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December 17, 2021

Brent Mead
Assistant Solicitor General
Office of Montana Attorney General Austin Knudsen
Montana Department of Justice
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BY ELECTRONIC DELIVERY

Dear Mr. Mead,

The Montana League of Cities and Towns is an incorporated, nonpartisan, nonprofit association of 127 Montana municipalities. The Montana Association of Counties represents Montana's 56 counties. We submit these comments jointly on behalf of Montana's 183 local governments on the proposed statement of purpose and fiscal statement for CI-9.

Section 13-27-312(2)(a), MCA requires ballot statements to "explain the purpose and implication of the issue." Further, Section 13-27-312(4), MCA requires that ballot statements "express the true and impartial explanation of the proposed ballot issue in plain, easily understood language." The League submits that the proposed statement of purpose violates this requirement in several ways as explained herein.

Failure to Adequately Summarize the Implications of CI-9

While the proposed statement, with minor modifications, explains what the changes to law the initiative would make, it provides absolutely no explanation of the implication of the ballot initiative.

Under current law, municipalities and counties levy the number of mills necessary to generate the *revenue actually assessed the previous year*, plus an inflationary factor. This factor is a previous legislative cap placed on local revenue growth. Under current law, the number of mills each taxing jurisdiction can levy adjusts from year to year based on the certified values of the tax base (increasing values lower maximum mills, decreasing tax bases increases mills) plus the inflationary factor. Mill values, and therefore the number of mills a taxing jurisdiction can apply, vary drastically from jurisdiction to jurisdiction.

School districts set their mills slightly differently. Each district is assigned a maximum number of mills based on the number of students enrolled, plus a factor to meet statewide equalization requirements. They

then have a margin of additional mills that voters can approve. In this way, schools are revenue-capped, whereas municipalities, counties, and special districts are mill-capped.

Under CI-9 as proposed, a taxing jurisdiction would continue to set levies for the full amount authorized, and then in the next year raise the mills to hit the revenue target that was in place. As a result, the residential properties that did not hit the 1% cap, as well as properties in all other classes, would undergo an increase in mills to generate the revenue authorized from the previous year's assessment plus the inflation cap under Section 15-10-420, MCA. Under the initiative's framework and current law, the reduction in revenues generated from class 4 properties as a result of the proposed initiative limitations shifts to all other property tax classes.

In order to meet the statutory requirements of Sections 13-27-312(2)(a) and (4), MCA, we urge the Attorney General to use the following statement of purpose and implication:

“[Initiative number] decreases revenues generated from residential properties and increases the revenues generated from commercial, agricultural, and other property classes. It establishes 2019 state valuations as the base year for the valuations of residential property and limits annual decreases and increases in valuations of residential property to either 2% or the inflation rate (whichever is lower) when assessing property taxes, if it is not newly constructed or significantly improved or had a change of ownership since January 1, 2019. It requires the Legislature to limit total ad valorem property taxes on residential property to 1% or less of the assessed valuation. It requires the Legislature to define “residential property” and provide for the application and implementation of the initiative and permits the state to assess other real property based on acquisition value.”

Failure to Adequately Summarize the Fiscal Impacts of CI-9

The fiscal note provided with the proposed ballot initiative creates a statewide aggregate maximum millage rate to forecast the fiscal impacts of the initiative. This is an erroneous reflection of the Montana property tax system, how local government and school district budgets are established, mill levies are set, and property is taxed. The proposed ballot initiative does not place any limitation on mills. Instead, it limits the annual change in assessed residential property values and the total amount of ad valorem taxes assessed against residential property.

A more accurate scenario simulates the impact of the ballot initiative by following the actual process of how local taxation works, as set forth above, which demonstrates that the reduction in revenues generated from class 4 properties as a result of the proposed initiative limitations shifts to all other property tax classes.

The fiscal note creates a number of assumptions that do not reflect the language of the initiative or of current law. First, it calculates and imposes an aggregate mill levy cap, which the initiative does not impose. Second, it assumes that “mills must be equal across tax classes within a jurisdiction.” There is no citation for this assumption. The proposed ballot initiative limits on residential property values doesn't apply to other class codes. Third, it assumes that state mill levies would be prioritized for collection over local or school mill levies, which the initiative does not provide for. In fact, the initiative is silent on the process for determining the priority on any taxing jurisdiction's mills over any other. Will mills for state equalization required for a constitutionally guaranteed right to education be prioritized over mills that pay for a previously guaranteed bond issuance by a special district? Will voted mills that fund additional police and fire department employees be prioritized over permissive mills necessary to cover public employee group health insurance?

The Department of Revenue establishes the market value of each class 4 property in the state and tracks all taxing jurisdictions and mills applied to each class 4 property. Under the framework established by the language of the ballot initiative, the department would need to produce the tax bill for every residential property in the state to ensure that the 1% limit isn't breached for any one property. Presumably, the department would also have to apportion the tax revenue going to each of the jurisdictions (state, school, city/town, county, special district) according to a priority that is not established in law or in the proposed initiative. Thus, the fiscal impact of this framework on the department is far greater than the \$45,000 for system changes to maintain current full market values and track acquisition value in the property tax database system.

In order to meet the statutory requirements of Section 13-27-312(3), MCA, we urge the Attorney General to use the following fiscal statement with the statement of purpose:

“[Initiative number] reduces Montana state revenue by \$24 million in 2025, \$34 million in 2026, and \$29 million in 2027. [Initiative number] will also have an unquantifiable but substantial negative impact on local government and school district funding, subject to legislative action.”

The proposed ballot initiative will have severe consequences on all sectors of the Montana economy and Montana statute requires that voters are given a true and impartial explanation of these consequences in plain, easily understood language. We appreciate your consideration of our proposed modified statement of purpose and fiscal statement.

Sincerely,



Tim Burton, Executive Director
Montana League of Cities and Towns



Eric Bryson, Executive Director
Montana Association of Counties