROPERTY TAX REVENUE FOR A PROPERTY TAX YEAR SHALL NOT INCREASE BY MORE THAN INFLATION FROM THE LOCAL GOVERNMENT'S PROPERTY TAX REVENUE FOR THE PRIOR PROPERTY TAX YEAR, UNLESS THE GOVERNING BODY OF THE LOCAL GOVERNMENT APPROVES THE INCREASE IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION. THE GOVERNING BODY MAY ENACT A TEMPORARY PROPERTY TAX CREDIT THAT IS UP TO THE NUMBER OF MILLS NECESSARY TO PREVENT THE LOCAL GOVERNMENT'S PROPERTY TAX REVENUE FROM EXCEEDING THIS PROPERTY TAX LIMIT.

(b) THE LIMIT SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION IS BASED ON THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS MOST RECENTLY PUBLISHED ESTIMATE OF INFLATION FOR THE PRIOR CALENDAR YEAR THAT IS AVAILABLE AS OF DECEMBER 15 OF THE PROPERTY TAX YEAR FOR WHICH THE LIMIT IS BEING CALCULATED.

(3) (a) FOR PURPOSES OF CALCULATING THE PROPERTY TAX LIMIT, PROPERTY TAX REVENUE THAT IS FROM THE FOLLOWING SOURCES OR IS USED FOR THE FOLLOWING PURPOSES IS EXCLUDED FROM PROPERTY TAX REVENUE FOR THE PROPERTY TAX YEAR:

(I) PROPERTY TAX REVENUE FROM THE INCREASED VALUATION FOR ASSESSMENT WITHIN THE TAXING ENTITY FOR THE PRECEDING YEAR THAT IS ATTRIBUTABLE TO NEW CONSTRUCTION AND PERSONAL PROPERTY CONNECTED THEREWITH, AS DEFINED BY THE PROPERTY TAX ADMINISTRATOR IN MANUALS PREPARED PURSUANT TO SECTION 39-2-109 (1)(e);

(II) PROPERTY TAX REVENUE FROM THE INCREASED VALUATION FOR ASSESSMENT ATTRIBUTABLE TO A CHANGE IN LAW FOR A PROPERTY TAX CLASSIFICATION OR TO THE ANNEXATION OR INCLUSION OF ADDITIONAL LAND, THE IMPROVEMENTS THEREON, AND PERSONAL PROPERTY CONNECTED THEREWITH WITHIN THE TAXING ENTITY FOR THE PRECEDING YEAR;

(III) PROPERTY TAX REVENUE FOR PROPERTY THAT HAD PREVIOUSLY BEEN OMITTED FROM THE ASSESSMENT ROLL;

(IV) PROPERTY TAX REVENUE ABATED OR REFUNDED BY THE LOCAL GOVERNMENT DURING THE PROPERTY TAX YEAR;

(V) PROPERTY TAX REVENUE ATTRIBUTABLE TO PREVIOUSLY LEGALLY EXEMPT FEDERAL PROPERTY THAT BECOMES TAXABLE IF SUCH PROPERTY CAUSES AN INCREASE IN THE LEVEL OF SERVICES PROVIDED BY THE LOCAL GOVERNMENT; AND

(VI) ANY AMOUNT FOR THE PAYMENT OF EXPENSES INCURRED IN THE REAPPRAISAL OF CLASSES OR SUBCLASSES ORDERED OR CONDUCTED BY THE STATE BOARD OF EQUALIZATION FOR THE PAYMENT TO THE STATE OF EXCESS STATE EQUALIZATION PAYMENTS TO SCHOOL DISTRICTS, WHICH EXCESS IS DUE TO THE UNDERVALUATION OF TAXABLE PROPERTY.

(b) FOR PURPOSES OF CALCULATING THE PROPERTY TAX LIMIT, PROPERTY TAX REVENUE THAT IS FROM THE FOLLOWING SOURCES OR IS USED FOR THE FOLLOWING PURPOSES IS EXCLUDED FROM PROPERTY TAX REVENUE FOR THE PROPERTY TAX YEAR AND THE PRIOR PROPERTY TAX YEAR:

(I) PROPERTY TAX REVENUE FROM PRODUCING MINES OR LANDS OR LEASEHOLDS PRODUCING OIL OR GAS;

(II) AN AMOUNT TO PROVIDE FOR THE PAYMENT OF BONDS AND INTEREST THEREON, OR FOR THE PAYMENT OF ANY OTHER CONTRACTUAL

OBLIGATION THAT HAS BEEN APPROVED BY A MAJORITY OF THE LOCAL GOVERNMENT'S VOTERS VOTING THEREON AT ANY ELECTION HELD BEFORE, ON, OR AFTER NOVEMBER 7, 2023; AND

(III) ANY REVENUE FROM A MILL LEVY THAT HAS BEEN APPROVED BY VOTERS OF THE LOCAL GOVERNMENT, WITHOUT LIMITATION AS TO RATE OR AMOUNT, AT ANY ELECTION HELD BEFORE, ON, OR AFTER NOVEMBER 7, 2023.

(c) A TEMPORARY PROPERTY TAX CREDIT CREATED UNDER SUBSECTION (2)(a) OF THIS SECTION DOES NOT CHANGE THE UNDERLYING MILL LEVY IMPOSED BY A LOCAL GOVERNMENT. REDUCING OR ELIMINATING A TEMPORARY PROPERTY TAX CREDIT DOES NOT REQUIRE PRIOR VOTER APPROVAL UNDER SECTION 20 (4)(a) OF ARTICLE X OF THE STATE CONSTITUTION.

(4) A LOCAL GOVERNMENT MAY IMPOSE A MILL LEVY THAT WOULD EXCEED THE PROPERTY TAX LIMIT IF THE FOLLOWING PROCEDURES ARE FOLLOWED:

(a) THE GOVERNING BODY OF THE LOCAL GOVERNMENT MUST PUBLISH NOTICE OF ITS PROPOSED INTENT TO EXCEED THE PROPERTY TAX LIMIT IN A NEWSPAPER IN EACH COUNTY IN WHICH THE LOCAL GOVERNMENT IS LOCATED AND ON THE WEBSITE OF THE GOVERNING BODY, IF THE GOVERNING BODY MAINTAINS A WEBSITE, AT LEAST TEN DAYS IN ADVANCE OF THE PUBLIC HEARING AT WHICH THE MILL LEVY IS TO BE APPROVED;

(b) THE NOTICE MUST INCLUDE:

(I) THE PROPOSED MILL LEVY IF THE GOVERNING BODY APPROVES A MILL LEVY THAT WOULD EXCEED THE PROPERTY TAX LIMIT;

(II) ANY TEMPORARY PROPERTY TAX CREDITS; AND

(III) THE DATE, TIME, AND LOCATION OF THE PUBLIC HEARING;

(c) THE GOVERNING BODY OF THE LOCAL GOVERNMENT MUST PROVIDE THE PUBLIC AN OPPORTUNITY TO PRESENT ORAL TESTIMONY AT AN OPEN MEETING WITHIN REASONABLE TIME LIMITS AND WITHOUT AN UNREASONABLE RESTRICTION ON THE NUMBER OF INDIVIDUALS ALLOWED TO

MAKE PUBLIC COMMENT; AND

(d) THE GOVERNING BODY OF THE LOCAL GOVERNMENT MUST ADOPT A RESOLUTION OR ORDINANCE TO APPROVE A MILL LEVY THAT EXCEEDS THE PROPERTY TAX LIMIT AT THE PUBLIC HEARING AFTER THE GOVERNING BODY HAS HEARD FROM INTERESTED TAXPAYERS.

(5) THE FINAL DECISION BY A GOVERNING BODY TO IMPOSE A MILL LEVY THAT EXCEEDS THE PROPERTY TAX LIMIT IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBSECTION (4) OF THIS SECTION IS DEEMED TO BE FINAL AND CONCLUSIVE AND IS NOT SUBJECT TO APPEAL TO COURT.

(6) IF A LOCAL GOVERNMENT EXCEEDS THE PROPERTY TAX LIMIT FOR A PROPERTY TAX YEAR AND DOES NOT COMPLY WITH SUBSECTION (4) OF THIS SECTION, THEN THE LOCAL GOVERNMENT SHALL REFUND TO TAXPAYERS ANY PROPERTY TAXES COLLECTED ABOVE THE PROPERTY TAX LIMIT.

SECTION 7. In Colorado Revised Statutes, 39-1-103, **add** (5)(g) as follows:

39-1-103. Actual value determined - when - legislative declaration. (5) (g) FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, THE ACTUAL VALUE OF RENEWABLE ENERGY AGRICULTURAL LAND IS BASED ON THE WASTE LAND SUBCLASS VALUATION FORMULA PROVIDED BY THE ADMINISTRATOR. IF ANY PORTION OF THE LAND IS USED FOR NONAGRICULTURAL COMMERCIAL OR NONAGRICULTURAL RESIDENTIAL PURPOSES, THAT PORTION IS VALUED ACCORDING TO THE USE, AS REQUIRED BY SUBSECTION (5)(a) OF THIS SECTION.

SECTION 8. In Colorado Revised Statutes, 39-1-104, **amend** (1), (1.6)(c), and (1.8); and **add** (1.9) as follows:

39-1-104. Valuation for assessment - definitions. (1) (a) EXCEPT AS SET FORTH IN SUBSECTION (1)(b) OF THIS SECTION, the valuation for assessment of ~~all taxable property~~ REAL AND PERSONAL PROPERTY THAT IS CLASSIFIED AS LODGING PROPERTY in the state ~~shall be~~ IS twenty-nine percent of the actual value thereof. ~~as determined by the assessor and the administrator in the manner prescribed by law, and that percentage shall be uniformly applied, without exception, to the actual value, so determined, of the real and personal property located within the territorial limits of the~~

~~authority levying a property tax, and all property taxes shall be levied against the aggregate valuation for assessment resulting from the application of that percentage.~~

(b) (I) ~~Notwithstanding subsection (1)(a) of this section,~~ For the property tax year commencing on January 1, 2023, the valuation for assessment of nonresidential property that is classified as lodging property is temporarily reduced to ~~twenty-seven and nine-tenths~~ TWENTY-SEVEN AND EIGHTY-FIVE ONE-HUNDREDTHS percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that ~~reduces~~ CAUSES the valuation for assessment to BE one thousand dollars.

(II) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2027, THE VALUATION FOR ASSESSMENT OF REAL AND PERSONAL PROPERTY THAT IS CLASSIFIED AS LODGING PROPERTY IS TEMPORARILY REDUCED TO TWENTY-SEVEN AND EIGHTY-FIVE ONE-HUNDREDTHS PERCENT OF THE ACTUAL VALUE THEREOF.

(III) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2027, AND JANUARY 1, 2028, THE VALUATION FOR ASSESSMENT OF REAL AND PERSONAL PROPERTY THAT IS CLASSIFIED AS LODGING PROPERTY IS TEMPORARILY REDUCED TO TWENTY-SEVEN AND SIXTY-FIVE ONE-HUNDREDTHS PERCENT OF THE ACTUAL VALUE THEREOF.

(IV) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2029, AND JANUARY 1, 2030, THE VALUATION FOR ASSESSMENT OF REAL AND PERSONAL PROPERTY THAT IS CLASSIFIED AS LODGING PROPERTY IS TEMPORARILY REDUCED TO TWENTY-SIX AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF.

(V) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2031, AND JANUARY 1, 2032, THE VALUATION FOR ASSESSMENT OF REAL AND PERSONAL PROPERTY THAT IS CLASSIFIED AS LODGING PROPERTY IS TEMPORARILY REDUCED TO:

(A) TWENTY-FIVE AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS GREATER

THAN OR EQUAL TO THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR; OR

(B) TWENTY-SIX AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS LESS THAN THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR.

(c) ~~This subsection (1) only applies to nonresidential property that is classified as lodging property.~~

(1.6) (c) Real and personal agricultural property is a subclass of nonresidential property for purposes of the valuation for assessment. REAL PROPERTY THAT IS CLASSIFIED AS AGRICULTURAL LAND THAT CONTAINS A RENEWABLE ENERGY FACILITY, AS DESCRIBED IN SECTION 39-4-102 (1.5), IF THE LAND WAS CLASSIFIED BY THE ASSESSOR AS AGRICULTURAL LAND AT THE TIME THE FACILITY WAS CONSTRUCTED UNDER SECTION 39-1-102 (1.6)(a), IS CLASSIFIED AS RENEWABLE ENERGY AGRICULTURAL LAND, WHICH IS A SUBCLASS OF AGRICULTURAL PROPERTY FOR PURPOSES OF THE VALUATION FOR ASSESSMENT. THIS CLASSIFICATION APPLIES FOR A PROPERTY TAX YEAR THAT THE REAL PROPERTY IS STILL USED FOR AGRICULTURAL PURPOSES AND TO THE PORTION OF THE LAND THAT IS ATTRIBUTABLE TO OR USED IN CONJUNCTION WITH THE RENEWABLE ENERGY FACILITY.

(1.8) (a) The valuation for assessment of real and personal property that is classified as agricultural property or renewable energy production property is twenty-nine percent of the actual value thereof; except that THE VALUATION FOR ASSESSMENT OF THIS PROPERTY IS TEMPORARILY REDUCED AS FOLLOWS:

(I) For THE property tax years commencing on January 1, 2022, AND January 1, 2023, ~~and January 1, 2024,~~ the valuation for assessment of this property is ~~temporarily reduced to~~ twenty-six and four-tenths percent of the actual value thereof;

(II) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2031, THE VALUATION FOR

ASSESSMENT OF THIS PROPERTY, EXCLUDING RENEWABLE ENERGY AGRICULTURAL LAND, IS TWENTY-SIX AND FOUR-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF;

(III) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2031, AND JANUARY 1, 2032, THE VALUATION FOR ASSESSMENT OF THIS PROPERTY, EXCLUDING RENEWABLE ENERGY AGRICULTURAL LAND, IS:

(A) TWENTY-FIVE AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS GREATER THAN OR EQUAL TO THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR; OR

(B) TWENTY-SIX AND FOUR-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS LESS THAN THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR; AND

(IV) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2033, THE VALUATION FOR ASSESSMENT OF RENEWABLE ENERGY AGRICULTURAL LAND IS TWENTY-ONE AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE THEREOF.

(b) The valuation for assessment of all nonresidential property that is not specified in subsection (1) or (1.8)(a) of this section is twenty-nine percent of the actual value thereof; except that ~~for the property tax year commencing on January 1, 2023,~~ the valuation for assessment of this property is temporarily reduced to:

(I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, for all of the property listed by the assessor under any improved commercial subclass codes, twenty-seven and ~~nine-tenths~~ EIGHTY-FIVE ONE-HUNDREDTHS percent of an amount equal to the actual value minus the lesser of thirty thousand dollars or the amount that ~~reduces~~ CAUSES the valuation for assessment to BE one thousand dollars; ~~and~~

(II) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, twenty-seven and ~~nine-tenths~~ EIGHTY-FIVE ONE-HUNDREDTHS percent of the actual value of all other nonresidential property that is not specified in ~~subsections~~ SUBSECTION (1), (1.8)(a), ~~and~~ OR (1.8)(b)(I) of this section;

(III) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2027, TWENTY-SEVEN AND EIGHTY-FIVE ONE-HUNDREDTHS PERCENT OF THE ACTUAL VALUE OF ALL OTHER NONRESIDENTIAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (1) OR (1.8)(a) OF THIS SECTION OR THAT IS NOT UNDER A VACANT LAND SUBCLASS;

(IV) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2027, AND JANUARY 1, 2028, TWENTY-SEVEN AND SIXTY-FIVE ONE-HUNDREDTHS PERCENT OF THE ACTUAL VALUE OF ALL OTHER NONRESIDENTIAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (1) OR (1.8)(a) OF THIS SECTION OR THAT IS NOT UNDER A VACANT LAND SUBCLASS;

(V) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2029, AND JANUARY 1, 2030, TWENTY-SIX AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE OF ALL OTHER NONRESIDENTIAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (1) OR (1.8)(a) OF THIS SECTION OR THAT IS NOT UNDER A VACANT LAND SUBCLASS; AND

(VI) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2031, AND JANUARY 1, 2032:

(A) TWENTY-FIVE AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE OF ALL OTHER NONRESIDENTIAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (1) OR (1.8)(a) OF THIS SECTION OR THAT IS NOT UNDER A VACANT LAND SUBCLASS, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS GREATER THAN OR EQUAL TO THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR; OR

(B) TWENTY-SIX AND NINE-TENTHS PERCENT OF THE ACTUAL VALUE OF ALL OTHER NONRESIDENTIAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (1) OR (1.8)(a) OF THIS SECTION OR THAT IS NOT UNDER A

VACANT LAND SUBCLASS, IF, FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2031, THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION IS LESS THAN THREE AND SEVEN-TENTHS PERCENT FROM THE PRIOR PROPERTY TAX YEAR.

(b.5) (I) FOR PURPOSES OF SUBSECTIONS (1)(b)(V), (1.8)(a)(III), AND (1.8)(b)(VI) OF THIS SECTION, THE TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY FOR ASSESSMENT EXCLUDES THE VALUATION FOR ASSESSMENT FROM PRODUCING MINES AND LANDS OR LEASEHOLDS PRODUCING OIL OR GAS.

(II) THE ADMINISTRATOR SHALL CALCULATE THE AVERAGE INCREASE IN TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY WITHIN THE THIRTY-TWO COUNTIES WITH THE SMALLEST INCREASES IN TOTAL VALUATION FOR PURPOSES OF SUBSECTIONS (1)(b)(V), (1.8)(a)(III), AND (1.8)(b)(VI) OF THIS SECTION BASED ON INFORMATION PROVIDED BY COUNTY ASSESSORS IN ACCORDANCE WITH SUBSECTION (1.8)(b.5)(III) OF THIS SECTION AND THE ABSTRACT OF ASSESSMENT FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2030.

(III) NO LATER THAN MAY 5, 2031, EACH ASSESSOR SHALL PROVIDE THE ADMINISTRATOR WITH AN ESTIMATE OF THE TOTAL VALUATION FOR ASSESSMENT OF TAXABLE REAL PROPERTY LOCATED WITHIN THE COUNTY BASED ON THE NOTICES OF VALUATION FOR THE PROPERTY TAX YEAR.

(IV) ON OR BEFORE JULY 1, 2031, THE ADMINISTRATOR SHALL PUBLISH ON THE WEBSITE MAINTAINED BY THE DIVISION OF PROPERTY TAXATION IN THE DEPARTMENT OF LOCAL AFFAIRS WHETHER THE RATES SET FORTH IN SUBSECTIONS (1)(b)(V)(A), (1.8)(a)(III)(A), AND (1.8)(b)(VI)(A) OF THIS SECTION APPLY OR WHETHER THE RATES SET FORTH IN SUBSECTIONS (1)(b)(V)(B), (1.8)(a)(III)(B), AND (1.8)(b)(VI)(B) OF THIS SECTION APPLY FOR PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2031, AND JANUARY 1, 2032.

(c) The actual value of real and personal property specified in ~~subsection (1.8)(a) or (1.8)(b)~~ SUBSECTION (1), (1.8)(a), OR (1.8)(b) of this section is determined by the assessor and the administrator in the manner prescribed by law, and a valuation for assessment percentage is uniformly

applied, without exception, to the actual value, AS so determined OR AS SO DETERMINED AND THEN REDUCED, of the various classes and subclasses of real and personal property located within the territorial limits of the authority levying a property tax, and all property taxes are levied against the aggregate valuation for assessment resulting from the application of the percentage.

(d) As used in this section, unless the context otherwise requires, "nonresidential property" means all taxable real and personal property in the state other than residential real property, producing mines, or lands or leaseholds producing oil or gas. Nonresidential property includes the subclasses of agricultural property, lodging property, and renewable energy production property, for purposes of the ~~ratio of~~ valuation for assessment.

(1.9) (a) THE TEMPORARY REDUCTIONS IN THE VALUATIONS FOR ASSESSMENT SET FORTH IN SUBSECTIONS (1)(b) AND (1.8) OF THIS SECTION MADE IN SENATE BILL 23-303 ARE CONTINGENT ON THE STATE'S AUTHORITY TO RETAIN AND SPEND STATE SURPLUS UP TO THE PROPOSITION HH CAP UNDER PART 2 OF ARTICLE 77 OF TITLE 24. NOTWITHSTANDING ANY PROVISION OF SUBSECTIONS (1)(b) AND (1.8) OF THIS SECTION TO THE CONTRARY, IF, FOR A FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2023, THE STATE IS NOT PERMITTED TO RETAIN AND SPEND STATE SURPLUS UP TO THE PROPOSITION HH CAP FOR THE FISCAL YEAR FOR ANY REASON, EXCLUDING A LEGISLATIVE ENACTMENT BY THE GENERAL ASSEMBLY, THEN FOR THE PROPERTY TAX YEAR THAT BEGINS DURING THE FISCAL YEAR AND ALL PROPERTY TAX YEARS THEREAFTER, THE TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT SET FORTH IN SUBSECTIONS (1)(b) AND (1.8) OF THIS SECTION MADE IN SENATE BILL 23-303 DO NOT APPLY.

(b) THE STATE CONTROLLER SHALL NOTIFY THE ADMINISTRATOR IF SUBSECTION (1.9)(a) OF THIS SECTION APPLIES, AND THE ADMINISTRATOR SHALL PUBLISH NOTICE ON THE WEBSITE MAINTAINED BY THE DIVISION OF PROPERTY TAXATION IN THE DEPARTMENT OF LOCAL AFFAIRS THAT THE APPLICABLE TEMPORARY REDUCTIONS SET FORTH IN SUBSECTIONS (1)(b) AND (1.8) OF THIS SECTION MADE IN SENATE BILL 23-303 DO NOT APPLY.

SECTION 9. In Colorado Revised Statutes, 39-1-104.2, **amend** (3)(q) and (3)(r); and **add** (1)(a.3), (1)(a.7), (3.5), and (3.7) as follows:

39-1-104.2. Residential real property - valuation for assessment

- legislative declaration - definitions. (1) As used in this section, unless the context otherwise requires:

(a.3) "PRIMARY RESIDENCE REAL PROPERTY" MEANS PROPERTY THAT IS CLASSIFIED AS SUCH UNDER SECTION 39-1-104.6.

(a.7) "QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY" MEANS PROPERTY THAT IS CLASSIFIED AS SUCH UNDER SECTION 39-1-104.7 (2).

(3) (q) The ~~ratio of~~ valuation for assessment for multi-family residential real property is 7.15 percent of THE actual value THEREOF for property tax years commencing on or after January 1, 2019; except that THE VALUATION FOR ASSESSMENT IS TEMPORARILY REDUCED AS FOLLOWS:

(I) For the property tax ~~years~~ YEAR commencing on January 1, 2022, ~~and January 1, 2024,~~ the ~~ratio of~~ valuation for assessment for multi-family residential real property is ~~temporarily reduced to~~ 6.8 percent of THE actual value THEREOF;

(II) For the property tax year commencing on January 1, 2023, the ~~ratio of~~ valuation for assessment for multi-family residential real property is ~~temporarily reduced to 6.765 percent~~ 6.7 PERCENT of THE AMOUNT EQUAL TO THE actual value OF THE PROPERTY MINUS THE LESSER OF FIFTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS; AND

(III) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2033, THE VALUATION FOR ASSESSMENT FOR MULTI-FAMILY RESIDENTIAL REAL PROPERTY IS 6.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF FORTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS.

