

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

March 1, 2003

TO: Carol Hedges
Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #97, concerning TABOR spending limits.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding your proposed amendment, a copy of which is attached.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in drafting the language of their proposal and to make the public aware of the contents of the proposal. Our first objective is to be sure we understand your intent and objective in proposing the amendment. We hope that the statements and questions in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To replace section 20 (7) of article X of the constitution of the state of Colorado with a new section 20 (7) that would:
 - a. Limit fiscal year spending by the state of Colorado to the level of spending in fiscal year 2000, measured as a percentage of total personal income for Colorado, unless voters approve a revenue change in a state general election, biennial local district election, or in an election held on the first Tuesday in November of odd-numbered years;

- b. Specify that the state of Colorado spending limit shall be the only limitation on state and local district spending and revenue under section 20 of article X of the Colorado constitution ("TABOR");
- c. Require revenues from sources not excluded from fiscal year spending that exceed the new state fiscal year spending limit for a fiscal year to be refunded in the next fiscal year unless the voters approve a revenue change as an offset; and
- d. Specify that nothing in the new section 20 (7) shall be construed to weaken the provisions of section 20 (4) of article X of the Colorado constitution, including the requirement of voter approval of new taxes and increases in tax rates.

Comments and Questions

The form and substance of the proposed amendment raise the following comments and questions:

Technical questions:

1. To conform to standard drafting practices regarding the form of proposed amendments to the Colorado constitution, would the proponents:
 - a. Replace the amending clause of the proposed initiative with an amending clause that states: "Section 20 (7) of article X of the constitution of the state of Colorado is REPEALED AND REENACTED, WITH AMENDMENTS, to read:";
 - b. Show the head note that states "State of Colorado spending limit." in **bold-faced** type;
 - c. Show the substantive text of the proposed initiative in LARGE AND SMALL CAPITAL LETTERS to indicate that it is new language.

Substantive questions:

1. Section 1 of article V of the Colorado constitution requires all proposed initiatives to have a single subject. Moreover, the Colorado Supreme Court has held that an initiative violates the single subject requirement if "its text relates to more than one subject and if the measure has at least two distinct and separate purposes which are not dependent upon or connected with each other."¹ The replacement of section 20 (7) of article X of the Colorado constitution contemplated by the proposed initiative would have several effects, including: The elimination of a limitation on state fiscal year spending; the elimination of limitations on local district fiscal year spending; the

¹ *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 30*, 959 P.2d 822, 825 (Colo. 1998) (quoting *In re Proposed Petition*, 907 P.2d 586, 590 (Colo. 1995)).

elimination of constitutional language that specifies the effects of qualification or disqualification of enterprises and future creation or retirement or refinancing of district bonding debt on fiscal year spending and limits thereon; the elimination of a limitation on annual local district property tax revenues; and the creation of a new state fiscal year spending limit, which raises the following questions:

- a. What is the single subject of the proposed initiative?
 - b. Does the proposed initiative have multiple distinct and separate purposes, and if so, are all of the initiative's purposes dependent upon or connected with each other?
2. The text contained in paragraph (a) of the proposed initiative is identical to the entire text of the proponents' proposed initiative 2003-04 #95, which is a revised version of the proponents' initiative 2003-04 #78, which was previously discussed in a review and comment hearing held on January 9, 2004. Accordingly, the following questions relating to paragraph (a) only address changes from initiative 2003-04 #78. With respect to paragraph (a):
- a. The proponents have changed the base year for determining the level of permissible fiscal year spending by the state of Colorado, as specified in initiative 2003-04 #78, from 1992 to 2000. What is the proponents' intent in making this change?
 - b. Is the level of fiscal year spending for the state of Colorado in fiscal year 2000, measured as a percentage of total personal income for Colorado, known at the present time? If so, have the proponents considered specifying that percentage numerically in the proposed initiative instead of referencing the base year 2000?
 - c. The text would allow voters to approve a revenue change to fiscal year spending by the state of Colorado in a "biennial local district election," which raises the following questions:
 - i. Since not all biennial local district elections occur at the same time, it appears that the proposed initiative would allow a ballot question to be submitted to and approved by a group of registered electors that does not include all of the registered electors of the state. If this is the proponents' intent, would an affirmative vote by a majority of the registered electors voting in those local districts holding elections on the date the ballot question is submitted be sufficient to approve the ballot question?
 - ii. If the proponents do not intend to allow a ballot question seeking voter approval for a revenue change to fiscal year spending by the state of Colorado, what is the proponents' intent in allowing a revenue change to be approved in a biennial local district election?
3. Paragraph (b) of the proposed initiative is essentially identical to the first sentence of section 20 (7)

(d) of article X of the Colorado constitution, which the proposed initiative would replace. Is paragraph (b) intended to have the same meaning and effect with respect to the new state fiscal year spending limit created by the proposed initiative as the first sentence of section 20 (7) (d) of article X of the Colorado constitution does with respect to existing state and local district fiscal year spending limits? If not, what is the purpose of paragraph (b)?