(r) The ~~ratio of~~ valuation for assessment for all residential real property other than multi-family residential real property is 7.15 percent of THE actual value THEREOF; except that THE VALUATION FOR ASSESSMENT IS TEMPORARILY REDUCED AS FOLLOWS:

(I) For the property tax year commencing on January 1, 2022, the ~~ratio of~~ valuation for assessment for all residential real property other than multi-family residential real property is ~~temporarily reduced to~~ 6.95 percent of THE actual value THEREOF;

(II) For the property tax year commencing on January 1, 2023, the ~~ratio of~~ valuation for assessment for all residential real property other than multi-family residential real property is ~~6.765 percent~~ 6.7 PERCENT of THE AMOUNT EQUAL TO THE actual value ~~and~~ OF THE PROPERTY MINUS THE LESSER OF FIFTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS;

(III) For the property tax year commencing on January 1, 2024, the ~~ratio of~~ valuation for assessment for all residential real property other than multi-family residential real property is ~~temporarily established as the percentage calculated in accordance with section 39-1-104.4~~ 6.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF FORTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS; AND

(IV) FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2025, BUT BEFORE JANUARY 1, 2033:

(A) THE VALUATION FOR ASSESSMENT FOR PRIMARY RESIDENCE REAL PROPERTY, INCLUDING MULTI-FAMILY PRIMARY RESIDENCE REAL PROPERTY, IS 6.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF FORTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS;

(B) THE VALUATION FOR ASSESSMENT FOR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY, INCLUDING MULTI-FAMILY QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY, IS 6.7 PERCENT OF THE AMOUNT EQUAL TO THE ACTUAL VALUE OF THE PROPERTY MINUS THE LESSER OF ONE HUNDRED FORTY THOUSAND DOLLARS OR THE AMOUNT THAT CAUSES THE VALUATION FOR ASSESSMENT OF THE PROPERTY TO BE ONE THOUSAND DOLLARS; AND

(C) THE VALUATION FOR ASSESSMENT FOR ALL RESIDENTIAL REAL PROPERTY THAT IS NOT SPECIFIED IN SUBSECTION (3)(q)(III), (3)(r)(IV)(A), OR (3)(r)(IV)(B) OF THIS SECTION IS 6.7 PERCENT OF THE ACTUAL VALUE THEREOF.

(3.5) (a) THE TEMPORARY REDUCTIONS IN THE VALUATIONS FOR ASSESSMENT SET FORTH IN SUBSECTION (3) OF THIS SECTION MADE IN SENATE BILL 23-303 ARE CONTINGENT ON THE STATE'S AUTHORITY TO RETAIN AND SPEND STATE SURPLUS UP TO THE PROPOSITION HH CAP UNDER PART 2 OF ARTICLE 77 OF TITLE 24. NOTWITHSTANDING ANY PROVISION OF SUBSECTION (3) OF THIS SECTION TO THE CONTRARY, IF, FOR A FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2023, THE STATE IS NOT PERMITTED TO RETAIN AND SPEND STATE SURPLUS UP TO THE PROPOSITION HH CAP FOR THE FISCAL YEAR FOR ANY REASON, EXCLUDING A LEGISLATIVE ENACTMENT BY THE GENERAL ASSEMBLY, THEN FOR THE PROPERTY TAX YEAR THAT BEGINS DURING THE FISCAL YEAR AND ALL PROPERTY TAX YEARS THEREAFTER, THE TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT SET FORTH IN SUBSECTION (3) OF THIS SECTION MADE IN SENATE BILL 23-303 DO NOT APPLY.

(b) THE STATE CONTROLLER SHALL NOTIFY THE ADMINISTRATOR IF SUBSECTION (3.5)(a) OF THIS SECTION APPLIES, AND THE ADMINISTRATOR SHALL PUBLISH NOTICE ON THE WEBSITE MAINTAINED BY THE DIVISION OF PROPERTY TAXATION IN THE DEPARTMENT OF LOCAL AFFAIRS THAT THE APPLICABLE TEMPORARY REDUCTIONS SET FORTH IN SUBSECTION (3) OF THIS SECTION MADE IN SENATE BILL 23-303 DO NOT APPLY.

(3.7) (a) THE ADMINISTRATOR SHALL CONVENE A WORKING GROUP WITH REPRESENTATIVES, INCLUDING ASSESSORS AND ELECTED COUNTY OFFICIALS FROM SMALL-, MEDIUM-, AND LARGE-SIZED COUNTIES AND A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF REAL ESTATE PROFESSIONALS, TO MAKE RECOMMENDATIONS ABOUT WAYS TO STREAMLINE AND IMPROVE THE DESIGNATION OF THE PRIMARY RESIDENCE REAL PROPERTY IN THE EVENT THAT VOTERS APPROVE THE BALLOT ISSUE REFERRED IN ACCORDANCE WITH SECTION 24-77-202. IN FORMULATING ITS RECOMMENDATIONS, THE WORKING GROUP SHALL CONSIDER INFORMATION TECHNOLOGY NEEDS AND ADMINISTRATIVE IMPACTS. ON OR BEFORE JANUARY 1, 2024, THE WORKING GROUP SHALL PROVIDE A REPORT OF ITS RECOMMENDATIONS TO THE SENATE LOCAL GOVERNMENT AND HOUSING COMMITTEE, AND THE HOUSE OF REPRESENTATIVES TRANSPORTATION,

HOUSING, AND LOCAL GOVERNMENT COMMITTEE; EXCEPT THAT NO REPORT IS DUE IF THE BALLOT ISSUE DOES NOT PASS.

(b) THIS SUBSECTION (3.7) IS REPEALED, EFFECTIVE JULY 1, 2024.

SECTION 10. In Colorado Revised Statutes, **repeal** 39-1-104.3 and 39-1-104.4 as follows:

39-1-104.3. Partial real property tax reductions - residential property - definitions - repeal. ~~(1) As used in this section, unless the context otherwise requires, "residential real property" means property listed by the assessor under any residential real property classification code.~~

~~(2) For the property tax year commencing on January 1, 2023,the valuation for assessment for residential real property is six and seven hundred sixty-five thousandths percent, as set forth in section 39-1-104.2 (3)(q)(II) and (3)(r)(II), of the amount equal to the actual value, determined pursuant to section 39-1-103, minus the lesser of fifteen thousand dollars or the amount that reduces the valuation for assessment to one thousand dollars.~~

~~(3) This adjustment does not apply to any other class of property.~~

~~(4) This section is repealed, effective July 1, 2025.~~

39-1-104.4. Adjustment of residential rate. ~~(1) The ratio of valuation for assessment for residential real property other than multi-family residential real property for the property tax year commencing on January 1, 2024, is equal to the percentage necessary for the following to equal a total of seven hundred million dollars:~~

~~(a) The aggregate reduction of local government property tax revenue during the property tax year commencing on January 1, 2023, as a result of the changes made in Senate Bill 22-238, enacted in 2022, that reduced valuations for assessment set forth pursuant to sections 39-1-104 (1)(b) and (1.8)(b), 39-1-104.2 (3)(q)(II) and (3)(r)(II), and 39-3-104.3 (2); and~~

~~(b) The aggregate reduction of local government property tax revenue during the property tax year commencing on January 1, 2024, as a~~

~~result of the reduced valuations for assessment set forth pursuant to sections 39-1-104 (1.8)(a) and 39-1-104.2 (3)(q)(I) and (3)(r)(III) for the property tax year commencing on January 1, 2024.~~

~~(2) On or before March 21, 2024, based on the information available on that date, the property tax administrator shall submit a report to the general assembly calculating the ratio of valuation for assessment specified in subsection (1) of this section.~~

SECTION 11. In Colorado Revised Statutes, **add** 39-1-104.6 and 39-1-104.7 as follows:

39-1-104.6. Primary residence real property. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "OWNER-OCCUPIER" MEANS AN INDIVIDUAL WHO:

(A) IS AN OWNER OF RECORD OF RESIDENTIAL REAL PROPERTY THAT THE INDIVIDUAL OCCUPIES AS THE INDIVIDUAL'S PRIMARY RESIDENCE;

(B) IS NOT AN OWNER OF RECORD OF THE RESIDENTIAL REAL PROPERTY THAT THE INDIVIDUAL OCCUPIES AS THE INDIVIDUAL'S PRIMARY RESIDENCE, BUT EITHER IS A SPOUSE OR CIVIL UNION PARTNER OF AN OWNER OF RECORD OF THE RESIDENTIAL REAL PROPERTY AND WHO ALSO OCCUPIES THE RESIDENTIAL REAL PROPERTY AS THE OWNER OF RECORD'S PRIMARY RESIDENCE, OR IS THE SURVIVING SPOUSE OR PARTNER OF AN INDIVIDUAL WHO WAS AN OWNER OF RECORD OF THE RESIDENTIAL REAL PROPERTY AND WHO OCCUPIED THE RESIDENTIAL REAL PROPERTY WITH THE SURVIVING SPOUSE OR PARTNER AS THEIR PRIMARY RESIDENCE UNTIL THE OWNER OF RECORD'S DEATH; OR

(C) IS NOT AN OWNER OF RECORD OF THE RESIDENTIAL REAL PROPERTY THAT THE INDIVIDUAL OCCUPIES AS THE INDIVIDUAL'S PRIMARY RESIDENCE, ONLY BECAUSE THE PROPERTY HAS BEEN PURCHASED BY OR TRANSFERRED TO A TRUST, A CORPORATE PARTNERSHIP, OR ANY OTHER LEGAL ENTITY SOLELY FOR ESTATE PLANNING PURPOSES AND IS THE MAKER OF THE TRUST OR A PRINCIPAL OF THE CORPORATE PARTNERSHIP OR OTHER LEGAL ENTITY;

(D) OCCUPIES RESIDENTIAL REAL PROPERTY AS THE INDIVIDUAL'S

PRIMARY RESIDENCE AND IS THE SPOUSE OR CIVIL UNION PARTNER OF A PERSON WHO ALSO OCCUPIES THE RESIDENTIAL REAL PROPERTY, WHO IS NOT THE OWNER OF RECORD OF THE PROPERTY ONLY BECAUSE THE PROPERTY HAS BEEN PURCHASED BY OR TRANSFERRED TO A TRUST, A CORPORATE PARTNERSHIP, OR ANY OTHER LEGAL ENTITY SOLELY FOR ESTATE PLANNING PURPOSES, AND WHO IS THE MAKER OF THE TRUST OR A PRINCIPAL OF THE CORPORATE PARTNERSHIP OR OTHER LEGAL ENTITY; OR

(E) OCCUPIES RESIDENTIAL REAL PROPERTY AS THE INDIVIDUAL'S PRIMARY RESIDENCE AND IS THE SURVIVING SPOUSE OR PARTNER OF A PERSON WHO OCCUPIED THE RESIDENTIAL REAL PROPERTY WITH THE SURVIVING SPOUSE OR PARTNER UNTIL THE PERSON'S DEATH, WHO WAS NOT THE OWNER OF RECORD OF THE PROPERTY AT THE TIME OF THE PERSON'S DEATH ONLY BECAUSE THE PROPERTY HAD BEEN PURCHASED BY OR TRANSFERRED TO A TRUST, A CORPORATE PARTNERSHIP, OR ANY OTHER LEGAL ENTITY SOLELY FOR ESTATE PLANNING PURPOSES PRIOR TO THE PERSON'S DEATH, AND WHO WAS THE MAKER OF THE TRUST OR A PRINCIPAL OF THE CORPORATE PARTNERSHIP OR OTHER LEGAL ENTITY PRIOR TO THE PERSON'S DEATH.

(II) "OWNER-OCCUPIER" ALSO INCLUDES ANY INDIVIDUAL WHO, BUT FOR THE CONFINEMENT OF THE INDIVIDUAL TO A HOSPITAL, NURSING HOME, OR ASSISTED LIVING FACILITY, WOULD OCCUPY THE RESIDENTIAL REAL PROPERTY AS THE INDIVIDUAL'S PRIMARY RESIDENCE AND WOULD MEET ONE OR MORE OF THE OWNERSHIP CRITERIA SPECIFIED IN SUBSECTION (1)(a)(I) OF THIS SECTION, IF THE RESIDENTIAL REAL PROPERTY:

(A) IS TEMPORARILY UNOCCUPIED; OR

(B) IS OCCUPIED BY THE SPOUSE, CIVIL UNION PARTNER, OR A FINANCIAL DEPENDENT OF THE INDIVIDUAL.

(b) "OWNER OF RECORD" MEANS AN INDIVIDUAL WHOSE NAME APPEARS ON A VALID RECORDED DEED TO RESIDENTIAL REAL PROPERTY AS AN OWNER OF THE PROPERTY.

(c) "QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY" MEANS A PROPERTY THAT IS CLASSIFIED AS SUCH UNDER SECTION 39-1-104.7.

(d) "SURVIVING SPOUSE OR PARTNER" MEANS AN INDIVIDUAL WHO WAS LEGALLY MARRIED TO ANOTHER INDIVIDUAL, OR WAS A PARTNER IN A CIVIL UNION WITH ANOTHER INDIVIDUAL, AT THE TIME OF THE OTHER INDIVIDUAL'S DEATH AND WHO HAS NOT REMARRIED OR ENTERED INTO ANOTHER CIVIL UNION.

(2) **Classification.** (a) EXCEPT AS SET FORTH IN SECTION 39-1-104.7, FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2025, RESIDENTIAL REAL PROPERTY THAT AS OF THE ASSESSMENT DATE IS USED AS THE PRIMARY RESIDENCE OF AN OWNER-OCCUPIER IS CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY, WHICH IS A SUBCLASS OF RESIDENTIAL REAL PROPERTY, IF:

(I) THE OWNER-OCCUPIER COMPLETES AND FILES AN APPLICATION IN THE MANNER REQUIRED BY SUBSECTION (3) OF THIS SECTION; AND

(II) THE CIRCUMSTANCES THAT QUALIFY THE PROPERTY FOR THE CLASSIFICATION HAVE NOT CHANGED SINCE THE FILING OF THE APPLICATION.

(b) UNDER NO CIRCUMSTANCES IS THE CLASSIFICATION ALLOWED FOR PROPERTY TAXES ASSESSED DURING ANY PROPERTY TAX YEAR PRIOR TO THE YEAR IN WHICH AN OWNER-OCCUPIER FIRST FILES AN APPLICATION IN THE MANNER REQUIRED BY SUBSECTION (3) OF THIS SECTION. IF OWNERSHIP OF RESIDENTIAL REAL PROPERTY THAT QUALIFIED AS PRIMARY RESIDENCE REAL PROPERTY AS OF THE ASSESSMENT DATE CHANGES AFTER THE ASSESSMENT DATE, THE CLASSIFICATION IS ALLOWED ONLY IF AN OWNER-OCCUPIER WHOSE STATUS AS AN OWNER-OCCUPIER QUALIFIED THE PROPERTY FOR THE CLASSIFICATION HAS FILED AN APPLICATION BY THE DEADLINE SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION.

(c) IF AN INDIVIDUAL OWNS AND OCCUPIES A DWELLING UNIT IN A COMMON INTEREST COMMUNITY, AS DEFINED IN SECTION 38-33.3-103 (8), AS THE INDIVIDUAL'S PRIMARY RESIDENCE, ONLY THE DWELLING UNIT THAT THE INDIVIDUAL OCCUPIES AS THE INDIVIDUAL'S PRIMARY RESIDENCE MAY QUALIFY AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY.

(d) FOR PURPOSES OF THIS SUBSECTION (2), TWO INDIVIDUALS WHO ARE LEGALLY MARRIED OR ARE CIVIL UNION PARTNERS, BUT WHO OWN MORE THAN ONE PARCEL OF RESIDENTIAL REAL PROPERTY, ARE DEEMED TO

OCCUPY THE SAME PRIMARY RESIDENCE AND ONLY THAT PROPERTY MAY BE CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY. IF AN INDIVIDUAL IS AN OWNER-OCCUPIER OF A RESIDENTIAL REAL PROPERTY AND AN OWNER OF RECORD ON ANOTHER PROPERTY ALONG WITH A MEMBER OF THE INDIVIDUAL'S FAMILY OTHER THAN THE INDIVIDUAL'S SPOUSE, THEN THE OTHER FAMILY MEMBER MAY BE AN OWNER-OCCUPIER OF THE OTHER PROPERTY.

(e) REAL PROPERTY THAT MIGHT OTHERWISE BE CLASSIFIED AS MULTI-FAMILY RESIDENTIAL REAL PROPERTY THAT CONTAINS A UNIT THAT QUALIFIES AS PRIMARY RESIDENCE REAL PROPERTY UNDER THIS SECTION IS CLASSIFIED AS MULTI-FAMILY PRIMARY RESIDENCE REAL PROPERTY.

(3) **Applications.** (a) FOR A PROPERTY TO BE CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY OR AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY, AN INDIVIDUAL MUST FILE WITH THE ASSESSOR A COMPLETED APPLICATION NO LATER THAN MARCH 15 OF THE FIRST PROPERTY TAX YEAR FOR WHICH THE CLASSIFICATION IS SOUGHT. AN APPLICATION RETURNED BY MAIL IS DEEMED FILED ON THE DATE IT IS POSTMARKED.

(b) (I) AN APPLICANT MUST COMPLETE AN APPLICATION FOR PROPERTY TO BE CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY OR AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY ON A FORM PRESCRIBED BY THE ADMINISTRATOR THAT INCLUDES THE FOLLOWING INFORMATION:

(A) THE APPLICANT'S NAME, MAILING ADDRESS, AND SOCIAL SECURITY NUMBER;

(B) THE ADDRESS AND SCHEDULE OR PARCEL NUMBER OF THE PROPERTY;

(C) THE NAME AND SOCIAL SECURITY NUMBER OF THE APPLICANT'S SPOUSE OR CIVIL UNION PARTNER WHO OCCUPIES THE PROPERTY AS THE SPOUSE OR CIVIL UNION PARTNER'S PRIMARY RESIDENCE;

(D) IF A TRUST IS THE OWNER OF RECORD OF THE PROPERTY, THE NAMES OF THE MAKER OF THE TRUST, THE TRUSTEE, AND THE BENEFICIARIES OF THE TRUST;

(E) IF A CORPORATE PARTNERSHIP OR OTHER LEGAL ENTITY IS THE OWNER OF RECORD OF THE PROPERTY, THE NAMES OF THE PRINCIPALS OR THE CORPORATE PARTNERSHIP OR OTHER LEGAL ENTITY;

(F) A STATEMENT OF WHETHER THE APPLICANT PREVIOUSLY QUALIFIED FOR THE PROPERTY TAX EXEMPTION FOR QUALIFYING SENIORS ALLOWED BY SECTION 39-3-203 (1) FOR A DIFFERENT PROPERTY THAN THE PROPERTY THAT THE APPLICANT CURRENTLY OCCUPIES AS THE APPLICANT'S PRIMARY RESIDENCE;

(G) AN AFFIRMATION, IN A FORM PRESCRIBED BY THE ADMINISTRATOR, THAT THE APPLICANT BELIEVES, UNDER PENALTY OF PERJURY IN THE SECOND DEGREE AS DEFINED IN SECTION 18-8-503, THAT ALL INFORMATION PROVIDED BY THE APPLICANT IS CORRECT; AND

(H) ANY OTHER INFORMATION THAT THE ADMINISTRATOR REASONABLY DEEMS NECESSARY.

(II) THE ADMINISTRATOR SHALL ALSO INCLUDE IN THE APPLICATION A STATEMENT THAT AN APPLICANT, OR, IF APPLICABLE, THE TRUSTEE, HAS A LEGAL OBLIGATION TO INFORM THE ASSESSOR WITHIN SIXTY DAYS OF ANY CHANGE IN THE OWNERSHIP OR OCCUPANCY OF THE RESIDENTIAL REAL PROPERTY FOR WHICH CLASSIFICATION AS PRIMARY RESIDENCE REAL PROPERTY OR AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY HAS BEEN APPLIED FOR OR ALLOWED THAT WOULD PREVENT THE CLASSIFICATION FROM BEING ALLOWED FOR THE PROPERTY.

(c) FOR PURPOSES OF THE APPLICATION AND RELATED PROVISIONS IN THIS SECTION, REAL PROPERTY THAT IS MULTI-FAMILY PRIMARY RESIDENCE REAL PROPERTY IS TREATED AS PRIMARY RESIDENCE REAL PROPERTY AND MULTI-FAMILY QUALIFIED-SENIOR PRIMARY REAL RESIDENCE IS TREATED AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY.

(4) **Penalties.** (a) IN ADDITION TO ANY PENALTIES PRESCRIBED BY LAW FOR PERJURY IN THE SECOND DEGREE, AN APPLICANT WHO KNOWINGLY PROVIDES FALSE INFORMATION ON AN APPLICATION OR ATTEMPTS TO CLAIM MORE THAN ONE PROPERTY AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY FOR THE SAME PROPERTY TAX YEAR SHALL:

(I) NOT BE ABLE TO CLAIM THE PROPERTY AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY FOR THE PROPERTY TAX YEAR;

(II) PAY, TO THE TREASURER OF A COUNTY IN WHICH PROPERTY WAS IMPROPERLY CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY DUE TO THE PROVISION BY THE APPLICANT OF FALSE INFORMATION OR THE FILING OF MORE THAN ONE APPLICATION, AN AMOUNT EQUAL TO THE AMOUNT OF PROPERTY TAXES NOT PAID AS A RESULT OF THE IMPROPER CLASSIFICATION AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY; AND

(III) UPON CONVICTION OF PERJURY, BE REQUIRED TO PAY TO THE TREASURER OF ANY COUNTY IN WHICH AN INVALID APPLICATION WAS FILED AN ADDITIONAL AMOUNT EQUAL TO TWICE THE AMOUNT OF THE PROPERTY TAXES IDENTIFIED IN SUBSECTION (4)(a)(II) OF THIS SECTION PLUS INTEREST, CALCULATED AT THE ANNUAL RATE CALCULATED PURSUANT TO SECTION 39-21-110.5 FROM THE DATE THE INVALID APPLICATION WAS FILED UNTIL THE DATE THE APPLICANT MAKES THE PAYMENT REQUIRED BY THIS SUBSECTION (4)(a)(III).

(b) IF AN APPLICANT OR A TRUSTEE FAILS TO INFORM THE ASSESSOR WITHIN SIXTY DAYS OF ANY CHANGE IN THE OWNERSHIP OR OCCUPANCY OF RESIDENTIAL REAL PROPERTY FOR CLASSIFICATION AS A PRIMARY RESIDENCE REAL PROPERTY OR A QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY THAT HAS BEEN APPLIED FOR OR ALLOWED THAT WOULD PREVENT THE CLASSIFICATION FROM BEING ALLOWED FOR THE PROPERTY AS REQUIRED BY SUBSECTION (3)(b) OF THIS SECTION:

(I) THE CLASSIFICATION IS NOT ALLOWED WITH RESPECT TO THE RESIDENTIAL REAL PROPERTY FOR THE SUBSEQUENT PROPERTY TAX YEAR; AND

(II) THE APPLICANT OR TRUSTEE SHALL PAY, TO THE TREASURER OF ANY COUNTY IN WHICH THE CLASSIFICATION WAS IMPROPERLY ALLOWED DUE TO THE APPLICANT'S OR TRUSTEE'S FAILURE TO IMMEDIATELY INFORM THE ASSESSOR OF ANY CHANGE IN THE OWNERSHIP OR OCCUPANCY OF RESIDENTIAL REAL PROPERTY, AN AMOUNT EQUAL TO THE AMOUNT OF PROPERTY TAXES NOT PAID AS A RESULT OF THE IMPROPER CLASSIFICATION

AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY PLUS INTEREST, CALCULATED AT THE ANNUAL RATE SPECIFIED IN SECTION 39-21-110.5 FROM THE DATE ON WHICH THE CHANGE IN THE OWNERSHIP OR OCCUPANCY OCCURRED UNTIL THE DATE THE APPLICANT MAKES THE PAYMENT REQUIRED BY THIS SUBSECTION (4)(b)(II).

(c) ANY AMOUNT REQUIRED TO BE PAID TO A TREASURER PURSUANT TO SUBSECTION (4)(a) OR (4)(b) OF THIS SECTION IS DEEMED PART OF THE LIEN OF GENERAL TAXES IMPOSED ON THE PERSON REQUIRED TO PAY THE AMOUNT AND HAS THE PRIORITY SPECIFIED IN SECTION 39-1-107 (2).

(5) **Confidentiality.** (a) COMPLETED APPLICATIONS FOR CLASSIFICATION AS PRIMARY RESIDENCE REAL PROPERTY OR AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY ARE CONFIDENTIAL; EXCEPT THAT:

(I) (A) AN ASSESSOR OR THE ADMINISTRATOR MAY RELEASE STATISTICAL COMPILATIONS OR INFORMATIONAL SUMMARIES OF ANY INFORMATION CONTAINED IN THE APPLICATIONS AND SHALL PROVIDE A COPY OF AN APPLICATION TO THE APPLICANT WHO RETURNED THE APPLICATION AND THE TREASURER OF THE SAME COUNTY AS THE ASSESSOR;

(B) AN ASSESSOR OR THE ADMINISTRATOR MAY INTRODUCE A COPY OF AN APPLICATION AS EVIDENCE IN ANY ADMINISTRATIVE HEARING OR LEGAL PROCEEDING IN WHICH THE ACCURACY OR VERACITY OF THE APPLICATION IS AT ISSUE SO LONG AS NEITHER THE APPLICANT'S SOCIAL SECURITY NUMBER NOR ANY OTHER SOCIAL SECURITY NUMBER SET FORTH IN THE APPLICATION ARE DIVULGED.

(II) A TREASURER SHALL KEEP CONFIDENTIAL EACH INDIVIDUAL APPLICATION RECEIVED FROM AN ASSESSOR BUT MAY RELEASE STATISTICAL COMPILATIONS OR INFORMATIONAL SUMMARIES OF ANY INFORMATION CONTAINED IN APPLICATIONS AND MAY INTRODUCE A COPY OF AN APPLICATION AS EVIDENCE IN ANY ADMINISTRATIVE HEARING OR LEGAL PROCEEDING IN WHICH THE ACCURACY OR VERACITY OF THE APPLICATION IS AT ISSUE SO LONG AS NEITHER THE APPLICANT'S SOCIAL SECURITY NUMBER NOR ANY OTHER SOCIAL SECURITY NUMBER SET FORTH IN THE APPLICATION IS DIVULGED.

(III) THE ADMINISTRATOR MAY SHARE INFORMATION CONTAINED IN

AN APPLICATION, INCLUDING ANY SOCIAL SECURITY NUMBER SET FORTH IN THE APPLICATION, WITH THE DEPARTMENT OF REVENUE TO THE EXTENT NECESSARY TO ENABLE THE ADMINISTRATOR TO VERIFY THAT THE APPLICANT SATISFIES LEGAL REQUIREMENTS FOR THE CLASSIFICATION.

(b) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (5)(a) OF THIS SECTION, THE ADMINISTRATOR, AN ASSESSOR, OR A TREASURER SHALL NOT GIVE ANY OTHER PERSON ANY LISTING OF APPLICANTS OR ANY OTHER INFORMATION THAT WOULD ENABLE A PERSON TO EASILY ASSEMBLE A MAILING LIST OF APPLICANTS FOR THE PRIMARY RESIDENCE REAL PROPERTY CLASSIFICATION OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY CLASSIFICATION.

(c) IN ACCORDANCE WITH SECTION 25-2-103 (4.7), THE ADMINISTRATOR SHALL ANNUALLY PROVIDE TO THE STATE REGISTRAR OF VITAL STATISTICS OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT A LIST, BY NAME AND SOCIAL SECURITY NUMBER, OF EVERY INDIVIDUAL WHO HAD PROPERTY CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY FOR THE IMMEDIATELY PRECEDING YEAR SO THAT THE REGISTRAR CAN PROVIDE TO THE ADMINISTRATOR A LIST OF ALL THE INDIVIDUALS ON THE LIST WHO HAVE DIED. NO LATER THAN APRIL 1, 2026, AND APRIL 1 OF EACH YEAR THEREAFTER, THE ADMINISTRATOR SHALL FORWARD TO THE ASSESSOR OF EACH COUNTY THE NAME AND SOCIAL SECURITY NUMBER OF EACH DECEASED INDIVIDUAL WHO HAD RESIDENTIAL REAL PROPERTY LOCATED WITHIN THE COUNTY THAT WAS SO CLASSIFIED FOR THE IMMEDIATELY PRECEDING YEAR, SO THAT THE ASSESSOR CAN CHANGE THE CLASSIFICATION OF THE PROPERTY, IF NECESSARY.

(6) **Notice.** (a) AS SOON AS PRACTICABLE AFTER JANUARY 1, 2025, AND AFTER JANUARY 1 OF EACH YEAR THEREAFTER, EACH COUNTY TREASURER SHALL, AT THE TREASURER'S DISCRETION, MAIL OR ELECTRONICALLY SEND TO EACH PERSON WHOSE NAME APPEARS ON THE TAX LIST AND WARRANT AS AN OWNER OF RESIDENTIAL REAL PROPERTY NOTICE OF THE PRIMARY RESIDENCE REAL PROPERTY AND THE QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY CLASSIFICATIONS. THE TREASURER SHALL MAIL OR ELECTRONICALLY SEND THE NOTICE EACH YEAR ON OR BEFORE THE DATE ON WHICH THE TREASURER MAILS THE PROPERTY TAX STATEMENT FOR THE PREVIOUS PROPERTY TAX YEAR PURSUANT TO SECTION 39-10-103. THE ADMINISTRATOR SHALL PRESCRIBE THE FORM OF THE

NOTICE, WHICH MUST INCLUDE A STATEMENT OF THE ELIGIBILITY CRITERIA FOR THE PRIMARY RESIDENCE REAL PROPERTY AND QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY CLASSIFICATIONS AND INSTRUCTIONS FOR OBTAINING A RELATED APPLICATION.

(b) TO REDUCE MAILING COSTS, AN ASSESSOR MAY COORDINATE WITH THE TREASURER OF THE SAME COUNTY TO INCLUDE NOTICE WITH THE TAX STATEMENT FOR THE PREVIOUS PROPERTY TAX YEAR MAILED PURSUANT TO SECTION 39-10-103, OR MAY INCLUDE NOTICE WITH THE NOTICE OF VALUATION MAILED PURSUANT TO SECTION 39-5-121 (1)(a).

(7) **Notice of classification - appeal.** (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, AN ASSESSOR SHALL ONLY CLASSIFY PROPERTY AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY IF AN APPLICANT HAS TIMELY RETURNED AN APPLICATION IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION THAT ESTABLISHES THAT EITHER CLASSIFICATION IS APPROPRIATE.

(II) IF THE INFORMATION PROVIDED ON OR WITH AN APPLICATION INDICATES THAT THE APPLICANT IS NOT ENTITLED TO THE CLASSIFICATION, OR IS INSUFFICIENT TO ALLOW THE ASSESSOR TO DETERMINE WHETHER THE PROPERTY MEETS THE CLASSIFICATION, THE ASSESSOR SHALL DENY THE APPLICATION AND MAIL TO THE APPLICANT A STATEMENT PROVIDING THE REASONS FOR THE DENIAL AND INFORMING THE APPLICANT OF THE APPLICANT'S RIGHT TO CONTEST THE DENIAL PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION. THE ASSESSOR SHALL MAIL THE STATEMENT NO LATER THAN AUGUST 1 OF THE PROPERTY TAX YEAR FOR WHICH THE APPLICATION WAS FILED.

(b) (I) AN APPLICANT WHOSE APPLICATION HAS BEEN DENIED MAY CONTEST THE DENIAL BY REQUESTING A HEARING BEFORE THE COUNTY COMMISSIONERS SITTING AS THE COUNTY BOARD OF EQUALIZATION NO LATER THAN AUGUST 15 OF THE PROPERTY TAX YEAR FOR WHICH THE APPLICATION WAS FILED. THE HEARING SHALL BE HELD ON OR AFTER AUGUST 1 AND NO LATER THAN SEPTEMBER 1 OF THE PROPERTY TAX YEAR FOR WHICH THE APPLICATION WAS FILED, AND THE DECISION OF THE COUNTY BOARD OF EQUALIZATION IS NOT SUBJECT TO FURTHER ADMINISTRATIVE APPEAL BY EITHER THE APPLICANT OR THE ASSESSOR.

(II) AN INDIVIDUAL WHO HAS NOT TIMELY FILED AN APPLICATION WITH THE ASSESSOR BY MARCH 15 MAY FILE A LATE APPLICATION NO LATER THAN THE JULY 15 THAT IMMEDIATELY FOLLOWS THAT DEADLINE. THE ASSESSOR SHALL ACCEPT ANY SUCH APPLICATION BUT MAY NOT ACCEPT ANY LATE APPLICATION FILED AFTER JULY 15. A DECISION OF AN ASSESSOR TO DISALLOW THE FILING OF A LATE APPLICATION AFTER JULY 15 OR TO GRANT OR DENY THE CLASSIFICATION TO AN APPLICANT WHO HAS FILED A LATE APPLICATION AFTER MARCH 15 BUT NO LATER THAN JULY 15 IS FINAL, AND AN APPLICANT WHO IS DENIED LATE FILING OR AN EXEMPTION MAY NOT CONTEST THE DENIAL.

(III) THE COUNTY BOARD OF EQUALIZATION MAY APPOINT INDEPENDENT REFEREES TO CONDUCT HEARINGS REQUESTED PURSUANT TO SUBSECTION (7)(b)(I) OF THIS SECTION ON BEHALF OF THE COUNTY BOARD AND TO MAKE FINDINGS AND SUBMIT RECOMMENDATIONS TO THE COUNTY BOARD FOR ITS FINAL ACTION.

(8) **Reporting to administrator.** (a) NO LATER THAN SEPTEMBER 10, 2025, AND SEPTEMBER 10 OF EACH YEAR THEREAFTER, EACH ASSESSOR SHALL FORWARD TO THE ADMINISTRATOR A REPORT ON THE RESIDENTIAL REAL PROPERTY IN THE ASSESSOR'S COUNTY THAT QUALIFIES AS PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY FOR THE CURRENT PROPERTY TAX YEAR. FOR EACH UNIT OF RESIDENTIAL REAL PROPERTY, THE REPORT MUST INCLUDE:

(I) THE LEGAL DESCRIPTION OF THE PROPERTY;

(II) THE SCHEDULE OR PARCEL NUMBER FOR THE PROPERTY; AND

(III) THE NAME AND SOCIAL SECURITY NUMBER OF THE APPLICANT WHO CLAIMED AN EXEMPTION FOR THE PROPERTY AND, IF APPLICABLE, THE APPLICANT'S SPOUSE OR CIVIL UNION PARTNER WHO OCCUPIES THE PROPERTY.

(b) (I) NO LATER THAN NOVEMBER 1, 2025, AND NOVEMBER 1 OF EACH YEAR THEREAFTER, THE ADMINISTRATOR SHALL PROVIDE WRITTEN NOTICE TO AN APPLICANT THAT THE APPLICANT IS INELIGIBLE AND THE REASON FOR THE INELIGIBILITY. THE NOTICE MUST ALSO INCLUDE A STATEMENT SPECIFYING THE DEADLINE AND PROCEDURES FOR PROTESTING THE DENIAL OF THE CLASSIFICATION.

(II) AN APPLICANT WHOSE CLAIMS FOR THE CLASSIFICATION ARE DENIED BY THE ADMINISTRATOR PURSUANT TO SUBSECTION (8)(b)(I) OF THIS SECTION MAY FILE A WRITTEN PROTEST WITH THE ADMINISTRATOR NO LATER THAN NOVEMBER 15 OF THE YEAR IN WHICH THE CLASSIFICATION WAS DENIED. AN APPLICATION RETURNED BY MAIL IS DEEMED FILED ON THE DATE IT IS POSTMARKED. IF THE GROUND FOR THE DENIAL IS THAT THE APPLICANT, OR THE APPLICANT AND THE APPLICANT'S SPOUSE OR CIVIL UNION PARTNER, CLAIMED MULTIPLE CLASSIFICATIONS, THE SOLE GROUND FOR A PROTEST IS THAT THE APPLICANT, OR THE APPLICANT AND THE APPLICANT'S SPOUSE OR CIVIL UNION PARTNER, FILED ONLY ONE CLAIM FOR THE CLASSIFICATION, AND THE PROTEST MUST SPECIFY THE PROPERTY IDENTIFIED BY THE ADMINISTRATOR IN THE NOTICE DENYING THE CLASSIFICATION FOR WHICH NO CLASSIFICATION WAS CLAIMED. IF THE GROUND FOR THE DENIAL IS THAT THE APPLICANT IS NOT AN OWNER-OCCUPIER OF THE RESIDENTIAL REAL PROPERTY FOR WHICH THE CLASSIFICATION IS CLAIMED, THE SOLE GROUNDS FOR A PROTEST ARE THAT THE APPLICANT ACTUALLY IS AN OWNER-OCCUPIER AND THAT THE APPLICANT QUALIFIES FOR THE CLASSIFICATION.

(c) NO LATER THAN DECEMBER 1, 2025, AND EACH DECEMBER 1 THEREAFTER, AND AFTER EXAMINING THE REPORTS SENT BY EACH ASSESSOR, DENYING CLAIMS FOR CLASSIFICATIONS, AND DECIDING PROTESTS IN ACCORDANCE WITH SUBSECTION (8)(b) OF THIS SECTION, THE ADMINISTRATOR SHALL PROVIDE WRITTEN NOTICE TO THE ASSESSOR OF EACH COUNTY IN WHICH AN APPLICATION HAS BEEN DENIED BECAUSE THE APPLICANT WAS INELIGIBLE.

39-1-104.7. Qualified-senior primary residence real property - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "OWNER-OCCUPIER" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-1-104.6 (1)(a).

(b) "SENIOR HOMESTEAD EXEMPTION" MEANS THE PROPERTY TAX EXEMPTION FOR QUALIFYING SENIORS ALLOWED BY SECTION 39-3-203 (1).

(2) (a) FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2025, RESIDENTIAL REAL PROPERTY THAT AS OF THE ASSESSMENT DATE IS USED AS THE PRIMARY RESIDENCE OF AN OWNER-OCCUPIER IS CLASSIFIED AS QUALIFIED-SENIOR PRIMARY RESIDENCE

REAL PROPERTY, WHICH IS A SUBCLASS OF RESIDENTIAL REAL PROPERTY, IF:

(I) THE REAL PROPERTY WOULD OTHERWISE BE CLASSIFIED AS PRIMARY RESIDENCE REAL PROPERTY UNDER SECTION 39-1-104.6; AND

(II) THE OWNER-OCCUPIER OF THE PROPERTY PREVIOUSLY QUALIFIED FOR THE SENIOR HOMESTEAD EXEMPTION FOR A DIFFERENT PROPERTY AND DOES NOT QUALIFY FOR THE SENIOR HOMESTEAD EXEMPTION FOR THE CURRENT PROPERTY TAX YEAR.

(b) REAL PROPERTY THAT MIGHT OTHERWISE BE CLASSIFIED AS MULTI-FAMILY RESIDENTIAL REAL PROPERTY THAT CONTAINS A UNIT THAT QUALIFIES AS QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY UNDER THIS SECTION IS CLASSIFIED AS MULTI-FAMILY QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY.

SECTION 12. In Colorado Revised Statutes, 39-1-111, **amend** (1) and (5) as follows:

39-1-111. Taxes levied by board of county commissioners - repeal. (1) (a) No later than December 22 in each year, the board of county commissioners in each county of the state, or such other body in the city and county of Denver as shall be authorized by law to levy taxes, or the city council of the city and county of Broomfield, shall, either by an order to be entered in the record of its proceedings or by written approval, levy against the valuation for assessment of all taxable property located in the county on the assessment date, and in the various towns, cities, school districts, and special districts within such county, the requisite property taxes for all purposes required by law.

(b) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION IS POSTPONED FROM DECEMBER 22, 2023, TO JANUARY 12, 2024.

(II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE JULY 1, 2025.

(5) (a) If, after certification of the valuation for assessment pursuant to section 39-5-128 and notification of total actual value pursuant to section 39-5-121 (2)(b) but prior to December 10, changes in such valuation for assessment or total actual value are made by the assessor, the assessor shall

send a single notification to the board of county commissioners or other body authorized by law to levy property taxes, to the division of local government, and to the department of education that includes all of such changes that have occurred during said specified period of time. Upon receipt of such notification, such board or body shall make adjustments in the tax levies to ensure compliance with section 29-1-301, ~~C.R.S.,~~ if applicable, and may make adjustments in order that the same amount of revenue be raised. A copy of any adjustment to tax levies shall be transmitted to the administrator and assessor. Nothing in this subsection (5) shall be construed as conferring the authority to exceed statutorily imposed mill levy or revenue-raising limits.

(b) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (5)(a) OF THIS SECTION IS POSTPONED FROM DECEMBER 10, 2023, TO DECEMBER 29, 2023.

(II) THIS SUBSECTION (5)(b) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 13. In Colorado Revised Statutes, 39-5-128, **amend** (1) as follows:

39-5-128. Certification of valuation for assessment - repeal. (1) (a) No later than August 25 of each year, the assessor shall certify to the department of education, to the clerk of each town and city, to the secretary of each school district, and to the secretary of each special district within the assessor's county the total valuation for assessment of all taxable property located within the territorial limits of each such town, city, school district, or special district and shall notify each such clerk, secretary, and board to officially certify the levy of such town, city, school district, or special district to the board of county commissioners no later than December 15. The assessor shall also certify to the secretary of each school district the actual value of the taxable property in the district.

(b) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION FOR OFFICIALLY CERTIFYING A LEVY IS POSTPONED FROM DECEMBER 15, 2023, TO JANUARY 5, 2024.

(II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 14. In Colorado Revised Statutes, 39-3-210, **amend** (1)(a), (1)(e), (3), (4)(b), (5), and (6); **repeal and reenact, with amendments,** (2) and (4)(a); and **add** (1)(a.3), (1)(b.5), (1)(d.5), (1)(e.5),(1)(f.3), (1)(f.7), (2.5), (4.5), and (5.5) as follows:

39-3-210. Reporting of property tax revenue reductions - reimbursement of local governmental entities - definitions - local government backfill cash fund - creation - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Additional state revenues" means the ~~lesser of two hundred forty million dollars or the total amount of the~~ state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution that the state is required to refund under section 20 (7)(d) of article X of the state constitution, including any amount specified in section 24-77-103.8, that ~~exceeds~~ EXCEED the ~~amounts~~ AMOUNT projected to be refunded as required by ~~sections 39-3-209 and 39-22-627~~ SECTION 39-3-209 for the state fiscal year commencing on July 1, 2022.

(a.3) "COUNTY" INCLUDES A CITY AND COUNTY.

(b.5) "FUND" MEANS THE LOCAL GOVERNMENT BACKFILL CASH FUND CREATED IN SUBSECTION (5.5)(a) OF THIS SECTION.

(d.5) "LOCAL GOVERNMENTAL ENTITY" MEANS A GOVERNMENTAL ENTITY AUTHORIZED BY LAW TO IMPOSE AD VALOREM TAXES ON TAXABLE PROPERTY LOCATED WITHIN ITS TERRITORIAL LIMITS; EXCEPT THAT THE TERM EXCLUDES SCHOOL DISTRICTS.

(e) "Municipality" means a home rule or statutory city, town, OR territorial charter city. ~~or city and county.~~

(e.5) "PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT" MEANS THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT CREATED IN SECTION 24-77-203 (3)(a).

(f.3) "SELECT SPECIAL DISTRICT" MEANS A FIRE DISTRICT, HEALTH SERVICE DISTRICT, WATER DISTRICT, SANITATION DISTRICT, OR LIBRARY DISTRICT.

(f.7) "TOTAL PROPERTY TAX REVENUE REDUCTION" MEANS THE AMOUNT THAT A TREASURER CALCULATES FOR A LOCAL GOVERNMENTAL ENTITY IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(2) (a) (I) FOR THE PROPERTY TAX YEARS COMMENCING ON JANUARY 1, 2023, AND JANUARY 1, 2024, EACH TREASURER SHALL CALCULATE THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH LOCAL GOVERNMENTAL ENTITY WITHIN THE TREASURER'S COUNTY AS A RESULT OF ALL OF THE CUMULATIVE TEMPORARY REDUCTIONS IN VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022, AND SENATE BILL 23-303.

(II) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2025, BUT BEFORE JANUARY 1, 2033, EACH TREASURER SHALL CALCULATE THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH LOCAL GOVERNMENTAL ENTITY WITHIN THE TREASURER'S COUNTY AS A RESULT OF ALL OF THE TEMPORARY REDUCTIONS IN VALUATION FOR ASSESSMENT MADE IN SENATE BILL 23-303.

(b) (I) WHEN CALCULATING THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR A LOCAL GOVERNMENTAL ENTITY FOR A PROPERTY TAX YEAR AS REQUIRED BY THIS SECTION, A TREASURER SHALL USE THE LOCAL GOVERNMENTAL ENTITY'S MILL LEVY FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, EXCLUDING ANY MILLS LEVIED TO PROVIDE FOR THE PAYMENT OF BONDS AND INTEREST THEREON OR FOR THE PAYMENT OF ANY OTHER CONTRACTUAL OBLIGATION THAT HAS BEEN APPROVED BY A MAJORITY OF THE LOCAL GOVERNMENTAL ENTITY'S VOTERS VOTING THEREON.

(II) NOTWITHSTANDING SUBSECTION (2)(a) OF THIS SECTION, A TREASURER IS NOT REQUIRED TO DETERMINE THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR A LOCAL GOVERNMENTAL ENTITY THAT IS INELIGIBLE TO RECEIVE A REIMBURSEMENT FROM THE STATE FOR A PROPERTY TAX YEAR IN ACCORDANCE WITH SUBSECTION (4.5)(b)(I)(B) OF THIS SECTION.

(c) (I) FOR THE PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2023, BUT BEFORE JANUARY 1, 2033, EACH ASSESSOR SHALL CALCULATE THE DIFFERENCE IN ASSESSED VALUE OF REAL PROPERTY FOR EACH LOCAL GOVERNMENTAL ENTITY WITHIN THE ASSESSOR'S COUNTY FOR

THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, AND THE PROPERTY TAX YEAR.

(II) NOTWITHSTANDING SUBSECTION (2)(c)(I) OF THIS SECTION, AN ASSESSOR IS NOT REQUIRED TO CALCULATE THE DIFFERENCE IN ASSESSED VALUE OF REAL PROPERTY FOR A LOCAL GOVERNMENTAL ENTITY, EXCLUDING A COUNTY, THAT IS INELIGIBLE TO RECEIVE A REIMBURSEMENT FROM THE STATE FOR A PROPERTY TAX YEAR IN ACCORDANCE WITH SUBSECTION (4.5)(b)(I)(B) OF THIS SECTION.

(d) FOR PURPOSES OF THIS SECTION, A LOCAL GOVERNMENTAL ENTITY WITHIN A COUNTY INCLUDES THE COUNTY ITSELF.

(2.5) (a) ON OR BEFORE SEPTEMBER 15, 2023, EACH TREASURER SHALL REPORT THE FOLLOWING ESTIMATES TO THE ADMINISTRATOR FOR ALL LOCAL GOVERNMENTAL ENTITIES WITHIN THE TREASURER'S COUNTY:

(I) THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THAT IS BASED ON THE:

(A) TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022; AND

(B) CUMULATIVE TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022, AND SENATE BILL 23-303, IF A MAJORITY OF VOTERS APPROVE THE BALLOT ISSUE REFERRED IN ACCORDANCE WITH SECTION 24-77-202; AND

(II) THE INCREASE IN ASSESSED VALUE FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THAT IS BASED ON THE:

(A) TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022; AND

(B) CUMULATIVE TEMPORARY REDUCTIONS IN THE VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022, AND SENATE BILL 23-303, IF A MAJORITY OF VOTERS APPROVE THE BALLOT ISSUE REFERRED IN ACCORDANCE WITH SECTION 24-77-202.

(b) THE ADMINISTRATOR SHALL PROVIDE THE ESTIMATES RECEIVED IN ACCORDANCE WITH SUBSECTION (2.5)(a) OF THIS SECTION TO THE DEPARTMENT OF REVENUE AND LEGISLATIVE COUNCIL STAFF.

(3) No later than March 1, 2024, ~~each~~ AND MARCH 1 OF THE NEXT NINE YEARS THEREAFTER, A treasurer shall report the amounts specified in subsection (2) of this section, as applicable and the basis for the amounts to the administrator. ~~and~~ The administrator may require a treasurer to provide additional information as necessary to evaluate the accuracy of the amounts reported. The administrator shall confirm that the reported amounts are correct or rectify the amounts, if necessary. The administrator shall then forward the correct amounts for ~~each~~ A county to the state treasurer to enable the state treasurer to issue a reimbursement warrant to ~~each~~ A treasurer in accordance with subsection (4) of this section.

(4) (a) (I) NO LATER THAN APRIL 15, 2024, THE STATE TREASURER SHALL ISSUE A WARRANT, TO BE PAID UPON DEMAND FROM ADDITIONAL STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2022, AND, IF NECESSARY, FROM OTHER MONEY IN THE GENERAL FUND, TO EACH TREASURER THAT IS EQUAL TO THE TOTAL REIMBURSEMENT AMOUNTS SET FORTH IN SUBSECTION (4.5) OF THIS SECTION FOR ALL LOCAL GOVERNMENTAL ENTITIES WITHIN THE TREASURER'S COUNTY FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023.

(II) NO LATER THAN APRIL 15, 2025, AND APRIL 15 OF THE NEXT EIGHT YEARS THEREAFTER, THE STATE TREASURER SHALL ISSUE A WARRANT, TO BE PAID UPON DEMAND FIRST FROM THE FUND, AND, IF NECESSARY, FROM STATE REVENUES IN THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT, TO EACH TREASURER THAT IS EQUAL TO THE TOTAL REIMBURSEMENT AMOUNTS SET FORTH IN SUBSECTION (4.5) OF THIS SECTION FOR ALL LOCAL GOVERNMENTAL ENTITIES WITHIN THE TREASURER'S COUNTY FOR THE PRIOR PROPERTY TAX YEAR.

(b) Each treasurer shall distribute the total amount received from the state treasurer to the local governmental entities, excluding school districts, within the treasurer's county as if the revenues had been regularly paid as property tax, but so that the local governmental entities only receive the amounts determined pursuant to ~~subsection (4)(a) of~~ this section.

(4.5) (a) EXCEPT AS SET FORTH IN SUBSECTIONS (4.5)(b), (4.5)(c),

AND (4.5)(d) OF THIS SECTION, THE REIMBURSEMENT FOR A LOCAL GOVERNMENTAL ENTITY FOR A PROPERTY TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2023, BUT BEFORE JANUARY 1, 2033, IS EQUAL TO:

(I) FOR COUNTIES WITH A POPULATION THAT IS THREE HUNDRED THOUSAND OR LESS:

(A) THE ENTIRE AMOUNT OF THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH LOCAL GOVERNMENTAL ENTITY WITHIN A COUNTY THAT HAD AN INCREASE OF LESS THAN TEN PERCENT IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR FOR WHICH THE REIMBURSEMENT IS BEING CALCULATED; AND

(B) NINETY PERCENT OF THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH LOCAL GOVERNMENTAL ENTITY THAT HAD AN INCREASE OF TEN PERCENT OR MORE IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR FOR WHICH THE REIMBURSEMENT IS BEING CALCULATED;

(II) FOR COUNTIES WITH A POPULATION GREATER THAN THREE HUNDRED THOUSAND:

(A) THE ENTIRE AMOUNT OF THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH MUNICIPALITY OR SELECT SPECIAL DISTRICT THAT HAD AN INCREASE OF LESS THAN TEN PERCENT IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR FOR WHICH THE REIMBURSEMENT IS BEING CALCULATED;

(B) NINETY PERCENT OF THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR EACH MUNICIPALITY OR SELECT SPECIAL DISTRICT THAT HAD AN INCREASE OF TEN PERCENT OR MORE IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR FOR WHICH THE REIMBURSEMENT IS BEING CALCULATED; AND

(C) SIXTY-FIVE PERCENT OF THE TOTAL PROPERTY TAX REVENUE REDUCTION FOR ALL LOCAL GOVERNMENTAL ENTITIES BESIDES A

MUNICIPALITY OR A SELECT SPECIAL DISTRICT.

(b) (I) EXCEPT AS SET FORTH IN SUBSECTION (4.5)(b)(II) OF THIS SECTION, FOR PROPERTY TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2024, A LOCAL GOVERNMENTAL ENTITY IS INELIGIBLE TO RECEIVE REIMBURSEMENT UNDER THIS SECTION IF:

(A) THE LOCAL GOVERNMENTAL ENTITY HAS AN INCREASE OF TWENTY PERCENT OR MORE IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR FOR WHICH A REIMBURSEMENT AMOUNT IS CALCULATED; OR

(B) THE LOCAL GOVERNMENTAL ENTITY IS WITHIN A COUNTY THAT HAS A POPULATION GREATER THAN THREE HUNDRED THOUSAND AND WAS INELIGIBLE TO RECEIVE A REIMBURSEMENT UNDER SUBSECTION (4.5)(b)(I)(A) OF THIS SECTION FOR A PRIOR PROPERTY TAX YEAR.

(II) THE REIMBURSEMENT FOR A FIRE DISTRICT, HEALTH SERVICE DISTRICT, OR AMBULANCE DISTRICT THAT WOULD OTHERWISE BE INELIGIBLE TO RECEIVE A REIMBURSEMENT BASED ON SUBSECTION (4.5)(b)(I) OF THIS SECTION IS EQUAL TO FIFTY PERCENT OF THE DISTRICT'S TOTAL PROPERTY TAX REVENUE REDUCTION FOR THE PROPERTY TAX YEAR.

(c) (I) FOR A PROPERTY TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2033, THE TOTAL OF ALL REIMBURSEMENTS STATEWIDE UNDER THIS SECTION SHALL NOT EXCEED THE TOTAL OF THE AMOUNT IN THE FUND AND AN AMOUNT EQUAL TO TWENTY PERCENT OF THE AMOUNT IN THE PROPOSITION HH GENERAL FUND EXEMPT ACCOUNT AS OF THE DATE THAT THE TREASURER IS MAKING THE REIMBURSEMENTS.

(II) IF THE TOTAL OF ALL REIMBURSEMENTS STATEWIDE WOULD OTHERWISE EXCEED THE LIMIT SET FORTH IN SUBSECTION (4.5)(c)(I) OF THIS SECTION FOR A PROPERTY TAX YEAR, THE STATE TREASURER SHALL PROVIDE THE REIMBURSEMENTS OTHERWISE SPECIFIED IN THIS SUBSECTION (4.5) TO ALL FIRE DISTRICTS, HEALTH SERVICE DISTRICTS, AND AMBULANCE DISTRICTS AND THEN PROPORTIONALLY REDUCE THE REIMBURSEMENT AMOUNT FOR ALL OTHER LOCAL GOVERNMENTAL ENTITIES SO THAT THE TOTAL OF ALL REIMBURSEMENTS STATEWIDE, INCLUDING THE

REIMBURSEMENT AMOUNTS FOR ALL FIRE DISTRICTS, HEALTH SERVICE DISTRICTS, AND AMBULANCE DISTRICTS, EQUALS THE LIMIT FOR THE PROPERTY TAX YEAR.

(III) THE STATE TREASURER SHALL REDUCE A LOCAL GOVERNMENTAL ENTITY'S REIMBURSEMENT AS NECESSARY TO AVOID THE LOCAL GOVERNMENTAL ENTITY EXCEEDING ITS FISCAL YEAR SPENDING LIMIT UNDER SECTION 20 (7)(b) OF ARTICLE X OF THE STATE CONSTITUTION FOR THE FISCAL YEAR.

(d) IF A LOCAL GOVERNMENTAL ENTITY HAS AN INCREASE OF TWENTY PERCENT OR MORE IN THE ASSESSED VALUE OF REAL PROPERTY FROM THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2022, TO THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THEN, FOR THE REIMBURSEMENT FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE LOCAL GOVERNMENTAL ENTITY'S TOTAL PROPERTY TAX REVENUE REDUCTION IS BASED ONLY ON THE TEMPORARY REDUCTIONS IN VALUATION FOR ASSESSMENT MADE IN SENATE BILL 22-238, ENACTED IN 2022.

(e) THE REIMBURSEMENT AMOUNTS SET FORTH IN THIS SECTION ARE BASED ON THE AMOUNTS THAT THE ADMINISTRATOR REPORTS TO THE TREASURER IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (4.5), POPULATION IS DETERMINED PURSUANT TO THE MOST RECENTLY PUBLISHED POPULATION ESTIMATES FROM THE STATE DEMOGRAPHER APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS.

(f) IF A LOCAL GOVERNMENTAL ENTITY IS LOCATED IN MORE THAN ONE COUNTY, THEN THE PART LOCATED IN EACH COUNTY IS TREATED LIKE ANY OTHER LOCAL GOVERNMENTAL ENTITY LOCATED WITHIN THE COUNTY FOR THE PURPOSE OF DETERMINING THE REIMBURSEMENT AMOUNT UNDER SUBSECTION (4.5)(a) OF THIS SECTION, BUT, FOR THE PURPOSE OF APPLYING SUBSECTION (4.5)(b) OF THIS SECTION, THE ENTIRE LOCAL GOVERNMENTAL ENTITY IS CONSIDERED.

(5) On or before March 21, 2024, based on the information available as of that date, the property tax administrator shall submit a report to the general assembly describing the ~~aggregate reduction of local government~~ TOTAL property tax revenue ~~during~~ REDUCTION FOR ALL LOCAL

GOVERNMENTAL ENTITIES STATEWIDE FOR the property tax year commencing on January 1, 2023. ~~as a result of the changes made in Senate Bill 22-238, enacted in 2022, that reduced valuations for assessment set forth pursuant to sections 39-1-104 (1)(b) and (1.8)(b), 39-1-104.2 (3)(q)(II) and (3)(r)(II), and 39-3-104.3 (2).~~

(5.5) (a) THE LOCAL GOVERNMENT BACKFILL CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH SUBSECTION (5.5)(b) OF THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE LOCAL GOVERNMENT BACKFILL CASH FUND TO THE FUND.

(b) ON FEBRUARY 1, 2024, THE STATE TREASURER SHALL TRANSFER ONE HUNDRED TWENTY-EIGHT MILLION DOLLARS FROM THE GENERAL FUND TO THE FUND.

(c) THE MONEY IN THE FUND IS AVAILABLE FOR THE STATE TREASURER TO PAY THE WARRANTS REQUIRED TO BE ISSUED IN ACCORDANCE WITH SUBSECTION (4)(a)(II) OF THIS SECTION.

(6) This section is repealed, effective ~~July 1, 2025~~ JULY 1, 2035.

SECTION 15. In Colorado Revised Statutes, **amend** 39-5-129 as follows:

39-5-129. Delivery of tax warrant - public inspection - repeal. (1) As soon as practicable after the requisite taxes for the year have been levied but in no event later than January 10 of each year, the assessor shall deliver the tax warrant under ~~his~~ THE hand and official seal OF THE ASSESSOR to the treasurer, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. The assessor shall retain one or more true copies thereof, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. Such tax warrant shall set forth the assessment roll, reciting the persons in whose names taxable property in the county has been listed, the class of such taxable property and the valuation for assessment thereof, the several taxes levied against such valuation, and the amount of such taxes extended against each separate valuation. At the end of the warrant, the aggregate of all taxes levied shall

be totaled, balanced, and prorated to the several funds of each levying authority, and the treasurer shall be commanded to collect all such taxes.

(2) (a) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE DEADLINE SET FORTH IN SUBSECTION (1) OF THIS SECTION IS POSTPONED FROM JANUARY 10, 2024, TO JANUARY 19, 2024.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 16. In Colorado Revised Statutes, 39-10-103, **add** (1)(c) as follows:

39-10-103. Tax statement - repeal. (1) (c) (I) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, THE TREASURER SHALL MAIL THE STATEMENT AS SOON AS PRACTICABLE AFTER JANUARY 19, 2024.

(II) THIS SUBSECTION (1)(c) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 17. In Colorado Revised Statutes, 39-21-113, **amend** (24) as follows:

39-21-113. Reports and returns - rule - repeal. (24) Notwithstanding any other provision of this section, the executive director, after receiving from the property tax administrator a list of individuals who are claiming EITHER the property tax exemptions for qualifying seniors and disabled veterans allowed under part 2 of article 3 of this ~~title~~ TITLE 39 OR THE PRIMARY RESIDENCE REAL PROPERTY OR QUALIFIED-SENIOR PRIMARY RESIDENCE REAL PROPERTY CLASSIFICATION FOR THE PROPERTY, shall provide to the property tax administrator information pertaining to the listed individuals, including their names, social security numbers, marital and income tax filing status, and residency status, needed by the administrator to verify that the exemption OR CLASSIFICATION is allowed only to applicants who satisfy legal requirements for claiming it. The administrator and the administrator's agents, clerks, and employees shall keep all information received from the executive director confidential, and any individual who fails to do so is guilty of a misdemeanor and subject to punishment as specified in subsection (6) of this section.

SECTION 18. In Colorado Revised Statutes, 39-22-2002, **add** (5.5)

as follows:

39-22-2002. Fiscal years commencing on or after July 1, 1998 - state sales tax refund - authority of executive director - repeal. (5.5) (a) IN ADDITION TO THE CALCULATIONS OTHERWISE REQUIRED BY THIS SECTION, NO LATER THAN OCTOBER 1, 2023, THE EXECUTIVE DIRECTOR SHALL CALCULATE THE AMOUNT OF THE IDENTICAL INDIVIDUAL REFUND CALCULATED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION AND THE INCOME CLASSIFICATIONS AND THE AMOUNT OF THE REFUND ALLOWED FOR EACH INCOME CLASSIFICATION PURSUANT TO SECTION 39-22-2003 (3) FOR THE TAXABLE YEAR COMMENCING DURING THE FISCAL YEAR BASED ON THE AMOUNT OF EXCESS STATE REVENUES THAT WILL BE REFUNDED UNDER SECTION 39-3-210 WITH OR WITHOUT THE PROVISIONS OF SENATE BILL 23-303 TAKING EFFECT.

(b) THIS SUBSECTION (5.5) IS REPEALED, EFFECTIVE JULY 1, 2024.

SECTION 19. In Colorado Revised Statutes, 22-54-114, **add** (10) as follows:

22-54-114. State public school fund - repeal. (10) (a) ON FEBRUARY 1, 2024, THE STATE TREASURER SHALL TRANSFER SEVENTY-TWO MILLION DOLLARS FROM THE GENERAL FUND TO THE STATE PUBLIC SCHOOL FUND FOR THE PURPOSE OF OFFSETTING REDUCTIONS IN SCHOOL DISTRICT PROPERTY TAX REVENUE.

(b) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 20. In Colorado Revised Statutes, 39-5-121, **add** (3.5) as follows:

39-5-121. Notice of valuation - legislative declaration - definition - repeal. (3.5) (a) ON OR BEFORE MARCH 1, 2024, THE ADMINISTRATOR SHALL PREPARE A DESCRIPTION OF THE PROPERTY TAX CLASSES AND SUBCLASSES SET FORTH IN SECTIONS 39-1-104 AND 39-1-104.2, THE VALUATION FOR ASSESSMENT FOR THE DIFFERENT CLASSES AND SUBCLASSES, THE PROPERTY TAX YEARS THAT THE VARIOUS VALUATIONS FOR ASSESSMENT APPLY, AND INFORMATION ABOUT THE APPLICATION PROCESS SET FORTH IN SECTION 39-1-104.6 (3). THE ASSESSOR SHALL EITHER INCLUDE THE DESCRIPTION ALONG WITH A NOTICE OF VALUATION THAT IS

REQUIRED TO BE SENT IN THE 2024 CALENDAR YEAR UNDER SUBSECTION (1) OR (1.5) OF THIS SECTION OR MAKE IT AVAILABLE ON THE ASSESSOR'S WEBSITE.

(b) THIS SUBSECTION (3.5) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 21. In Colorado Revised Statutes, 39-10-104.5, amend (3)(a) as follows:

39-10-104.5. Payment dates - optional payment dates - failure to pay - delinquency. (3) (a) (I) If the first installment is not paid on or before the last day of February, then delinquent interest on the first installment shall accrue at the rate of one percent per month from the first day of March until the date of payment; except that, if payment of the first installment is made after the last day of February but not later than thirty days after the mailing by the treasurer of the tax statement, or true and actual notification of an electronic statement, pursuant to section 39-10-103 (1)(a), no such delinquent interest shall accrue. If the second installment is not paid by the fifteenth day of June, delinquent interest on the second installment shall accrue at the rate of one percent per month from the sixteenth day of June until the date of payment. Interest on the first installment shall continue to accrue at the same time that interest is accruing on the unpaid portion of the second installment. The taxpayer shall continue to have the option of paying delinquent property taxes in two equal installments until one day prior to the sale of the tax lien on such property pursuant to article 11 of this title.

(II) (A) FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2023, DELINQUENT INTEREST DOES NOT ACCRUE IF PAYMENT OF THE FIRST INSTALLMENT IS MADE AFTER THE LAST DAY OF FEBRUARY BUT NOT LATER THAN FIFTEEN DAYS AFTER THE MAILING BY THE TREASURER OF THE TAX STATEMENT, OR TRUE AND ACTUAL NOTIFICATION OF AN ELECTRONIC STATEMENT, PURSUANT TO SECTION 39-10-103 (1).

(B) THIS SUBSECTION (3)(a)(II) IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 22. Appropriation. (1) For the 2023-24 state fiscal year, $62,426 is appropriated to the department of local affairs. This appropriation is from the general fund. To implement this act, the

department may use this appropriation for the purchase of information technology services.

(2) For the 2023-24 state fiscal year, $62,426 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of local affairs under subsection (1) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of local affairs.

(3) For the 2023-24 state fiscal year, $94,162,222 is appropriated to the department of education. This appropriation is from the state education fund created in section 17 (4)(a) of article IX of the state constitution. To implement this act, the department may use this appropriation for the state share of districts' total program funding.

SECTION 23. Effective date. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect only if a majority of voters approve the ballot issue referred in accordance with section 24-77-202, Colorado Revised Statutes, enacted in section 3 of this act, and in which case this act takes effect on the date of the official declaration of the vote thereon by the governor.

(2) Section 3, section 39-1-104.2 (3.7) enacted in section 9 of this bill, section 39-3-210 (1)(a.3), (1)(e), and (2.5) enacted or amended in section 14 of this act, section 18, this section 23, and section 24 of this act take effect upon passage.

SECTION 24. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED Wednesday May 24th 2023 at 11:15 AM
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Exhibit B

Senate Bill 23-303
Revised Fiscal Note

SB 23-303

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 7, 2023)

Drafting Number:	LLS 23-0305	**Date:**	May 8, 2023
Prime Sponsors:	Sen. Fenberg; Hansen Rep. deGruy Kennedy; Weissmann	**Bill Status:**	Consideration of Amendments
		Fiscal Analyst:	David Hansen | 303-866-2633 david.hansen@coleg.gov

Bill Topic: **REDUCE PROPERTY TAXES & VOTER-APPROVED REVENUE CHANGE**

Summary of Fiscal Impact:

☐ State Revenue
☒ State Expenditure
☒ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill refers a ballot measure to voters at the November 2023 election and changes the treatment of property tax backfill payments to consolidated city and county governments under Senate Bill 22-238. All other provisions of the bill take effect only with approval of the ballot measure. With voter approval, the bill imposes a local government property tax revenue limit and reduces certain property assessment rates, among other changes. It increases state expenditures, makes transfers, allows the state to retain a portion of excess state revenues and reduces TABOR refunds, reduces local property tax revenues on net, and increases local expenditures.

Appropriation Summary: For FY 2023-24, the bill conditionally requires appropriations of $117.8 million to multiple agencies. Currently, the rerevised bill includes appropriations of $94.3 million. See State Appropriations section.

Fiscal Note Status: This revised fiscal note reflects the rerevised bill.

Table 1
Conditional State Fiscal Impacts Under SB 23-303

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-	-
Expenditures	General Fund	$0.1 million	$0.2 million	$0.1 million
	Prop HH GF Exempt Account	-	$33.3 million	$71.7 million
	School Finance[1]	$117.7 million	$278.2 million	$350.7 million
	Local Gov't Backfill Cash Fund	-	$128.0 million	-
	Centrally Appropriated	-	$0.01 million	$0.03 million
	Total Expenditures	**$117.8 million**	**$439.7 million**	**$422.6 million**
	Total FTE	**-**	**0.4 FTE**	**1.8 FTE**

Table 1
Conditional State Fiscal Impacts Under SB 23-303 (Cont.)

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Transfers	General Fund	($200.0 million)	-	-
	Prop HH GF Exempt Account	-	($133.3 million)	($286.9 million)
	Local Gov't Backfill Cash Fund	$128.0 million	-	-
	State Public School Fund	$72.0 million	-	-
	Housing Development Grant Fund	-	$8.3 million	$17.9 million
	State Education Fund	-	$124.9 million	$269.0 million
	Net Transfer	**$0**	**$0**	**$0**
Other Impacts	TABOR Refunds[2]	($166.6 million)	($358.6 million)	*not estimated*
	General Fund Reserve	$0.03 million	$0.01 million	$0.02 million

[1] *Expenditures for the state share of school finance may be paid from the General Fund, the State Education Fund, the State Public School Fund, or a combination of these.*
[2] *The amounts shown on this line represent decreased TABOR refund obligations for FY 2023-24 and FY 2024-25 if Proposition HH is approved by voters. For the FY 2022-23 TABOR obligation refunded in tax year 2023, the bill refunds an additional $94.3 million via property tax reimbursements, reducing the six-tier sales tax refund by an equal amount.*

Summary of Legislation

The bill refers a ballot measure ("Proposition HH") to voters at the November 2023 election. Additionally, the bill directs that consolidated city and county entities must be treated as counties instead of cities when determining their backfill for lost 2023 property tax revenue under Senate Bill 22-238.

Proposition HH

Conditional on voter approval, Proposition HH makes changes to property tax law including changes to assessment rates, valuations, classification, deadlines for administering property taxes for the 2023 property tax year, and local government reimbursements. The measure implements a local property tax revenue limit, creates a new cash fund, makes transfers, allows the state to retain more state revenue through at least FY 2031-32, and modifies TABOR refund mechanisms. A more detailed summary of Proposition HH is included below.

Proposition HH cap. If voters approve the ballot measure, the bill allows the state to retain and spend revenue in excess of the current law limit ("Referendum C cap"). With voter approval, the bill creates a new limit ("Proposition HH cap").

The Proposition HH cap is calculated like the Referendum C cap, which is adjusted annually for inflation, population growth, qualification and disqualification of enterprises, and debt service changes. In addition to these adjustments, the Proposition HH cap includes an additional growth factor of 1 percentage point per year. For example:

- the FY 2023-24 Proposition HH cap is calculated based on the FY 2022-23 Referendum C cap, adjusted for inflation, population growth, qualification and disqualification of enterprises, debt service changes, and the 1 percentage point additional growth factor; and
- the FY 2024-25 Proposition HH cap, and the cap for subsequent years through FY 2031-32, is equal to the prior year's Proposition HH cap, adjusted for the same factors, including an additional 1 percentage point growth factor each year.

The property assessment reductions in the bill apply through tax year 2032. Beginning in FY 2032-33, the Proposition HH cap is set to the level of the Referendum C cap unless the General Assembly acts to extend the assessment rate reductions that apply for tax year 2031, or acts to reduce property assessments in a different way that accomplishes an equal or greater reduction in assessed values.

Revenue retained in excess of the Referendum C cap, up to the Proposition HH cap, is deposited in a newly-created Proposition HH General Fund Exempt Account. Revenue in the account is first used to reimburse local governments ("backfill") for their lost property tax revenue as a result of the assessment rate and value reductions in this bill and in Senate Bill 22-238. Lost property tax revenue that results from reduced mill levies, for example as a result of the local property tax limit in this bill, are not reimbursed. Second, the bill makes a transfer of 5 percent of the amount retained under Proposition HH or $20 million, whichever is smaller, to the Housing Development Grant Fund. Any retained amount remaining after reimbursements and the transfer to the Housing Development Growth Fund is transferred annually to the State Education Fund. Money transferred to the fund must not supplant General Fund appropriations for school finance.

Local property tax limit. The bill creates a limit for local property taxes beginning in property tax year 2023, excluding school districts and home rule cities and counties, unless the district adopts a resolution or ordinance to exceed it. Under the bill, growth in revenue is limited to the rate of inflation in the Denver-Aurora-Lakewood Consumer Price Index over the prior year's property tax revenue. The bill includes several exceptions when calculating the limit including revenue from new construction, changes in classification, annexations, refunds, oil and gas, producing mines, and for bonds and other contractual obligations.

In order to exceed the limit, a local government must provide notice, conduct a public hearing, and hear public testimony before adopting a resolution or ordinance. If a local government exceeds the limit without following the required process, that local government is required to refund the excess amount to taxpayers.

Property tax assessment for residential property. The bill makes temporary assessment rate reductions for residential property classes and expands reductions in valuation. Table 2 presents residential assessments under SB 23-303 and compares these assessments to those in current law. Under both current law and the bill, a dollar amount set in statute may be subtracted from a property's market valuation before application of the assessment rate.

Table 2
Residential Property Assessment Under SB 23-303
Amounts in italics show changes from current law

Property Tax Year	2023	2024	2025-2032	2033 and later
Owner-Occupied Primary Residence	6.7% after $50,000 reduction *from 6.765% after $15,000 reduction*	6.7% after $40,000 reduction *from 6.976%* for single family, 6.8% for multifamily*	6.7% after $40,000 reduction *from 7.15%*	7.15% *unchanged*
Senior Owner-Occupied Primary Residence	6.7% after $50,000 reduction *from 6.765% after $15,000 reduction*	6.7% after $40,000 reduction *from 6.976%* for single family, 6.8% for multifamily*	6.7% after $140,000 reduction *from 7.15%*	7.15% *unchanged*
Other Multifamily	6.7% after $50,000 reduction *from 6.765% after $15,000 reduction*	6.7% after $40,000 reduction *from 6.8%*	6.7% after $40,000 reduction *from 7.15%*	7.15% *unchanged*
Other Residential	6.7% after $50,000 reduction *from 6.765% after $15,000 reduction*	6.7% after $40,000 reduction *from 6.976%**	6.7% *from 7.15%*	7.15% *unchanged*

* *Current law requires the Property Tax Administrator to determine the 2024 assessment rate for residential property other than multifamily property so as to accomplish a cumulative $700 million property tax reduction attributable to Senate Bill 22-238 over the 2023 and 2024 property tax years. The December 2022 LCS forecast projected this rate at 6.976%. SB 23-303 repeals this requirement.*

Residential real property subclasses. The bill creates a two new subclasses of residential property for owner-occupied primary residences and qualified-senior primary residences. The new subclasses are effective beginning with the 2025 property tax year. In order to qualify for the new subclasses property owners must complete and file an application with their local county assessor.

Property tax assessment for nonresidential property. The bill makes temporary assessment rate reductions for most nonresidential property classes. Table 3 presents nonresidential assessments under SB 23-303 and compares these assessments to those in current law.

Table 3
Nonresidential Real Property Assessment Under SB 23-303
Amounts in italics show changes from current law
Omits producing mines and oil & gas, as these are not affected

Property Tax Year	2023	2024-2026	2027-2028	2029-2030	2031-2032
Lodging and Other Improved Commercial Property	27.85% after $30,000 reduction *from 27.9% after $30,000 reduction*	27.85% *from 29%*	27.65% *from 29%*	26.9% *from 29%*	26.9% or 25.9%[1] *from 29%*
Other Commercial, Industrial, Natural Resources, State Assessed	27.85% *from 27.9%*	27.85% *from 29%*	27.65% *from 29%*	26.9% *from 29%*	26.9% or 25.9%[1] *from 29%*
Vacant Land	27.85% *from 27.9%*	29% *unchanged*	29% *unchanged*	29% *unchanged*	29% *unchanged*
Agricultural, Renewable Energy Producing Property	26.4% *unchanged*	26.4% *from 29%*[2]	26.4% *from 29%*	26.4% *from 29%*	26.4% or 25.9%[1] *from 29%*
Renewable Energy Agricultural Land[3]	26.4%	21.9%	21.9%	21.9%	21.9%

[1] *For 2031 and 2032, assessment rates for these classes are reduced to 25.9% if growth in assessed values among the 32 counties with the least growth in assessed values between 2030 and 2031 is greater than or equal to 3.7%.*
[2] *For 2024, the current law assessment rate for these classes is 26.4% under both current law and the bill.*
[3] *This property subclass is created in the bill in 2024 and is assessed as agricultural property under current law.*

Renewable energy agricultural land. The bill creates a new subclass of agricultural property for renewable energy agricultural land. The actual value of the new subclass will be based on the waste land subclass valuation formula from the Division of Property Taxation.

Local government backfill. The bill makes a number of modifications to the local government backfill mechanisms created in Senate Bill 22-238 for lost property tax revenue, extends the backfill to include reductions in value made under the bill, and extends reimbursements through the 2032 property tax year. Modifications to the backfill mechanism include:

- specifying that lost property tax revenue be calculated based on 2022 mill levies, and must exclude mill levies for bonds and contractual obligations;
- allowing all backfill required for the 2023 property tax year to be reimbursed from the FY 2022-23 TABOR surplus as a TABOR refund, up from a limit of $240 million under SB 22-238;
- specifies that for local governments that have an increase in real property valuation of more than 20 percent from 2022 to 2023, backfill for the 2023 property tax year will be based only on revenue reductions under SB 22-238 and not the changes made in this SB 23-303;
- paying backfill for the 2024 through 2032 property tax years from a one-time transfer of $128 million from the General Fund to a new cash fund in FY 2023-24, and up to 20 percent of TABOR surplus revenue retained under the Proposition HH cap in FY 2023-24 through FY 2031-32;
- allowing ambulance, fire protection, and health services districts to receive backfill under the provisions of Senate Bill 22-238 until their assessed valuation increases more than 20 percent from 2022 levels, after which they will receive 50 percent;

- reducing backfill payments as necessary to any districts where the payments would cause it to exceed its TABOR revenue limit;
- beginning tax year 2024, designating local government entities in counties with population over 300,000 as ineligible to receive backfill payments if and when the increase in the entities' assessed valuation from the 2022 level exceeds 20 percent; and
- beginning tax year 2024, designating local government entities in counties with population under 300,000 as ineligible to receive backfill payments if and when the increase in the entities' assessed valuation from the 2022 level exceeds 20 percent, but allowing these entities to again become eligible if their valuation falls below the threshold.

Local Government Backfill Cash Fund and State Public School Fund transfers. The bill creates the Local Government Reimbursement Cash Fund and transfers $128 million from the General Fund into the new fund in FY 2023-24. Additionally, the bill transfers $72 million from the General Fund to the State Public School Fund in FY 2023-24.

Property tax administration. For the 2023 tax year, the bill delays several deadlines for property tax reporting and administration including, certification of revenues, mill levies, and levying of taxes for school districts and other local governments.

Primary residence real property working group. The bill creates a working group to be convened by the Division of Property Taxation to streamline and improve administration of the primary residence real property class created in the bill. The working group will include assessors and elected county officials that will make recommendations to House and Senate committees by January 1, 2024.

Background

Senate Bill 22-238. During the 2022 session, the General Assembly passed Senate Bill 22-238, which made temporary changes to assessment rates and property valuation for the 2023 and 2024 property tax years. The bill also included a state backfill requirement to compensate local governments and property tax districts, other than school districts, for revenue decreases under the bill, and designated the backfill as a TABOR refund mechanism to refund a portion of the state's FY 2022-23 TABOR surplus, up to $240 million. If the backfill exceeds $240 million or the total amount of state TABOR refunds, current law requires the remainder to be paid from the General Fund. For the 2023 property tax year, SB 22-238:

- reduced the valuation of each residential property by up to $15,000;
- reduced the valuation of improved nonresidential commercial property by up to $30,000;
- temporarily lowered the assessment rate for all residential property to 6.765 percent, from 6.8 percent for multifamily property and 6.95 percent for all other residential properties; and
- temporarily lowered the assessment rate for most nonresidential property classes, excluding oil and gas, producing mines, agricultural, and renewable energy producing property, to 27.9 percent from 29 percent.

For the 2024 property tax year, SB 22-238:

- temporarily reduced the assessment rate for multifamily residential property to 6.8 percent from 7.15 percent;
- set the assessment rate for other residential property to a level that would result in a $700 million reduction in revenue attributable to the bill over the 2023 and 2024 property tax years, projected at 6.976 percent in the December 2022 Legislative Council Staff forecast; and
- temporarily reduced the assessment rate for agricultural and renewable energy property to 26.4 percent from 29 percent.

Housing Development Grant Fund. Created in 2009, the fund provides grants to eligible entities to acquire, rehabilitate, and construct affordable housing projects. The fund is administered by the Division of Housing in the Department of Local Affairs.

Assumptions

Assessed value impacts. Conditional on voter approval of Proposition HH and based on the December 2022 Legislative Council Staff (LCS) forecast for assessed values, the bill is expected to reduce assessed values by amounts shown in Table 4.

Table 4
Conditional Assessed Value Impacts
Under SB 23-303
Millions of Dollars

	Current Law		SB 23-303	
Year	Assessed Value	Percent Change	Assessed Value	Percent Change
2022	$150,166		$150,166	
2023*f*	$183,956	22.5%	$179,959	19.8%
2024*f*	$194,897	5.9%	$182,714	1.5%
2025*f*	$204,038	4.7%	$189,014	3.4%

Source: Colorado Legislative Council Staff. f=forecast

Property tax revenue impacts. The bill affects property tax revenue both through reduced assessed values and application of a property tax revenue limit.

Reduced assessed values are assumed to reduce property tax revenue for local governments that levy fixed mills, including most counties, municipalities, and special districts. School districts are assumed to experience reductions in revenue generated from their total program mills, as well as from override mills in districts where voters have approved fixed mill overrides.

Some levies are not expected to generate less revenue from reduced assessed values. These include metropolitan district and school district bond indebtedness mills, which are typically structured to generate a certain amount of revenue regardless of the tax base. School district override mills are assumed not to generate less revenue if the school district is already at its statutory override revenue cap, or where voters have approved overrides to generate fixed dollar amounts or inflation-adjusted dollar amounts.

The property tax revenue limit is assumed to reduce revenue to statutory counties, municipalities, and special districts that do not opt out of the limit's constraints on mill levies as discussed in the Local Government section below. Reduced property tax revenue attributable to the revenue limit has no direct state fiscal impact. Lost revenue due to reduced mill levies is not backfilled, as backfill amounts are based on 2022 mill levies. School districts are excluded from the property tax revenue limit, so the limit has no direct impact on the state aid requirement for school finance.

Comparable Crime Analysis

Proposition HH

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. Conditional on voter approval, the bill creates the new offense of giving false information for a property tax reduction, a class 2 misdemeanor. To form an estimate of the prevalence of this new crime, the fiscal note analyzed the existing offense of filing a false tax return as a comparable crime. From FY 2019-20 to FY 2021-22, 6 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, 3 were male, 2 were female, and 1 did not have a gender identified. Demographically, 3 were White, 1 was Asian, 1 was classified as "Other," and 1 did not have a race identified. Based on the low number of sentences for the comparable crime, the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Transfers

Proposition HH

Conditional on voter approval, the bill creates the Local Government Backfill Cash Fund. In FY 2023-24, the bill transfers $128 million from the General Fund to the Local Government Backfill Cash Fund and $72 million to the State Public School Fund.

Conditional on voter approval, state revenue retained under the Proposition HH cap will be used to reimburse local governments for lost property tax revenue under the bill, and make transfers to the Housing Development Grant Fund and the State Education Fund. Transfers to the Housing Development Grant Fund will be the lesser of 5 percent of revenue retained under the Proposition HH cap or $20 million. For FY 2024-25, the analysis estimates transfers from the Proposition HH General Fund Exempt Account of about $8.3 million to the Housing Development Grant Fund and $124.9 million to the State Education Fund. In FY 2025-26, transfers are estimated at $17.9 million to the Housing Development Grant Fund and $269.0 million to the State Education Fund. In future years, transfers to the Housing Development Grant Fund are expected to reach $20 million and increasing amounts are expected to be transferred to the State Education Fund. A forecast of state revenue is not

available beyond FY 2024-25 and a forecast of state assessed valuation is not available beyond property tax year 2025. Conditional transfers estimated under the bill are summarized in Table 1.

State Expenditures

Conditional on voter approval, the bill increases state expenditures by $94.3 million in FY 2023-24, $439.7 million in FY 2024-25, and $422.6 million in FY 2025-26. Expenditures are shown in Table 5 and detailed below. The bill also affects election related-costs to refer a measure to the voters.

Table 5
Conditional Expenditures Under SB 23-303

	FY 2023-24	FY 2024-25	FY 2025-26
Local Government Backfill			
Proposition HH General Fund Exempt Account	-	$33.3 million	$71.7 million
Local Government Backfill Cash Fund	-	$128.0 million	-
Backfill Subtotal	**-**	**$161.3 million**	**$71.7 million**
School Finance			
State Share of School Finance[1]	$117.7 million	$278.2 million	$350.7 million
School Finance Subtotal	**$117.7 million**	**$278.2 million**	**$350.7 million**
Department of Local Affairs			
Personal Services	-	$26,385	$116,091
Operating Expenses	-	$675	$2,430
Capital Outlay Costs	-	$6,670	-
Computer Programming	$62,426	$154,891	$10,560
Centrally Appropriated Costs[2]	-	$6,877	$30,698
FTE – Personal Services	-	0.4 FTE	1.8 FTE
DOLA Subtotal	**$62,426**	**$195,498**	**$159,779**
Total Costs	**$117.8 million**	**$439.7 million**	**$422.6 million**
Total FTE	**-**	**0.4 FTE**	**1.8 FTE**

[1] *Expenditures for the state share of school finance may be paid from the General Fund, the State Education Fund, the State Public School Fund, or a combination of these. Under Proposition HH, an estimated $124.9 million in FY 2024-25 and $269.0 million in FY 2025-26 will be transferred into the State Education Fund from the Proposition HH General Fund Exempt Account.*
[2] *Centrally appropriated costs are not included in the bill's appropriation.*

Property tax backfill to local governments. The bill increases state expenditures by an estimated $161.3 million in FY 2024-25 and $71.7 million in FY 2025-26 to backfill local governments for lost property tax revenue. Lost property tax revenue backfilled by the state in FY 2024-25 for property tax year 2024 will first be paid from the Local Government Backfill Cash Fund prior to reimbursements from the Proposition HH General Fund Exempt Account in an amount up to 20 percent of the revenue

retained under the Proposition HH cap. Beginning for tax year 2025 reimbursements paid in FY 2025-26, the entire amount of the backfill is expected to be paid from the Proposition HH General Fund Exempt Account.

FY 2023-24 disbursements to backfill local governments for their 2023 property tax revenue loss is addressed in the Other Budget Impacts section below, because it is administered as a TABOR refund rather than a state expenditure.

School finance. The bill decreases property tax collections from school district total program mills, requiring an equivalent increase in the state share of total program funding for school finance. The state aid obligation is expected to increase by $117.7 million in FY 2023-24, $278.2 million in FY 2024-25, and $350.7 million in FY 2025-26, and larger amounts in future years as temporary nonresidential assessment rates decrease. The state aid obligation may be paid from the General Fund, the State Education Fund, the State Public School Fund, or a combination of these. Beginning in FY 2024-25, the bill may result in transfers from revenue retained under the Proposition HH cap. As described in the State Transfer section above, an estimated $124.9 million will be transferred to the State Education Fund in FY 2024-25, and $269.0 million will be transferred in FY 2025-26, with increasing amounts expected in future years. Transfers may exceed increased expenditures for school finance due to reduced local property tax revenue prior to FY 2032-33, after which revenue retained under the cap is set to expire.

Department of Local Affairs. General Fund expenditures in the Department of Local Affairs Division of Property Taxation are expected to increase by $62,426 in FY 2023-24, $195,498 in FY 2024-25, $159,779 in FY 2025-26, and $86,897 in FY 2026-27 and subsequent years.

The entire amount of costs for FY 2023-24 is for development of a software system to track residential property that is taxed as primary residence property. These costs will occur in the Office of Information Technology (OIT), paid using reappropriated funds from DOLA. Ongoing costs for system maintenance are expected in later years as shown in Table 5.

The remaining costs are for the addition of staff in the division. Beginning in January 2025, the division will require 1.0 FTE to process and validate tax applications for primary residence properties. Costs for FY 2024-25 are prorated to reflect the start date and the General Fund pay date shift. Costs for FY 2025-26 only include an additional 0.8 FTE, representing two temporary staff required between August 2025 and December 2025 when the majority of applications from property owners are expected to arrive. Beyond the additional staff requirements, division workload will increase to convene the primary residence real property working group, review and update procedures, forms, manuals, and to provide technical assistance to local governments.

Department of the Treasury. The bill is expected to increase department workload to administer reimbursements to local governments through FY 2032-33. This workload increase can be accomplished within existing appropriations.

Department of Public Health and Environment. The department is required to compare the Division of Property Taxation's records of homeowners who qualified for reduced taxation due to ownership of their primary residence against lists of persons who have died. This workload increase can be accomplished within existing appropriations.

Department of Revenue. The bill requires that the department prepare two sets of six-tier sales tax refund amounts for the 2023 tax year when these amounts are provided to the Executive Committee of the Legislative Council in September 2023, to provide contingencies in case the ballot measure passes or fails. This workload increase can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 5.

Election expenditure impact — existing appropriations. This bill includes a referred measure that will appear before voters at the November 2023 general election. While no additional appropriation is required, certain election costs are incurred by the state when ballot measures are referred. These include reimbursing counties for increased election costs, publishing the text and title of the measure in newspapers across the state, and preparing and mailing the Blue Book. All of the bill's other impacts on state expenditures are conditional on voter approval of Proposition HH.

Other Budget Impacts

TABOR refunds under Senate Bill 22-238. The bill specifies that city and county entities are treated as counties, rather than cities, when determining backfill for lost property tax revenue under provisions in SB 22-238. The provision would direct a 65 percent backfill for the City and County of Denver, rather than 90 percent under current law enacted in SB 22-238. This change will decrease FY 2023-24 reimbursements to the City and County of Denver for the 2023 property tax year by an estimated $8.0 million, reducing the amount of TABOR refunds paid via this mechanism and correspondingly increasing TABOR refunds paid via the six-tier sales tax refund mechanism. This impact occurs independent of whether voters approve Proposition HH.

Proposition HH

TABOR refunds for FY 2022-23. The bill does not change the amount to be refunded to taxpayers for FY 2022-23. However, if voters approve the ballot measure, the bill would require an estimated $94.3 million that would otherwise be refunded via the six-tier sales tax refund mechanism to instead be refunded via property tax reductions, paid via reimbursements to local governments for their losses. Table 6 presents estimated reductions in the expected six-tier refund amounts for tax year 2023.

TABOR refunds for FY 2023-24 through FY 2031-32. If voters approve the ballot measure, the bill allows the state to retain revenue that would otherwise be refunded to taxpayers for these fiscal years. Based on the March 2023 LCS forecast, the estimated amounts to be retained are:

- $166.6 million for FY 2023-24;
- $358.6 million for FY 2024-25; and
- larger amounts in subsequent fiscal years through at least FY 2031-32.

Growth in the Proposition HH cap is cumulative, such that each annual 1 percent increase adds to the prior year's cap and allows a greater amount to be retained. Because the cap is estimated to approach

$19.5 billion in FY 2024-25, the bill is expected to allow the state to retain about $200 million more each year than in the prior year, provided that state revenue meets or exceeds the cap.

A forecast of state revenue is not available beyond FY 2024-25. Based on the State Demographer's forecast for state population, and assuming annual inflation of 2.5 percent for years beyond the current forecast period, the Proposition HH cap is estimated to exceed the Referendum C cap by $2.2 billion in FY 2031-32, the last year when it applies. Through FY 2031-32, in years when revenue would be refunded to taxpayers under current law, the bill allows for a portion of this revenue, up to the Proposition HH cap, to be retained. The actual amount retained will depend on revenue collections, inflation, population growth, and any later fiscal policy changes.

Through at least FY 2024-25 and for all years when the measure allows for revenue to be retained, the measure will reduce the amount refunded to taxpayers via the six-tier sales tax refund mechanism. The impact on these refunds is equal to the amount of revenue retained. Estimated TABOR refund impacts on taxpayers of different incomes are presented in Table 6.

Table 6
Conditional Six-Tier TABOR Refund Impacts of SB 23-303

Tax Year 2023

Adjusted Gross Income	Current Law Refund Estimate *Single / Joint*	SB 23-303 Refund Estimate *Single / Joint*	Change in Refund Estimate *Single / Joint*
Up to $50,000	$480 / $960	$462 / $924	-$18 / -$36
$50,001 to $100,000	$639 / $1,278	$615 / $1,230	-$24 / -$48
$100,001 to $157,000	$736 / $1,472	$708 / $1,416	-$28 / -$56
$157,001 to $219,000	$875 / $1,750	$842 / $1,684	-$33 / -$66
$219,001 to $279,000	$941 / $1,882	$906 / $1,812	-$35 / -$70
$279,001 and up	$1,514 / $3,028	$1,457 / $2,914	-$57 / -$114

This impact occurs because the bill increases the amount of the TABOR surplus refunded via property tax reductions, paid via reimbursements to local governments. The total amount of TABOR refunds required for FY 2022-23 is unchanged.

Tax Year 2024

Adjusted Gross Income	Current Law Refund Estimate *Single / Joint*	SB 23-303 Refund Estimate *Single / Joint*	Change in Refund Estimate *Single / Joint*
Up to $52,000	$352 / $704	$320 / $640	-$32 / -$64
$52,001 to $103,000	$469 / $938	$427 / $854	-$42 / -$84
$103,001 to $164,000	$540 / $1,080	$491 / $982	-$49 / -$98
$164,001 to $227,000	$642 / $1,284	$584 / $1,168	-$58 / -$116
$227,001 to $291,000	$690 / $1,380	$628 / $1,256	-$62 / -$124
$291,001 and up	$1,111 / $2,222	$1,011 / $2,022	-$100 / -$200

This impact occurs because Proposition HH reduces the amount of TABOR refunds required for FY 2023-24.

Table 6
Conditional Six-Tier TABOR Refund Impacts of SB 23-303 (Cont.)

Tax Year 2025

Adjusted Gross Income	Current Law Refund Estimate *Single / Joint*	SB 23-303 Refund Estimate *Single / Joint*	Change in Refund Estimate *Single / Joint*
Up to $54,000	$294 / $588	$227 / $454	-$67 / -$134
$54,001 to $106,000	$392 / $784	$303 / $606	-$89 / -$178
$106,001 to $168,000	$452 / $904	$348 / $696	-$104 / -$208
$168,001 to $233,000	$537 / $1,074	$414 / $828	-$123 / -$246
$233,001 to $299,000	$577 / $1,154	$446 / $892	-$131 / -$262
$299,001 and up	$929 / $1,858	$717 / $1,434	-$212 / -$424

This impact occurs because Proposition HH reduces the amount of TABOR refunds required for FY 2024-25.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes. Beginning in FY 2024-25, expenditures from the Proposition HH General Fund Exempt Account are required by statute and not appropriated, therefore they are not expected to be subject to the statutory reserve requirement.

Local Government

Local Revenue

City and county backfill under Senate Bill 22-238. The bill specifies that city and county entities are treated as counties, rather than cities, when determining backfill for lost property tax revenue under provisions in Senate Bill 22-238. The provision would require that the City and County of Denver receive 65 percent of the property tax revenue lost rather than 90 percent. The bill will decrease reimbursements to the City and County of Denver for the 2023 property tax year by an estimated $8.0 million in FY 2023-24.

Local Revenue – Proposition HH

Local property tax limit. The bill conditionally reduces local property tax revenues by imposing a property tax limit. The bill limits property tax revenues, except for certain exclusions, beginning with property tax year 2023 for local governments excluding school districts and home rule cities and counties. Property taxes are limited to the prior years' property tax revenue increased by the rate of inflation based on the Denver-Aurora-Lakewood Consumer Price Index. Sources and uses of revenue excluded from the limit include:

- revenue from new construction;
- revenue from changes in property tax classifications or annexations;
- revenue that has been abated or refunded;
- revenue from properties that were previously exempt and became taxable;
- payments or expenses incurred for reappraisals ordered or conducted by the State Board of Equalization;
- revenue from producing mines or oil and gas production;
- revenue for payment of bonds, interest, and other contractual obligations approved by voters; and
- revenue from mill levies approved by voters under certain conditions.

Local governments may exceed the property tax limit with adoption of a resolution or ordinance after conducting a public hearing. The bill allows local governments to create temporary property tax credits to refund revenue over the limit without reducing the permanent mill levy. Reduced local property tax revenue under the bill depends on the number of local governments that adopt resolutions or ordinances to exceed the bill's limitations, on the amount of revenue derived from exclusions in the bill, and whether the local government employs property tax credits to meet limitations under the bill rather than reducing its mill levy permanently. To the extent that local governments implement the property tax limit without opting out, property tax revenue will be reduced. Assuming all impacted local governments implement the limitation, local property taxes could be reduced up to an estimated $308 million for property tax year 2023, $248 million in property tax year 2024, and $329 million in property tax year 2025.

The analysis is based on revenue collected for impacted local governments for property tax year 2022, less mill levies assessed for bonds and contractual obligations, inflated by forecast increases in the Denver-Boulder-Lakewood Consumer Price Index from 2022 to 2024 from the March 2023 LCS forecast. Forecast revenue collections under the bill were inflated further utilizing the increase in assessed values by county from 2019 to 2020 to estimate potential increases from new construction, changes in use, and other increases from a previous intervening year. The analysis does not adjust for fixed or floating mill levies beyond those for bonded indebtedness or contractual obligations. Revenue losses under the bill were estimated utilizing changes in assessed value under the bill through the forecast period, less estimated assessed value from oil and gas and producing mines. To the extent local governments opt out of the limit, derive large portions of revenue from property excluded from the limit, or are constrained by revenue limitations under TABOR or the 5.5 percent property tax growth limit in current law, the revenue loss from the local limit provision will be less than estimated.

Lower assessment rates and reduced property values. Conditional on voter approval, the bill is expected to reduce local property tax revenue by net amounts of $106.6 million for property tax year 2023, $348.6 million for property tax year 2024, and $548.2 million for property tax year 2025 from the impact of lower assessment rates and reduced property values that will be partially offset by increased state aid to school districts and local government backfill as required in the bill. These components are summarized in Table 7.

Table 7
Local Government Revenue Impacts of Assessment Provisions in SB 23-303

	FY 2023-24 *Property Tax Year 2023* *Collected in 2024*	FY 2024-25 *Property Tax Year 2024* *Collected in 2025*	FY 2025-26 *Property Tax Year 2025* *Collected in 2026*
Property Tax Revenue	($349.2 million)	($788.2 million)	($970.6 million)
School Districts – State Aid	$117.7 million	$278.2 million	$350.7 million
State Backfill to Local Govt's*	$124.9 million	$161.3 million	$71.7 million
Net Revenue Impact	**($106.6 million)**	**($348.6 million)**	**($548.2 million)**

** Reimbursements to counties, municipalities, and special districts only, excludes mill levies for bonds and contractual obligations.*

- *Property tax revenue.* The bill is expected to reduce property tax revenue to local governments by $349.2 million for property tax year 2023, $788.2 million for property tax year 2024, and $970.6 million for property tax year 2025. Estimates assume the December 2022 Legislative Council Staff forecast for assessed valuations by school district, prorated to counties according to each school district's share of county assessed valuation for the 2022 property tax year. The fiscal note assumes weighted average mill levies by county for the 2022 property tax year from the Division of Property Taxation, except that school district total program mills are adjusted where required under current law enacted in House Bill 21-1164.

- *State aid to school districts.* The bill is expected to increase the state aid requirement by $117.7 million for property tax year 2023, $278.2 million for property tax year 2024, and $350.7 million for property tax year 2025, as a result of reduced property tax revenue from total program mill levies.

- *State backfill to local governments.* The bill requires the state to reimburse county treasurers for revenue reductions in 2023 from changes in the bill that extend reductions from Senate Bill 22-238. The bill also requires reimbursements for property tax years 2024 through property tax year 2032 to the extent local governments remain eligible under the bill. The amount of backfill to counties, cities, and other property tax districts is determined by various thresholds in the bill as noted in the Summary section above. For property tax years 2024 through 2032, the amount of backfill is limited to 20 percent of the amount retained under the Proposition HH cap, or an estimated $33.3 million for FY 2023-24 and $71.7 million in FY 2024-25. Estimated backfill to local governments, except school districts, is expected to increase an estimated $124.9 million for property tax year 2023, $161.3 million for property tax year 2024, and $71.7 million for property tax year 2025.

  The backfill to local governments beginning in FY 2024-25 is largely limited by the 20 percent limit on payments from revenue retained under the Proposition HH cap. Without the limit, backfill to local governments would total about $284.2 million in FY 2024-25 and $267.0 million in FY 2025-26. Based on the assumed backfill requirements in this fiscal note, the limitation is expected to result in a 43 percent reduction in the amount that would otherwise be backfilled for FY 2024-25, such that local governments that would otherwise receive 100 percent of their loss will instead receive 57 percent; local governments that would otherwise receive 90 percent will instead receive 51 percent; and local governments that would otherwise receive 65 percent will instead receive

37 percent. In FY 2025-26, the limitation results in a 73 percent reduction, or backfill equal to 18 percent, 24 percent, or 27 percent of what the local governments would otherwise receive for the 65 percent, 90 percent, and 100 percent backfill levels, respectively.

Local Expenditures – Proposition HH

The bill increases expenditures for county treasurers and assessors to implement the property tax changes in the bill. County assessors estimate the need for more staff and personnel to administer the bill if approved by voters in the November 2023 election.

Technical Note

If Proposition HH is approved, statutory counties, municipalities, and special districts will have a limited time to either implement mill levy reductions to accommodate the local property tax revenue limit, or to notice and conduct public hearings and opt out of the revenue limit. Local governments that do not take either action may collect more revenue than permitted by the limit, requiring later payments of refunds to taxpayers.

Effective Date

The provisions of the bill that refer Proposition HH to voters and that change the treatment of the SB 22-238 backfill for consolidated city and county governments take effect upon signature of the Governor, or upon becoming law without his signature. If Proposition HH is approved, all other provisions of the bill take effect on the date of the official declaration of the vote by the Governor.

State Appropriations

For FY 2023-24, the bill conditionally requires and includes a General Fund appropriation of $62,426 to the Department of Local Affairs, with the entire amount reappropriated to the Office of Information Technology.

For FY 2023-24, the bill conditionally requires a provision that the appropriation for the state share of total program funding for school finance be increased by $117,700,000. The rerevised bill currently includes an appropriation of $94,162,222.

State and Local Government Contacts

Information Technology
Judicial
Local Affairs
Personnel
Property Tax Division
Public Health and Environment
Treasury

Exhibit C

House Bill 23-1311

HOUSE BILL 23-1311

BY REPRESENTATIVE(S) deGruy Kennedy and Weissman, Amabile, Bacon, Boesenecker, Brown, Dickson, English, Epps, Froelich, Garcia, Gonzales-Gutierrez, Herod, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Mabrey, Marshall, McCormick, Michaelson Jenet, Ortiz, Ricks, Sharbini, Sirota, Titone, Valdez, Velasco, Willford, McCluskie;
also SENATOR(S) Hansen and Hinrichsen, Buckner, Coleman, Cutter, Jaquez Lewis, Kolker, Moreno, Sullivan, Winter F., Fenberg.

CONCERNING THE CREATION OF AN IDENTICAL REFUND PAYMENT OF EXCESS STATE REVENUES FROM ALL SOURCES AS A MECHANISM TO REFUND A PORTION OF THE EXCESS STATE REVENUES FOR THE 2022-23 STATE FISCAL YEAR ONLY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 39-22-2005 as follows:

39-22-2005. Refund of excess state revenues from all sources - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) "QUALIFIED INDIVIDUAL" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-22-2003 (1).

(b) "REMAINING EXCESS STATE REVENUES" MEANS THE TOTAL AMOUNT OF THE STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2022, IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7)(a) OF ARTICLE X OF THE STATE CONSTITUTION THAT THE STATE IS REQUIRED TO REFUND UNDER SECTION 20 (7)(d) OF ARTICLE X OF THE STATE CONSTITUTION, INCLUDING ANY AMOUNT SPECIFIED IN SECTION 24-77-103.8, THAT EXCEEDS THE AMOUNTS TO BE REFUNDED AS REQUIRED BY SECTIONS 39-3-209 AND 39-3-210 FOR THE STATE FISCAL YEAR.

(2) NOTWITHSTANDING SECTIONS 39-22-2002 AND 39-22-2003, ANY REMAINING EXCESS STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2022, ARE REFUNDED THROUGH AN IDENTICAL PAYMENT TO QUALIFIED INDIVIDUALS. THE AMOUNT OF EACH REFUND IS EQUAL TO THE AMOUNT OF THE REMAINING EXCESS STATE REVENUES DIVIDED BY THE NUMBER OF QUALIFIED INDIVIDUALS EXPECTED TO CLAIM A REFUND PURSUANT TO SECTION 39-22-2003 FOR THE INCOME TAX YEAR COMMENCING ON JANUARY 1, 2023. THIS IS A REFUND OF EXCESS STATE REVENUES FROM ALL SOURCES OF FISCAL YEAR SPENDING.

(3) A QUALIFIED INDIVIDUAL FILING A SINGLE RETURN IS ENTITLED TO ONE REFUND UNDER THIS SECTION AND TWO QUALIFIED INDIVIDUALS FILING A JOINT RETURN ARE ENTITLED TO TWO REFUNDS UNDER THIS SECTION. THE EXECUTIVE DIRECTOR SHALL CALCULATE THE AMOUNT OF THE REFUND REQUIRED BY THIS SECTION AND SHALL ADMINISTER THE REFUND IN THE SAME MANNER AS THE REFUND SET FORTH IN SECTION 39-22-2003.

(4) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2028.

SECTION 2. Effective date - applicability. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect upon passage.

(2) (a) Section 1 of this act takes effect only if, at the November 2023 statewide election, a majority of voters approve the ballot issue submitted for their approval or rejection pursuant to section 24-77-202, C.R.S., as enacted by Senate Bill 23-303.

(b) If the voters at the November 2023 statewide election approve the ballot issue described in subsection (2)(a) of this section, then section 1 of this act takes effect on the later of January 1, 2024, or the date of the official declaration of the vote thereon by the governor.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED Wednesday May 24th 2023 at 11:00 am
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Exhibit D

House Bill 23-1311
Revised Fiscal Note

HB 23-1311

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 6, 2023)

Drafting Number:	LLS 23-1036	**Date:**	May 6, 2023
Prime Sponsors:	Rep. deGruy Kennedy; Weissman Sen. Hansen; Hinrichsen	**Bill Status:**	House Second Reading
		Fiscal Analyst:	Greg Sobetski | 303-866-4105 greg.sobetski@coleg.gov

Bill Topic: **IDENTICAL TEMPORARY TABOR REFUND**

Summary of Fiscal Impact:

☐ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

Conditional upon approval of the referred measure in Senate Bill 23-303, this bill directs that TABOR refunds that would otherwise be paid in FY 2023-24 via the six-tier sales tax refund mechanism be instead paid in equal amounts to qualifying taxpayers. For FY 2023-24 only, the bill increases state agency workload and conditionally changes how TABOR refunds are made, but has no impact on the amount refunded.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill and has been revised to reflect amendments to Senate Bill 23-303 adopted in the House Appropriations Committee, which affect this bill's fiscal impact.

Table 1
Conditional State Fiscal Impacts Under HB 23-1311

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures		-	-
Transfers		-	-
Other Budget Impacts	TABOR Refunds – Six-Tier Mechanism	($2.41 billion)	-
	TABOR Refunds – Equal Amounts	$2.41 billion	-
	TABOR Refunds – Net Change	**$0**	**-**

Summary of Legislation

The bill adjusts the mechanisms used to refund the state TABOR refund obligation collected in the current FY 2022-23. If the ballot measure referred in Senate Bill 23-303 is approved by voters, then this House Bill 23-1311 requires any amount that would otherwise be refunded via the six-tier sales tax refund mechanism to instead be refunded on returns for tax year 2023 in equal amounts to all taxpayers who qualify for the six-tier sales tax refund. The Department of Revenue is required to administer this refund mechanism in the same way as the six-tier sales tax refund mechanism is administered under current law.

If the ballot measure referred in SB 23-303 is not referred or is not approved by voters, then the substantive provisions of this bill do not become law.

Background

Senate Bill 23-303. SB 23-303 refers a ballot measure to voters at the November 2023 statewide election. If the ballot measure is adopted, the bill makes changes to property assessments beginning for the 2023 tax year, and allows the state to retain additional revenue subject to the TABOR limit beginning in FY 2023-24.

TABOR refund mechanisms. Article X, Section 20, of the Colorado Constitution (TABOR) requires revenue collected in excess of an annual limit (TABOR limit) to be refunded to taxpayers, unless voters approve a measure allowing the state to retain the excess. TABOR allows the state to use "any reasonable method" for refunds. Since the enactment of TABOR, the state has created over 20 different refund mechanisms, most of which have been repealed. There are two permanent refund mechanisms in current law: the homestead exemptions for seniors and veterans with a disability, for which reimbursements are paid to local governments; and the six-tier sales tax refund mechanism, described below. Additionally, for refunds of the obligation for the current FY 2022-23 only, a portion of refunds are paid via reduced property assessments, for which reimbursements are paid to local governments under Senate Bill 22-238. If SB 23-303 passes and the ballot measure it refers is approved, then refunds via the mechanism created in SB 22-238 will increase.

Six-tier sales tax refund mechanism. Under current law, any TABOR refund obligation remaining after refunds are paid via other mechanisms is refunded via the six-tier sales tax refund mechanism. This mechanism distributes TABOR refunds to full-year Colorado resident individual income taxpayers who file a state income tax return. Refunds are distributed to taxpayers in six adjusted gross income tiers following the distribution of refunds in tax year 1999. Tier thresholds and refund amounts are set by the Department of Revenue each September after the State Controller certifies the amount of the refund obligation, in order to approximate the 1999 distribution as closely as possible.

The refund is called a "sales tax refund" because it refunds revenue collected from the general state sales tax. However, refunds are paid to income taxpayers via the state income tax form.

State Expenditures

Workload in the Department of Revenue will increase in FY 2023-24 to calculate the equal refund amount required in the bill. This workload increase is assessed as minimal and can be accomplished within existing appropriations. See the Technical Note.

Other Budget Impacts

TABOR refunds. The bill has no impact on the amount required to be refunded under TABOR. However, if the ballot measure referred in SB 23-303 is approved, the bill changes the mechanisms used to refund the TABOR obligation for the current FY 2022-23. Refunds of this surplus are paid in FY 2023-24.

The March 2023 Legislative Council Staff forecast estimates that the state will be required to refund $2.90 billion for the current FY 2022-23. Under current law, $161 million is estimated to be refunded via local government reimbursements for the homestead exemption; $239 million is estimated to be refunded via property tax backfill to local governments as required under Senate Bill 22-238, and the remaining $2.50 billion is estimated to be refunded via the six-tier sales tax refund mechanism. SB 23-303 is estimated to increase the amount refunded via the property tax backfill by $94.3 million, correspondingly reducing the amount refunded via the six-tier sales tax refund mechanism to $2.41 billion.

Under HB 23-1311, $2.41 billion is estimated to be refunded in equal amounts to qualifying taxpayers who would otherwise be eligible for the six-tier sales tax refund mechanism. Taxpayers filing a single return are estimated to receive $672, and taxpayers filing a joint return are estimated to receive $1,344. Table 2 presents the estimated refund amounts relative to the six-tier refund amounts that are estimated under SB 23-303 if the ballot measure is approved and HB 23-1311 does not pass.

Table 2
Conditional 2023 TABOR Refund Impacts of HB 23-1311
Relative to approval of the ballot measure in SB 23-303, without HB 23-1311

Adjusted Gross Income	SB 23-303 Refund Estimate *Single / Joint*	HB 23-1311 Refund Estimate *Single / Joint*	Change in Refund Estimate *Single / Joint*
Up to $50,000	$462 / $924	$672 / $1,344	+$210 / +$420
$50,001 to $100,000	$615 / $1,230	$672 / $1,344	+$57 / +$114
$100,001 to $157,000	$708 / $1,416	$672 / $1,344	-$36 / -$72
$157,001 to $219,000	$842 / $1,684	$672 / $1,344	-$170 / -$340
$219,001 to $279,000	$906 / $1,812	$672 / $1,344	-$234 / -$468
$279,001 and up	$1,457 / $2,914	$672 / $1,344	-$785 / -$1,570

Table 3 presents the estimated refund amounts if both the ballot measure and HB 23-1311 are adopted, relative to current law.

Table 3
Conditional 2023 TABOR Refund Impacts of SB 23-303 and HB 23-1311
Relative to current law

Adjusted Gross Income	Current Law Refund Estimate *Single / Joint*	HB 23-1311 Refund Estimate *Single / Joint*	Change in Refund Estimate *Single / Joint*
Up to $50,000	$480 / $960	$672 / $1,344	+$192 / +$384
$50,001 to $100,000	$639 / $1,278	$672 / $1,344	+$33 / +$66
$100,001 to $157,000	$736 / $1,472	$672 / $1,344	-$64 / -$128
$157,001 to $219,000	$875 / $1,750	$672 / $1,344	-$203 / -$406
$219,001 to $279,000	$941 / $1,882	$672 / $1,344	-$269 / -$538
$279,001 and up	$1,514 / $3,028	$672 / $1,344	-$842 / -$1,684

Technical Note

The bill requires that the equal refund amount be calculated in the same manner as the six-tier sales tax refund mechanism is calculated under current law. Refunds to be paid on returns for tax year 2023 are required to be calculated in September 2023; however, the language in the bill creating the "same manner" requirement will not take effect until after the result of the November 2023 election is certified, likely in November or December 2023. If this bill is enacted by the General Assembly and signed by the Governor, it is assumed that the Department of Revenue will perform the workload identified in the State Expenditures section to account for the possibility that the ballot measure will be approved, even though the relevant provision of law will not be in effect at the time that the workload is required.

Effective Date

The substantive provisions of the bill (Section 1) take effect only if the ballot measure referred in SB 23-303 is approved by voters at the November 2023 statewide election. The portions of the bill that establish the bill's conditional effective date (Sections 2 and 3) take effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Legislative Council Staff Economics Section

Exhibit E

Order Re: Second Amended Complaint Under 1-11-203.5 June 9, 2023

DATE FILED: June 9, 2023 11:25 AM
CASE NUMBER: 2023CV31432

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
Plaintiffs: STEVEN WARD, et al. v. Defendants: STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor of Colorado, et al.	**COURT USE ONLY** Case Number: 23CV31432 Courtroom: 280

ORDER RE: SECOND AMENDED COMPLAINT UNDER 1-11-203.5

THIS MATTER comes before the Court on Plaintiffs Steven Ward, Jerry Sonnenberg, Abe Laydon, Lora Thomas, George Teal, Kevin Grantham, Stan Vander Werf, Carrie Geitner, Cami Bremer, Longinos Gonzalez, Jr., Chuck Broerman, Mark Flutcher, Christopher Richardson, Grant Thayer, Dallas Schroeder, Advance Colorado, Cheyenne County, Douglas County, El Paso County, Elbert County, Fremont County, Kit Carson County, Logan County, Mesa County, Phillips County, Prowers County, Rio Blanco County, Washington County, and Highlands Ranch Metropolitan District's (hereinafter "Plaintiffs") Second Amended Complaint Under 1-11-203.5 (hereinafter "SAC"). The parties agreed to an expedited briefing schedule for resolution of the issues raised in the SAC. Plaintiffs and Defendants State of Colorado, by and through Jared S. Polis, in his official capacity as Governor of Colorado (hereinafter "the State") and Jena Griswold, in her official capacity as Colorado Secretary of State, submitted simultaneous Opening Briefs on May 30, 2023.[1] The parties likewise submitted simultaneous Answer Briefs on June 5, 2023. The Court, having reviewed its file and being fully advised of the matters therein, finds and orders as follows:

BACKGROUND

The crux of the controversy between the parties is SB23-303 and its embedded referred measure, Proposition HH. Briefly, Plaintiffs contend that SB23-303 and Proposition HH, individually and collectively, violate the Colorado Constitution's requirement that a bill not

[1] The Secretary of State's Opening Brief "takes no position on the merits of Plaintiffs' claims," and simply urges the Court to expeditiously resolve the matter to ensure that this case, and any subsequent appeals, will be resolve in advance of the September 11, 2023 deadline to certify the ballot content to the county clerks.

contain more than one subject which shall be clearly expressed in its title. See Colo. Const. Art. 5, § 21. Accordingly, Plaintiffs seek a declaration from this Court that SB23-303 is unconstitutional and void, or, in the alternative, that Section 3[2] of SB23-303 is void and unenforceable as a matter of law. Plaintiffs likewise seek, if the Court does not declare the foregoing unconstitutional, an order reforming the title of Proposition HH "to provide a clear, detailed and politically neutral explanation of its contents." See SAC, ¶ 12.

More specifically, Plaintiffs contend that SB23-303 violates the single subject requirement as SB23-303 includes at least four subjects, including: 1) a reduction in property tax assessment rates; 2) a request for voter approval for the retention of funds for other expenditures in an amount greater than necessary to offset the reduction in property taxes with the remainder to be reverted to the State's Education Fund; 3) an appropriation of an amount of funds to be used for tenant rent relief; and 4) a change to, and the ultimate elimination of, TABOR refunds. See SAC, ¶ 31. Plaintiffs contend that Proposition HH itself violates the single subject requirement on the same bases that SB23-303 does insofar as it essentially incorporates the same issues in the form of a ballot question. See SAC, ¶ 39. Plaintiffs also contend that Proposition HH violates the single subject requirement because a previously passed bill, HB23-1311, will go into effect only if Proposition HH is approved. See SAC, ¶ 41.

Plaintiffs contend that SB23-303 violates the clear title requirement in the following ways: 1) by calling for an unspecified reduction in property taxes without providing actual numbers (SAC, ¶¶ 43, 44); 2) by not disclosing that the excess of funds appropriated to be used to "backfill" the loss in revenue from the property tax reductions would be retained in the education fund (SAC, ¶ 45); 3) by failing to mention the formula that increases the TABOR limit by 1% each year for at least ten years (SAC, ¶ 46); 4) by failing to mention the local government opt-out provision (SAC, ¶ 47); 5) by failing to mention an appropriation to the housing development grant fund (SAC, ¶ 48); and 6) by failing to "describe or reference the fact that legislators are given the right to permanently change the TABOR cap" (SAC, ¶ 49). Likewise, Plaintiffs seek a reformation of the title of the ballot question on the same bases, in addition to failing to comply with certain subsections of C.R.S. § 1-40-106. SAC, ¶¶ 62-68.

LEGAL STANDARD

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall

[2] Plaintiffs contend that Section 3 of SB23-303 contains the referred measure, Proposition HH. SAC, ¶ 10.

not be so expressed." Colo. Const. Art. V, § 21. The purposes of this provision are: 1) to notify the public and legislators of pending bills so that all may participate in the legislative process; 2) to make the passage of each legislative proposal depend on its own merits; and 3) to enable the governor to consider each single subject of legislation separately in determining whether to exercise the veto power. *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288, 291 (Colo. App. 2005), *superseded by Rule on other grounds as stated in Paradine v. Goei*, 463 P.3d 868 (Colo. App. 2018).

The single subject requirement prohibits the joining in a single act of disconnected and incongruous matters, or of subjects having no necessary or proper connection. *Id*. The requirement was not designed to hinder or unnecessarily obstruct legislation, and to prevent it from having this effect, the provision must be liberally and reasonably construed. *Id*. In the matter of legislative titles, particularity is neither necessary nor desirable, and if legislation is germane to the general subject expressed in title, and is relevant and appropriate to such subject, it does not violate the clear title provision. *Corder v. Pond*, 190 P.2d 582, 583 (Colo. 1948). "It is enough if the bill treats of but one general object, and that object is expressed in the title." *People v. Goddard*, 7 P. 301, 304 (Colo. 1885). "To require that each subdivision of the subject, each and every of the end and means necessary or convenient for the accomplishment of the object, must be specifically mentioned in the title, would greatly impede and embarrass legislation." *Id*. In other words, where the body of the legislation is germane, relevant, and appropriate to the general subject matter expressed in the title, the requirement is met. *People v. Sa'ra*, 117 P.3d 51, 58 (Colo. App. 2004).

ANALYSIS

I. Subject Matter Jurisdiction

The State first contends that this Court lacks subject matter jurisdiction to entertain substantive claims under *Polhill v. Buckley*, 923 P.2d 119 (Colo. 1996). The State contends that limited jurisdiction exists under C.R.S. § 1-11-203.5 to address deficiencies in ballot titles, but that otherwise the Court is without jurisdiction to consider the single subject challenges to SB23-303 and Proposition HH, as well as the clear title challenge to SB23-303, leaving only the clear title challenge to Proposition HH and leaving the only available remedy thereunder reformation of the ballot title. State's Opening Brief, pp. 4-5.

Plaintiffs contend that the Court has subject matter jurisdiction to review their challenge, arguing that: 1) because the Governor signed SB23-303 into law, and because "portions" thereof became effective notwithstanding that the bulk of the bill remains contingent on voter approval, the Court has subject matter jurisdiction to consider their challenge to SB23-303 (Plaintiffs'

Answer Brief, p. 2); and 2) that the Court has subject matter jurisdiction to consider their challenge to Proposition HH under C.R.S. § 1-11-203.5 and under Colo. Const. Art. V, § 1(5.5). Plaintiffs' Answer Brief, pp. 7-8.

The Court concludes that it lacks subject matter jurisdiction to consider Plaintiffs' single subject matter challenge to SB23-303 and, by extension, Proposition HH to the extent that Plaintiffs challenge matters contingent upon voter approval, for the reasons explained below. The Court finds that it has subject matter jurisdiction to consider Plaintiffs' title reformation challenge under C.R.S. § 1-11-203.5, but that such jurisdiction is limited by that statute such that substantive constitutional challenges are not subject to review thereunder. However, for purposes of judicial expediency and economy, the Court will consider the merits of Plaintiffs' challenges so that, in the event the matter is appealed, and this Court erred in its jurisdictional analysis, the issues will be ripe for consideration and the merits of the Plaintiffs' challenge can be considered by the reviewing court with all necessary dispatch.

a. Subject Matter Jurisdiction re: Single-Subject Challenges to SB23-303 and Proposition HH

In *Polhill*, the Supreme Court of Colorado held that "courts lack subject matter jurisdiction to review a legislative referendum for compliance with the single-subject requirement of the Colorado Constitution unless and until it has been approved by the voters." 923 P.2d at 121. The Supreme Court was considering a challenge to a referendum proposed under Colo. Const. Art. XIX, § 2(3), which generally governs amendments to the Colorado Constitution and which subsection specifically forbids multiple subjects and unclear titles on measures submitted by the general assembly to the voters through referenda. The language quite closely parallels that of Colo Const. Art. V, § 21.[3] That the Supreme Court was considering a challenge under Colo. Const. Art. XIX, § 2(3) is of no moment, however, as the Supreme Court's rationales underlying its holding are equally applicable to the nearly identical Art. V, § 21.

The *Polhill* Court noted the "strong tradition" which requires that courts refrain from interfering with the ongoing legislative process except in extraordinary circumstances. 923 P.2d at 121; see also *Id*. at 122 (discussing separation of powers principles which counsel against a court

[3] *Compare* Colo. Const. Art. XIX, § 2(3) ("No measure proposing an amendment to this constitution shall be submitted by the general assembly to the registered electors of the state containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be expressed.") *with* Colo. Const., Art. V, § 21 ("No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.").

invading domains subject to legislative control and judgment in order to supervise the legislative process while law remains in gestation). As such, jurisdiction to review pending legislation exists only in limited circumstances, where conferred by constitutional provision or enabling statute. *See Id.*; see also *Bd. of Cty. Com'rs of Cty. of Archuleta v. Cty. Rd. Users Ass'n*, 11 P.3d 432, 439 (Colo. 2000) (distinguishing *Polhill* because the authority to propose the initiative at issue was provided for by County Sales Tax Act, not general constitutional reservation of initiative and referenda powers). The *Polhill* Court found that Art. XIX, § 2(3) did not itself confer jurisdiction and that C.R.S. § 1-40-107 provided jurisdiction for pre-election review of citizen initiatives, but not legislative referenda. 923 P.2d at 121.

Likewise, this Court finds that Art. V, § 21 does not itself confer jurisdiction to consider a single-subject challenge to a referendum, nor is the Court aware of any applicable statutory conferral.[4] As the *Polhill* Court found that Art. XIX, § 2(3) did not itself provide a conferral, and its language is nearly identical to Art. V, § 21, so too does this Court find that Art. V, § 21 does not provide for jurisdiction for such challenges.[5]

The *Polhill* Court also noted that, in certain circumstances, equity may provide a basis for jurisdiction where no adequate remedy is available to right the alleged wrong. 923 P.2d at 122. However, the *Polhill* Court declined to find that equity provided jurisdiction to consider a single-subject challenge to pre-election referendum where an adequate post-election remedy (invalidation of the referendum) was available, specifically noting that such a remedy was available under Art. V, § 21 (and, by extension, Art. XIX, § 2(3)). See fn. 4, *supra*. As such, Plaintiffs, here, have an adequate remedy available to them, post-election.

b. Subject Matter Jurisdiction under C.R.S. § 1-11-203.5 and Colo. Const., Art. V, § 1(5.5)

Plaintiffs contend that subject matter jurisdiction to consider their single-subject challenge to Proposition HH exists under C.R.S. § 1-11-203.5 and pursuant to Colo. Const., Art. V, § 1(5.5). See Plaintiffs' Answer Brief, pp. 6-9. The Court disagrees. However, the Court finds that limited jurisdiction is available under C.R.S. § 1-11-203.5 to consider the clear title challenge to Proposition HH where the remedy is reformation.

[4] The Court will discuss the limits of the jurisdiction conferred by C.R.S. § 1-11-203.5 in Section I(b), *infra*.

[5] The virtual identity of these two provisions was noted by the *Polhill* Court. In finding that challengers would have an adequate post-election remedy for a passed referendum that violated the single-subject requirement of Art. XIX, § 2(3), the *Polhill* Court noted that "the language of Article XIX, § 2(3) is also found in Article V, § 21, of the Colorado Constitution…[and] that language has not been found to limit the remedy which may be imposed if a bill is found to violate the single-subject requirement." 923 P.2d at 121-22.

First, regarding C.R.S. § 1-11-203.5, Plaintiffs argue that jurisdiction is available thereunder to hear "all election contests arising out of a ballot issue or ballot question concerning the order on the ballot or the form or content of any ballot title." Plaintiffs' Answer Brief, p. 7. They contend that their challenge to Proposition HH is precisely that: a challenge to the form and content of Proposition HH's title. *Id*.

C.R.S. § 1-11-203.5(1) provides that "all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title shall be summarily adjudicated by the district court." The statute, thus, contemplates a limited class of challenges arising out of a ballot issue or ballot question; namely, those concerning: 1) "the order on the ballot" or 2) "the form or content of any ballot title." *Id*. If a court, reviewing a challenge pursuant to this section, finds that the order of the ballot or the form or content of the ballot title does not comply with constitutional or statutory requirements, then the court must correct the ballot title or correct the order of the measures to be placed upon the ballot. *Id*. at -203.5(3).[6]

Read together, the most natural reading of the statute is that it is one which concerns itself with challenges to the language used in a ballot title, and not the substance of a ballot question, with a limited remedy of reformation to a nonconforming title. See *Cacioppo v. Eagle Cty. Sch. Dist. Re-50J*, 92 P.3d 453, 464 (Colo. 2004) (noting that the "form or content of the ballot title…refers only to the heading of the ballot issue and the question presented to the voters."). It is a limited grant of jurisdiction to consider a narrow issue with limited available remedies. It necessarily presupposes that a ballot title *can* be reformed to comply with statutory and constitutional requirements; in other words, it assumes that the ballot issue complies with matters such as the single-subject requirement. Challenges, such as Plaintiffs', to a ballot issue, which are predicated on the assumption that a ballot issue violates the single subject requirement (and thus assume a title cannot be properly formulated) are beyond the contemplation of C.R.S. § 1-11-203.5. The *Cacioppo* Court made such clear when it found that "a matter involves the substance of a ballot issue [and is therefore not subject to C.R.S. § 1-11-203.5] if it relates to the language in the ballot title itself…and if it such that it would be legally impossible for the court adjudicating the ballot title contest to reform or reword the ballot title as – contemplated by statute – to any constitutionally or statutorily acceptable level. Stated differently, the contest involves the substance of the ballot issue if, regardless of any contest filed before the election, the ballot issue as approved cannot be upheld under the laws or constitution of the state." 92 P.3d at 465. In short,

[6] As Plaintiffs do not challenge the order of the ballot, the Court disregards this provision in its forthcoming analysis.

"if the claim alleges that the ballot issue as passed," or here, as proposed, "cannot stand under the laws of this state, it is substantive in nature." *Id*.

This is precisely the nature of the single-subject challenge Plaintiffs now assert. See Plaintiffs' Opening Brief, p. 15 ("Because Proposition HH violates the Single Subject Requirement, there necessarily is no title that can be set for the measure and therefore may not be submitted to the voters for their approval."). The Court agrees with Plaintiffs that the issue in *Cacioppo* was not a single-subject challenge but disagrees with the contention that the holding is therefore no barrier to this Court's jurisdiction. The *Cacioppo* Court held, broadly, that substantive challenges to a ballot issue are not covered by C.R.S. § 1-11-203.5 and established a standard for determining when a challenge is substantive. In this Court's view, Plaintiffs' single-subject challenge clearly meets the standard for a substantive challenge to a ballot issue as set forth in *Cacioppo*.[7] As such, C.R.S. § 1-11-203.5 does not apply, and any jurisdiction conferred thereunder does not reach Plaintiffs' single-subject challenge. See also *Campbell v. Buckley*, 203 F.3d 738, 747 (10th Cir. 2000) (rejecting equal protection challenge to title setting procedure on the basis that legislative bills cannot be subject to a single-subject challenge before being passed into law whereas citizen initiatives can be subject to such a challenge before a petition is even circulated).

Second, Plaintiffs contend that subject matter jurisdiction is provided by Colo. Const., Art. V, § 1(5.5), which provides that "no measure shall by proposed by petition containing more than one subject, which shall be clearly expressed in its title" and that "if a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the poll."

Plaintiffs are mistaken. Colo. Const. Art. V, § 1(5.5) applies to initiatives, not referenda. The language of the provision itself refers to measures proposed "by petition," and while the

[7] The Court has considered *Busse v. City of Golden*, 73 P.3d 660 (Colo. 2003) and finds that it does not compel the conclusion that a single-subject challenge to a ballot issue is a challenge to the form or content of a ballot title. In *Busse*, the plaintiff argued that a referred local ballot issue was "invalid because it included multiple, separate purposes on a single ballot title." 73 P.3d at 662. The *Busse* Court held, in cursory fashion, that "Plaintiff's argument that the ballot issue was invalid because it contained multiple purposes is clearly a challenge to the form or content of the ballot title." *Id*. at 664. To further compound the confusion, the *Busse* Court also stated that "plaintiff's claim that Referred Issue 2A is invalid because it includes four separate purposes…[is] a challenge to the content of the ballot itself on the basis of multiple subjects," and is therefore subject to C.R.S. § 1-11-203.5's statute of limitations. *Cacioppo*, which considered the application of C.R.S. § 1-11-203.5 in greater detail, provides greater guidance to this Court concerning the statute in distinguishing between challenges to the title of a ballot issue itself and challenges to the substance of a ballot issue which, necessarily, implicate the title, and as such, is the most applicable. To the extent *Busse* and *Cacioppo* conflict and are not reconcilable, *Cacioppo* controls. See *Parker v. Plympton*, 273 P. 1030, 1034 (Colo. 1928) ("Where decisions are conflicting, the latest govern."), *superseded by rule on other grounds as stated in Klipp v. Grusing*, 200 P.2d 917 (Colo. 1948).

People, by petition, can place a referendum on the ballot,[8] a referred measure, as is at issue here, is not referred "by petition." Further, the provision provides that, where a petition violates the single subject requirement and a ballot title expressing a single subject cannot be set, "the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section." Subsection (5) of Art. V, § 1 requires that "the original draft of the text of the proposed initiated constitutional amendments and initiated laws" be submitted for review and comment; which is to say, it applies to initiatives, not referenda. It would be nonsensical for subsection (5.5) to exempt noncomplying referenda from a procedure to which they are already not subject. Plainly, Art. V, § 1(5.5) does not govern referenda. See also *Campbell*, 203 F.3d at 747 n. 57 (noting that "the single subject requirement for *citizen initiatives* is found at Colo. Const. Art. V, § 1(5.5)" and that "general assembly bills as well as constitutional amendments proposed by the general assembly and submitted to the electorate are also subject to a single subject requirement" under Art. V, § 21 and Art. XIX, § 2(3)."") (emphasis added); see also C.R.S. § 1-40-106.5(1)(a) (providing that "Section 1(5.5) of article V…require[s] that every…law proposed by initiative…be limited to a single subject, which shall be clearly expressed in its title.").

As such, the Court concludes that Colo. Const. Art V., § 1(5.5) provides no jurisdiction for the Court to consider Plaintiffs' single subject challenge to either SB23-303 or Proposition HH.

c. Subject Matter Jurisdiction re: Challenges to Provisions not Contingent upon Voter Approval of Proposition HH

As previously mentioned, Plaintiffs contend that SB23-303 "is law today and subject to judicial review" because it has been approved by the general assembly and signed by the Governor, and that because "critical parts of the bill are 'effective' upon passage" (*i.e.* not upon approval of Proposition HH), their challenge is ripe. Plaintiffs' Answer Brief, p. 2.

Plaintiffs point to Section 23 of SB23-303, which provides that: "(1) except as otherwise provided in subsection (2) of this section, this act takes effect only if a majority of voters approve the ballot issue referred…enacted in section 3 of this act." SB23-303, p. 47. Subsection (2) of Section 23 provides that section 3, section 39-1-104.2(3.7) contained within section 9, section 39-3-210(1)(a.3), (1)(e), and (2.5) as provided for in section 14, section 18, section 23, and section 24 are effective upon passage. The matters contained within those sections are as follows:

[8] See *Campbell*, 203 F.3d at 740 ("An initiative is placed on the ballot after the proponent secures by petition the required number of signatures by registered electors. A referendum similarly may be placed on the ballot by circulating a petition, or may be placed on the ballot by the general assembly.").

- Section 3 of SB23-303: section 3 of SB23-303 is the part of the legislation which submits Proposition HH to the voters. See SB23-303, pp. 3-7; see also SAC, ¶ 10.

- Section 39-1-104.2(3.7) as contained within section 9: this section of SB23-303 provides for the amendment of existing law or the addition of new provisions to existing law, including subsection (3.7). Subsection (3.7) itself directs the creation of a "working group" to consider and make recommendations about ways to streamline and improve the designation of the primary residence real property in the event that voters approve Proposition HH. See SB23-303 pp, 18, 21-22.

- Section 39-3-210(1)(a.3), (1)(e), and (2.5) as provided for in section 14: this section of SB23-303 likewise provides for the amendment of existing law or additions thereto, including the sections detailed above. These additions concern: clarifying that the term "county" as used includes a city and county (see (1)(a.3)); that the term "municipality" as used means a home rule or statutory city, town, or territorial charter city (see (1)(e)); and a reporting requirement for the covered treasurers to report certain estimates to the administrator for all local government entities within their county, some of which are conditioned upon the adoption of Proposition HH (see (2.5)). See SB23-303, pp. 36, 38-39.

- Section 18: this section of SB23-303 imposes an obligation on the executive director to calculate the amount of the identical individual refund under certain provisions and also the amount of the refund allowed for each income classification under C.R.S § 39-22-2003(3) for the taxable year commencing during the fiscal year based on the amount of excess state revenues that will be refunded under C.R.S. § 39-3-210, to be repealed July 1, 2024. See SB23-303, pp. 44-45.

- Section 23: this section of SB23-303 conditions the efficacy of most of SB23-303 on the approval of Proposition HH, with the exceptions discussed above. See SB23-303, p. 47.

- Section 24: this section of SB23-303 is the safety clause[9] of the bill. See SB23-303, pp. 47-48.

[9] Colo. Const. Art. 5, § 1(3) provides for the power of referendum, which may be ordered "except as to laws necessary for the immediate preservation of the public peace, health, or safety." The general assembly has the exclusive authority to determine whether a law is necessary for the immediate preservation of the public peace, health, or safety. *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092, 1096 (10th Cir. 1997), *citing Van Kleeck v. Ramer*, 156 P. 1108, 1110 (Colo. 1916). When the general assembly attaches a safety clause to a law, a referendum is precluded. *Id.*

A review of the foregoing reveals that Plaintiffs' characterization of these sections as being "critical parts" of the bill is a bit of a stretch. Indeed, it is telling that the individual challenges raised by Plaintiff in their comprehensive complaint and briefing do not concern any of these issues, individually.[10] Section 3 is the part of the bill which puts forth the referendum; it would be untenable to read *Polhill* as disallowing a challenge to referenda on single-subject grounds but allowing a challenge to the section of the bill which operates to put forth a referenda on precisely the same grounds. Likewise, Section 23, which conditions the efficacy of the bulk of the bill on approval of the referendum, and Section 24, which is a boilerplate safety clause, does not open the door to substantive consideration of the referendum itself prior to voter approval. To allow such procedural and structural provisions to open the door to the substance of what *Polhill* prohibited would be to read *Polhill* out of existence entirely.

The remaining sections (*i.e.* Sections 18, parts of 14, and parts of 9) create data-generation, consulting, and reporting obligations concerning fiscal data and policy, regardless of the approval of Proposition HH, subjects which do not constitute a part of Plaintiffs' challenge. To the extent this Court has subject matter jurisdiction to consider challenges to such provisions, the Court finds that Plaintiffs have not carried their burden to overcome the presumption of constitutionality of such provisions beyond a reasonable doubt.

In short, the fact that certain provisions of SB23-303 are currently active and in effect does not allow the Court to pry open the gates shut by the *Polhill* court, where the currently active provisions are procedurally-enabling sections or which otherwise concern ancillary details such as data generation, particularly where such provisions have not been placed at issue by the Plaintiffs and where Plaintiffs have thus failed to carry their burden to show that such provisions are unconstitutional beyond a reasonable doubt. To do so would be to disregard those august concerns discussed in *Polhill* and impermissibly circumvent the limitations they impose, justified on the most anemic of bases.

d. Subject Matter Jurisdiction re: Clear Title Challenges to SB23-303 and Proposition HH

Regarding Plaintiffs' clear title challenge to SB23-303, the Court finds that it lacks subject matter jurisdiction to consider such a challenge for the same reasons it lacks subject matter jurisdiction to consider a single subject challenge. The constitutional requirement for clear title is

[10] In Plaintiffs' own words, "the substance of SB23-303 is at stake in Proposition HH," and that "only" those provisions discussed above remain effective without the approval of Proposition HH. Plaintiffs' Opening Brief, p. 11, p. 11 n. 5.

found alongside the requirement for a single subject matter in Colo. Cont. Art. V, § 21, which itself confers no jurisdiction to hear a pre-election challenge. Likewise, C.R.S. § 1-11-203.5 provides no jurisdiction to hear a challenge to a bill title. In short, because SB23-303 is predominantly contingent on voter approval of the referred measure, and Plaintiffs' challenge arises out of those portions which are explicitly conditioned on such approval, any ruling by this Court on the bill's title would constitute an impermissible advisory opinion and trespass into the legislative domain to prematurely "superintend" obligations which are theirs to discharge.

The State, and this Court, agree, however, that limited jurisdiction exists to consider reformation of the title of the ballot issue under C.R.S. § 1-11-203.5 to the extent it can be done without considering the constitutional substance of Proposition HH.

II. Reformation of the Ballot Title Under C.R.S. § 1-11-203.5

Plaintiffs challenge the title of Proposition HH on multiple fronts. First, they contend that the title is so misleading that it amounts to a denial of due process. See SAC, ¶ 59. More concretely, they contend that the ballot title: a) fails to provides for specific rates of property tax changes, revenue reductions, or increased appropriations; b) does not explain that "backfilled" funds would not stop at revenue replacement; c) does not mention the compounding TABOR cap reform which, they contend, permanently alters the TABOR formula; d) describes excess revenue under TABOR as "surplus funds" without explaining that such funds would otherwise by refunded; e) does not adequately explain the local government opt-out provision; f) does not advise voters of the rent-assistance appropriation; and g) inaccurately states that funds will be used for "school districts," rather than the state education fund. SAC, ¶ 62. Plaintiffs also contend that the title expresses more than one subject (SAC, ¶ 63), that the title is misleading because it is exempted from C.R.S. § 1-40-106(3)(d) (SAC, ¶ 65), that the title is misleading because it "re-defines" excess TABOR revenue as a "state surplus" (SAC, ¶ 66), that the title fails to comply with C.R.S. § 1-40-106(f) (SAC, ¶ 67), and that the title fails to comply with C.R.S. § 1-40-106(g) (SAC, ¶ 68). Plaintiffs also contend, in their Opening Brief, that Proposition HH violates the clear title requirement because it does not alert the voter to the fact that the efficacy of HB23-1311 depends on their approval of Proposition HH. See Plaintiffs' Opening Brief, p. 17; *Cf.* SAC, ¶¶ 41, 42 (alleging that Proposition HH violates the single-subject requirement because HB23-1311 is conditioned on approval of Proposition HH).

A due process challenge is a substantive challenge which the Court lacks jurisdiction to entertain, as is the single-subject challenge. Challenges to the title under C.R.S. § 1-40-106(f), (g) appear to have been abandoned by Plaintiffs as they are not discussed in their Opening Brief. Regardless, such provisions are applicable to titles set by the Title Board as to proposed initiatives,

not referred measures. See *Matter of Title, Ballot Title and Submission Clause, and Summary Adopted Feb. 10, 1992 by Title Setting Review Board and Pertaining to a Proposed Initiative for an Amendment to Article XVI, Section 5, Colorado Constitution, Entitled "W.A.T.E.R."*, 831 P.2d 1301, 1306 (Colo. 1992).

The Court considers whether Proposition HH's title is misleading in such a way that it can be reformed. See *Cacioppo*, 92 P.3d at 466 (challenge appropriate where challenge refers to "wording and order of ballot title and not to the substance of what voters can approve," and where reviewing court could have reworded title to conform to constitutional requirement).

As previously mentioned, in the matter of titles, particularity is neither necessary nor desirable. *Corder*, 190 P.2d at 583. So long as the subject matter is germane to the general subject expressed in the title, and is relevant and appropriate to such subject, the title will pass muster. *Id*. The means by which the general subject of the title is accomplished are germane. *People v. Montgomery*, 342 P.3d 593, 596 (Colo. App. 2014) (sentencing, parole, and probation germane to subject of lifetime supervision of sex offenders as means by which behavior of convicted sex offenders were supervised). Clear title requirements have been "uniformly construed liberally in favor of the validity of enactments." *Cole v. People*, 18 P.2d 470, 471 (Colo. 1933). In *Cole*, the Supreme Court denied a challenge to an act entitled "an Act relating to banks and bankers" predicated on the fact that the act created a new felony not mentioned in the title. Quoting *Italia America Shipping Corporation v. Nelson*, 154 N.E. 198, 199 (Ill. 1926), the *Cole* Court found that, in order to sustain a clear title challenge, the challenged provision "must be so incongruous with the title or must have no proper connection with or relation to the title" and that "if all the provisions of an act relate to one subject indicated in the title and are parts of it or incident to it or reasonably connected with it or in some reasonable sense auxiliary to the object in view, then the [clear title] provision of the Constitution is obeyed;" the term "subject" as used means "the basis or principal object of the act," which "may contain many objects growing out of and germane to it" including "any matter or thing which may reasonably be said to be subservient to the general subject or purpose." 18 P.2d at 471.

In *People v. Trozzo*, the plaintiff challenged an act entitled "An act concerning certain forms of prostitution and providing punishment for persons encouraging prostitution in violation of this act." 117 P. 150, 151 (Colo. 1911). The Court held that "the controlling provision of the title in questions is 'An act concerning certain forms of prostitution,'" with the remainder referring to "nothing which is not germane to the subject thus expressed." Likewise, in *Zeigler v. People*, the Court held that the general subject of an act entitled "An act relating to agriculture and agricultural products; providing for investigations of the business and affairs of wholesale purchasers thereof, whether under contract or otherwise; and for licensing and regulation of

purchasers of such products; to prevent unfair trade practices in connection with such products; providing penalties for the violation of this act and providing that this act may be indexed and cited as 'The Produce Dealers Act'" was "agriculture and agricultural products." 124 P.2d at 596. In *Zeigler*, the Defendant complained that he did not realize he was not exempt from the licensing provisions. The *Zeigler* Court noted that the defendant "could ascertain from the title that the act requires the licensing of dealers in farm produce and, reading through the body of the act, could observe that the exemptions do not exclude him from its operation." *Id*. at 597.

It is against this backdrop[11] that the Court considers Plaintiffs' active challenges to Proposition HH's title. Proposition HH's title is as follows:

> SHALL THE STATE REDUCE PROPERTY TAXES FOR HOMES AND BUSINESSES, INCLUDING EXPANDING PROPERTY TAX RELIEF FOR SENIORS, AND BACKFILL COUNTIES, WATER DISTRICTS, FIRE DISTRICTS, AMBULANCE AND HOSPITAL DISTRICTS, AND OTHER LOCAL GOVERNMENTS AND FUND SCHOOL DISTRICTS BY USING A PORTION OF THE STATE SURPLUS UP TO THE PROPOSITION HH CAP AS DEFINED BY THIS MEASURE?

The general subject of the title is the rebalancing of the property tax burden facing homes and businesses in the state. The title alerts the voter to the stated intent to reduce property taxes on homes and businesses without undercutting funding from sectors that rely on property taxes for funding by "backfilling" certain entities and funding school districts. The title further alerts the voter to the mechanism to accomplish the rebalancing, *i.e.* use of a portion of the state surplus, and that the details of that mechanism are as defined by the Proposition.

Much of Plaintiffs' challenge can be characterized as an objection to the lack of specificity contained in the title. For example, Plaintiffs protest that the title does not provide for the specifics of the property tax rate changes, estimated revenue reductions, or increased appropriations, does not adequately explain that "backfilling" does not stop at replacement, does not explain the TABOR cap reform, does not adequately explain that "surplus funds" would otherwise be refunded, does not adequately explain the opt-out provision, and does not alert voters to the rent-assistance appropriation. See SAC, ¶ 62. The remaining challenges may be more aptly characterized as based on allegations that the title is misleading, by inaccurately stating that funds

[11] Which is to say, a presumption in favor of the validity of the title, and a requirement only that a general subject matter be expressed and that all manner of incidental, auxiliary, or necessary subjects may be contained within the law without needing to be expressed in the title, so long as they are germane and congruous to the general object therein expressed.

will be used for school districts instead of the education fund, because the title is exempt from C.R.S. § 1-40-106(3)(d), and because the title "re-defines" excess TABOR revenue as a "state surplus." See SAC, ¶¶ 62, 65, 66.

Regarding the challenges based on the alleged lack of specificity in the title, the Court rejects such challenges. A title is meant to be a title, not a summary of the specifics of a proposition. Particularity is neither necessary nor desirable when it comes to the title. The title exists for the purpose of alerting the reader to the general object of the proposed legislation, and it is not improper for it to decline to delve into specifics. See, *e.g.*, *Zeigler*, 124 P.2d at 597 (title indicated licensing regime was contemplated by act, and defendant could observe that he was not exempted from operating of the licensing requirement by reading through the body of the act); see also *In re Breene*, 24 P. 3, 4 (Colo. 1890) ("It is not essential that the title shall specify particularly each and every subdivision of the general subject."). Thus, objections to the lack of specifics concerning rate reductions and revenue projections, the mechanics of the "backfilling" mechanism and the TABOR cap, the opt-out provision, and the rent-assistance appropriation, are not well-taken. "The general assembly may, within reason, make the title of a bill as comprehensive as it chooses, and thus cover legislation, relating to many minor but associated matters." *In re Breene*, 24 P.3d at 4; see also *Rinn v. Bedford*, 84 P.2d 827, 829 (Colo. 1938) (denying clear title challenge to act entitled "An Act providing for additional public revenue" because such a title "has the prime merit…of being general and comprehensive, rather than being excessively analytical or constituting a mere catalogue or list of subtitles or secondary subject," and holding that "matter of providing in detail the process of collecting additional revenue is clearly included within, and germane to, the connotation of the title."). The current title alerts readers to the general object to be accomplished by the proposed law, and those concerned with the specifics are more than capable of reading the body of the proposition. While, of course, a title may not be so vague as to require a voter to read the body of the proposition to determine its general object, it does not follow that the title must be so specific as to relieve the voter entirely of reading the bill to understand the precise nature of the manner in which the general object is to be obtained.

The Court likewise does not find the title to be misleading. First, the title is not misleading because it is exempt from C.R.S. § 1-40-106(3)(d). Plaintiffs, having ignored the subject entirely in their briefs, present no basis for their contention that a Proposition cannot be exempted from the requirements of C.R.S. § 1-40-106(3)(d). The Court therefore finds that Plaintiffs have not shown that the title is unconstitutionally in need of reformation for being so exempted. Nor is the title unconstitutionally misleading because it refers to excess TABOR revenue as a "state surplus." The context of the usage of the term makes clear the matter in question concerns "funding" for government entities, which predominantly rely on taxes for such funding. Thus, an ordinary intellect could discern that the "state surplus" relates to the amount of taxes which are in excess of

the amount required to finance government enterprises, which ordinarily would be refunded. While the Court appreciates that the title could, perhaps, do more to make this clear, it is not the role of the Court to "superintend" the responsibilities of the legislature in setting titles, nor is it the purpose of review under C.R.S. § 1-11-203.5 to allow this Court to substitute its judgment as to the title unless and until it is shown that the title is unconstitutionally infirm. The term "state surplus" is not so obscuring as to mislead a voter of ordinary intellect such that the Court feels it necessary to intercede. Finally, the title is not misleading because it refers to funding "school districts" instead of the general education fund. Again, Plaintiffs did not discuss this issue in their Opening or Answer Briefs, and as such, have failed to demonstrate its impropriety. Regardless, the Court does not find that referring to funding "school districts" is misleading because such funds are placed into the general education fund created by Colo. Const., Art. IX, § 17. The spending of money in that fund is expressly limited by the terms of the constitutional amendment which created it, and it would not be unconstitutionally duplicitous to characterize the use of money in this education fund as "fund[ing] school districts."

Concerning HB23-1311, the Court does not find that the failure of Proposition HH's title to alert readers to the fact that HB23-1311 is conditioned on approval of Proposition HH renders the title unconstitutionally unclear. Proposition HH, itself, does not concern itself with HB23-1311; its conditional nature is a consequence of its own provisions. In other words, Proposition HH, itself, does not presume to create the conditional nature of HB23-1311, and as such, is not an object of the ballot issue which must be disclosed in the title. Plaintiffs provide no support for the proposition that a ballot title must disclose the impact it may have on the implementation or efficacy of other laws, and the Court has likewise found none. Given that, the Court finds that Plaintiffs have failed to demonstrate the impropriety of Proposition HH's title for this supposed failure.

Lastly, challenges predicated on "convention" or requirements for initiative titles are neither here nor there. Convention is not requirement, so long as the departure therefrom is not so egregious as to amount to a fraud or deception upon the reader, and the Court declines to bind a current legislature to the practices of those past where such practices have not been reduced to binding statutory or constitutional requirements. Further, title requirements for citizen initiatives need not be paralleled by those applicable to legislative referenda. See *Campbell*, 203 F.3d at 748 (rejecting equal protection challenge to disparate standards for citizen initiatives and legislative actions because citizens and legislatures are not similarly situated classes with respect to the circumstances of the issue).

In short, the Court declines to reform the title of Proposition HH as it currently stands. The title alerts the reader to the general object to be attained by the proposed legislation: reducing

property taxes and making up the difference with excess revenues. All that is required of a title is a clear, general object; specifics need not be presented. The Court perceives no deception rising to a level as cannot be countenanced by the constitution, given the presumption in favor of validity of legislative acts and the heavy burden associated with overcoming such a presumption.

III. Consideration of the Merits of Plaintiffs' Challenges

To be clear, the Court finds that it lacks subject matter jurisdiction to consider the bulk of Plaintiffs' challenges, as outlined above. Typically, the Court would go no further, and not consider the merits of the challenge in light of the lack of jurisdiction. See, *e.g.*, *Polhill*, 923 P.2d at 122 ("Because we hold that the courts do not have jurisdiction…we do not decide whether SCR 95-2 encompasses a single subject."). However, given that the parties have fully briefed the merits of the challenge, and given the extraordinary time crunch[12] facing the parties, the Court finds it prudent to consider the merits to account for the possibility that its jurisdictional analysis is mistaken, so as to ensure that all issues are properly presented to a reviewing court, should any party seek further review, for the purposes of the rapid disposition of the merits of the challenge and the avoidance of any needless delay in resolving the questions put forth by Plaintiffs.

a. Single-Subject Challenges

Plaintiffs contend that SB23-303 violates the single subject requirement as SB23-303 contains at least four subjects, including: 1) a reduction in property tax assessment rates; 2) a request for voter approval for the retention of funds for other expenditures in an amount greater than necessary to offset the loss; 3) an appropriation of an amount of funds to be used for tenant rent relief; and 4) a change in TABOR refunds. See SAC, ¶ 31. Plaintiffs contend that Proposition HH violates the single subject requirement on the same grounds, as well as violating the single subject requirement by virtue of the fact that a previously passed bill, HB23-1311, will go into effect only if Proposition HH is approved. See SAC, ¶¶ 39, 41.

The Court does not find that SB23-303 and, by extension, Proposition HH, violate the single-subject requirement on the grounds articulated by Plaintiffs. Again, the Court is starting from a strong presumption of constitutional validity and considers such challenges in light of the liberal construction that must be afforded to the requirements of Colo. Const. Art. V, § 21. The single subject requirement is satisfied "so long as the matters encompassed in [a piece of legislation] are necessarily or properly connected to each other rather than disconnected or

[12] The Court, again, notes the deadline by which ballot issues must be certified is approximately three months from the date of this order. See fn. 1, *supra*.

incongruous." *Montgomery*, 342 P.3d at 596. The Court finds that the matters complained of are necessarily or properly connected with each other in light of the object of the legislation.

As previously mentioned, the object of the legislation is to afford property tax relief to homes and businesses without undercutting the funding of entities that rely on such tax income. One could fairly argue that reducing taxes *and* shoring up the financial shortfall are two separate subjects, but the Court does not believe that they are so "disconnected and incongruous" as to be constitutionally impermissible; they are both part of the financial balance attempting to be adjusted by the legislation.[13] The request for voter approval of the use of excess state revenue for the source of the financial backstop is a means of accomplishing the intended object, it is the mechanism by which the books are balanced, and as such, is not "disconnected or incongruous" in a constitutional sense.

But that does not completely address the full substance of Plaintiffs' challenge. Plaintiffs contend that the legislation goes beyond merely balancing the books, and affirmatively provides for a "source of additional revenue for state spending on public education" as well as an appropriation for rent relief, which Plaintiffs contend "cannot be" necessarily related to property tax relief because tenants do not pay property taxes. Plaintiffs' Answer Brief, p. 3.

It is worth briefly reviewing the mechanism by which Proposition HH would finance the property tax reduction shortfalls. First, the excess state revenues, if any, are deposited in an account. SB23-303, p. 6. Such funds must be used in a specified manner, the first of which is that whatever money is in the account be used to reimburse "local governments," (a definition which explicitly excludes school districts, see SB23-303, p. 36). SB23-303, p. 6. After such disbursement, five percent of whatever funds remain, up to a cap of $20 million, are set aside for use in a housing development grant fund to reduce the property taxes paid by renters as a portion of their rent. *Id*. The remainder is transferred to the state education fund, as constituted by Art. IX, § 17. *Id*.

The Court first considers what is, in the Court's view, the easier issue: the use of funds for rent relief. Plaintiffs contend that the rent subsidies cannot be necessarily related to property tax relief as "residential tenants do not pay property taxes – their landlords do." Plaintiffs' Answer Brief, p. 3. Plaintiffs further contend that it is no defense to say that renters indirectly pay property taxes as a portion of their rent because they will "benefit from their landlords' reduced property

[13] Indeed, even Plaintiffs seem to concede that "a dollar-for-dollar 'backfill' of local property tax revenue 'lost' because of lower assessment rates may be permissible," Plaintiffs' Opening Brief, p. 3, thereby suggesting that even they agree that lowering taxes, on one hand, and balancing the shortfall, on the other, does not constitute multiple subjects in the constitutional sense.

tax burden," and thus "the rental assistance…cannot have anything to do with reducing the (nonexistent) property-tax burden of renters." Plaintiffs' Answer Brief, p. 6.

The Court first rejects, out of hand, the notion that rental tenants "do not pay property taxes," as advanced by Plaintiffs. The Court appreciates the hyper-literal distinction advanced by Plaintiffs, but it is a distinction without a difference in the context presented by this case. Landlords invariably pass on the cost of their property taxes to their tenants when setting their rental rates. Thus, in the most real and practical sense, renters pay property taxes. And while the Court is fully willing to credit Plaintiffs' argument, predicated on either (or both) the good faith of landlords and the invisible hand of the market, that landlords will pass on their property tax savings to their tenants in the form of reduced rental rates, it does not necessarily follow that rental subsidies, therefore, "cannot have anything to do" with the property tax burden of renters. Rental subsidies will afford a practical relief to renters of the kind shared by their home-owning compatriots. Simply because some, or even all, landlords may pass on their property tax benefits to their tenants in the form of reduced rent does not mean that renters would not also experience a similar benefit through rent subsidies. Perhaps the legislature, in its calculus, determined that both the anticipated pass-through property tax reduction benefits and rent subsidies combined constitutes the appropriate level of relief for renters. Or perhaps the legislature was unwilling to rely on landlords to pass on the benefits of the property tax reduction to their tenants and desired a more direct form of relief, over which the state exercised more control. It matters not, as the Court's role is not to displace the legislature's judgment as to whether an object is accomplished,[14] but to determine whether the parts of the proposed legislation are germane or a necessary incident to the general object. Rental subsidies are a means to accomplish the goal of property tax relief as it applies to renters, and as such, are not so disconnected and incongruous from the object of the legislation as to offend the constitution.

Regarding the transfer of excess funds to the education fund in an amount which may exceed the loss occasioned to schools by the proposed property tax reductions, the Court does not find that such a circumstance constitutes a separate subject from the general object of the legislation. The Court notes that funds in excess of the loss will only be realized if the retained surplus is greater than the combined value of the local government entity backfill, the rental assistance set-aside, and the backfill for the loss to school districts from the property tax reduction.[15] To the extent that the legislation results in a "reserve fund" accruing in the education

[14] Which is to say, it is not for the Court to decide that the object of SB23-303 is fully accomplished by a single mechanism and invalidate all others which may work towards the same goal.

[15] Plaintiffs contend that SB23-303 is projected to "result in an additional $72 million in state funding to public education [in 2023-24]," which "jumps to $128 million" in 2024-25, and "increases further to $269 million" in 2025-26. Plaintiffs' Answer Brief, p. 5. Plaintiffs draw these figures from the Revised Fiscal Note for SB23-303, attached as Appendix D to their Answer Brief. The Court does not share their reading of the Fiscal Note. Rather, the fiscal

fund, the Court does not find that this offends the single subject requirement. Securing financing to effect a program is plainly germane to the program, and to the extent a reserve fund might be created from which the education backfill could be financed in lean years, that seems to this Court to be a necessary or appropriate incident to securing financing. The existence of a reserve fund, from which the state can backfill school district losses occasioned by the reduction in property taxes in years for which the designated surplus funds from that year cannot offset the loss, is not unconstitutionally disconnected or incongruous from the purpose of the legislation. Conceptually, it is no different from a person whose income is commission-based setting aside a little extra money during good months so that he or she can afford to pay his or her bills during the bad; it is simply a practice incident to sound finance. As such, it does not seem to this Court to be disconnected or incongruous from the subject of the legislation, as it is merely a means to effect their chosen financing method in light of future uncertainties.

Lastly, the Court considers Plaintiffs' argument that HB23-1311's operation being conditioned on approval of Proposition HH causes Proposition HH to violate the single subject requirement. In short, Plaintiffs contend that, because HB23-1311 will not go into effect if voters reject Proposition HH, Proposition HH therefore functions "as a referendum" on HB23-1311 and, as such, incorporates an additional subject matter not properly connected to the subject matter of Proposition HH. The Court rejects this argument.

The Court acknowledges that the argument has, at first blush, plausible merit, but subsequent consideration reveals the argument's failings. The Court notes that Plaintiffs have not provided any case law, despite the multiplicity of state constitutions with single-subject requirements, shedding light on the precise question; nor has the Court's own search yielded any results of its own. It seems untenable to the Court, however, to find that conditional legislation violates the single-subject requirement, even where the subjects are not necessarily related.

There can be no question that conditional legislation is an appropriate exercise of legislative power, so long as it does not improperly devolve the legislative function. See *Marshall Field & Co. v. Clark*, 143 U.S. 649, 683 (1892) ("We can see no sufficient reason why the legislature should not exercise its discretion…either expressly or conditionally, as their judgment should direct.").[16] Plaintiffs' invitation to the Court to invalidate legislation because a separate act

note provides that the state will transfer $72 million in 2023-24 to the education fund, from which schools will be backfilled, and that transfers for 2024-25 and 2025-26 from surplus revenue are estimated to be $124.9 million and $269 million, respectively. See Revised Fiscal Note SB23-303, p. 8. These numbers are not estimates of the net gain to the education fund.

[16] Most typically, challenges to conditional legislation are argued on the basis that the condition is made dependent on the discretion of a person or persons who are not permitted to exercise legislative authority, and that by relegating the determination of the condition to their discretion, the legislature has impermissibly delegated its authority to an

conditioned its effectiveness upon the legislation's approval asks the Court to exercise an unwarranted degree of interference in the legislative function. A finding that conditional legislation, in the circumstances present here, violates the single-subject requirement would either prohibit the passing of conditional legislation or prohibit the adoption of new legislation which had the effect of triggering conditions in legislation already existing. The single-subject requirement was not meant to impede the operation of government; it is intended to prevent logrolling and the passage of "unknown and alien subjects, which might be coiled up in the folds of the bill." *In re Breene*, 24 P. at 3-4. But the conditional nature of HB23-1311 is not "coiled up in the folds" of Proposition HH, it is openly expressed in a separate bill, which was itself approved on its own merits, conditional provision and all. It seems absurd to find that Proposition HH, which, by its terms, does not concern itself with HB23-1311, should be rendered unconstitutional because a separate piece of legislation openly set a condition on its own efficacy. Under such circumstances, the Court fails to perceive how declaring Proposition HH unconstitutional would further the purposes of the single-subject requirement; such a declaration would rather seem to have the effect of obstructing the ability of the legislature to pass conditional legislation, which is not the purpose of the constitutional requirement.

b. Clear Title Challenges

Lastly, the Court considers Plaintiffs' clear title challenges to SB23-303 and Proposition HH. Plaintiffs allege, in their SAC, that both SB23-303's title and Proposition HH's title violate the clear title requirement,[17] but in their Opening Brief, Plaintiffs advance arguments concerning only the title of Proposition HH. See Plaintiffs' Opening Brief, pp. 15-18; Plaintiffs' Answer Brief, pp. 10-15. It may be that Plaintiffs' contention is that SB23-303 violates the clear title requirement through the title of Proposition HH, contained within. The SAC suggests that this is not the case, however, and the Court notes that Section I of Plaintiffs' Argument in their Opening Brief is entitled, in part "Proposition HH and SB23-303 Violate the Colorado Constitution's Single Subject and Clear Title Requirements." But, again, no argument is advanced on the subject. The Court therefore considers only whether Proposition HH's title violates the clear title requirement, as Plaintiffs have either abandoned their challenge to SB23-303's title or have failed to carry their burden to show its impropriety by virtue of their silence on the subject.

improper party to "make" the law, by virtue of having control over the condition precedent. See, *e.g.*, *Marshall*, 143 U.S. at 692-93 (challenge to act of Congress requiring the President to issue a proclamation when certain trade conditions by foreign countries were found by him to be unequal and unreasonable, which would trigger trade suspensions); *Amalgamated Transit Union Local 587 v. State*, 11 P.3d 762, 797 (Wash. 2000) (collecting cases from states with no reserved legislative powers to the people or initiative/referenda powers which have found that conditioning legislation on statewide voter approval constitutes improper delegation of legislative authority).

[17] See SAC, ¶¶ 43-50, 62-60, 76, 77.

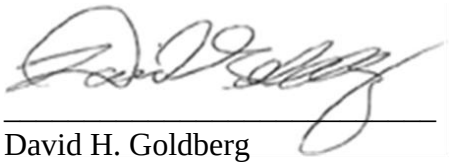
Turning to the title of Proposition HH, the Court finds that the title does not violate the constitutional clear title requirements. The Court's analysis, as set forth in Section II, *supra*, is applicable, as Plaintiffs' challenge to the title under C.R.S. § 1-11-203.5 was fundamentally predicated on the constitutional clear title requirement. In short, the title alerts the reader to the general object of the proposed legislation. The matters of which Plaintiffs complain are incidents, or means, to the accomplishment of that objective, and as such are germane to the general object. The title is not so vague or obscure as to force the reader to delve into the body of the proposed legislation to determine the general object, nor does interpretation of the title require any sort of superior intellect or rhetoric to divine the nature of the proposition. The Court therefore finds that Plaintiffs have not shown the title of Proposition HH to be unconstitutional.

CONCLUSION

For the reasons stated above, the Court DENIES Plaintiffs' requested relief.

SO ORDERED on this 9th day of June, 2023.

BY THE COURT:



David H. Goldberg
District Court Judge

Exhibit F

Proposed Alternate Titles

Proposed Alternative #2:

MAY THE STATE RETAIN AND SPEND STATE REVENUES THAT OTHERWISE WOULD BE REFUNDED TO TAXPAYERS, BY ADDING 1% TO THE CONSTITUTIONAL LIMITATION FOR STATE FISCAL YEARS 2023-24 THROUGH 2031-32, TO FUND REVENUE REDUCTIONS FROM REDUCING THE RESIDENTIAL PROPERTY TAX ASSESSMENT RATE FROM 6.765% TO 6.7% AND REDUCING THE PROPERTY TAX ASSESSMENT RATE FOR COMMERCIAL PROPERTY FROM 27.9% TO 27.85%, FOR THE FIRST YEAR, AND TO FUND THE STATE EDUCATION FUND AND OFFSET LOST REVENUE RESULTING FROM THE PROPERTY TAX RATE REDUCTIONS, WHILE ALSO APPROVING CHANGES ADOPTED IN HOUSE BILL 23-1311?

Proposed Alternative #3:

SHALL THERE BE A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING PROPERTY TAX REDUCTIONS, AND, IN CONNECTION THEREWITH, REDUCING THE RESIDENTIAL PROPERTY TAX ASSESSMENT RATE FROM 6.765% TO 6.7% AND REDUCING THE PROPERTY TAX ASSESSMENT RATE FOR COMMERCIAL PROPERTY FROM 27.9% TO 27.85%, FOR THE FIRST YEAR, AND ALLOWING THE STATE TO ANNUALLY RETAIN AND SPEND AN ADDITIONAL 1% ANNUALLY IT IS NOT CURRENTLY ALLOWED TO KEEP UNDER COLORADO LAW FOR STATE FISCAL YEARS 2023-24 THROUGH 2031-32 AS A VOTER-APPROVED REVENUE CHANGE TO FUND THE STATE EDUCATION FUND AND OFFSET LOST REVENUE RESULTING FROM THE PROPERTY TAX RATE REDUCTIONS, WHILE ALSO APPROVING CHANGES ADOPTED IN HOUSE BILL 23-1311?

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Filing Information:

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Court Location: Supreme Court
Case Number: 2023SA000150
Case Caption: Ward, Steven v State of Colorado
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Submitted By: Christine Keitlen

Filing Party(ies):

Party	Type	Status	Attorney
Advance Colorado, A Colorado Nonprofit Corporation	Petitioner	Active	Frederick Richard Yarger (Wheeler Trigg O Donnell LLP) Michael Lawrence O'Donnell (Wheeler Trigg O Donnell LLP) Miles Douglas Orton (Wheeler Trigg O Donnell LLP) Suzanne M Taheri (Suzanne Staiert)

Documents:

Document ID	Document	Title	Statutory Fee	Security
2588333560DEC	Opening Brief	Petitioners' Opening Brief	$75.00	Public
3E8F809D8549C	Exhibits	Exhibit A to Petitioners' Opening Brief	$0.00	Restricted
D4CD83EA6C7CC	Exhibits	Exhibit B to Petitioners' Opening Brief	$0.00	Restricted
C168381DBF717	Exhibits	Exhibit C to Petitioners' Opening Brief	$0.00	Restricted
E59AE1EE3B2A3	Exhibits	Exhibit D to Petitioners' Opening Brief	$0.00	Restricted
7847632AABBAF	Exhibits	Exhibit E to Petitioners' Opening Brief	$0.00	Restricted
7115E65376E1D	Exhibits	Exhibit F to Petitioners' Opening Brief	$0.00	Restricted

Service:

Party	Type	Attorney	Organization	Method
Abe Laydon	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Advance Colorado, A Colorado Nonprofit Corporation	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Cami Bremer	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Carrie Geitner	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Cheyenne County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Christopher Richardson	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Chuck Broerman	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Dallas Schroeder	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Douglas County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
El Paso County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Elbert County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Fremont County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
George Teal	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Grant Thayer	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Highlands Ranch Metropolitan District	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Jena Griswold, In Her Official Capacity As Secretary of State	Respondent	Michael Thomas Kotlarczyk	CO Attorney General	E-Service
Jerry Sonnenberg	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Kevin Grantham	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Kit Carson County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Logan County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Longinos Gonzalez, Jr.	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Lora Thomas	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Mark Flutcher	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Mesa County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Phillips County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Prowers County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Rio Blanco County	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Stan Vander Werf	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Reed William Morgan	CO Attorney General	E-Service

Party	Type	Attorney	Organization	Method
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Russell D Johnson	CO Attorney General	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Jeremy Donald Johnston	CO Attorney General	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Shelby A Krantz	CO Attorney General	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	You Na Han	CO Attorney General	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Daniel E Rheiner	CO Attorney General	E-Service
State of Colorado, By And Through Jared S. Polis, In His Official Capacity As Governor	Respondent	Skye Meredith Walker	CO Attorney General	E-Service
Steven Ward	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service
Washington County, Colorado Counties	Petitioner	Suzanne M Taheri	Suzanne Staiert	E-Service

Submission Options:

Note To Clerk: N/A
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