

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

January 30, 2004

TO: Mark Grueskin
Albert Yates

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #82, concerning tobacco tax increase for health related purposes.

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 add a new section 21 to article X of the Colorado constitution that would take effect January 1, 2005, and would:
 - a. Declare that:
 - i. Tobacco addiction is the leading cause of preventable death in Colorado;
 - ii. Colorado should deter children and youth from starting to smoke;

- iii. Cigarette and tobacco taxes are effective at preventing and reducing tobacco use among children and youth; and
 - iv. Tobacco tax revenues will be used to expand health care for children and low-income populations, tobacco education programs, and the prevention and treatment of cancer, heart, and lung disease.
- b. Impose an additional cigarette tax of three and two-tenths cents per cigarette and an additional tobacco products tax of twenty percent of the manufacturer's list price of the products taxed and prohibit the general assembly from repealing or reducing any existing cigarette and tobacco products taxes;
- c. Exclude all revenues from the additional cigarette and tobacco products taxes from state and local government fiscal year spending for purposes of section 20 of article X of the Colorado constitution (TABOR);
- d. Require the General Assembly to annually appropriate the revenues from the additional cigarette and tobacco products taxes for the following health related purposes and in the following proportions:
- i. Forty-six percent to increase the number of children and pregnant women enrolled, add parents of enrolled children, and expand eligibility of low income adults and children who receive medical care through the children's basic health plan, the Colorado medical assistance program, or any successor program to those programs;
 - ii. Nineteen percent to the department of health care policy and financing or any successor agency to be distributed proportionally by number of uninsured or medically indigent patients served to Colorado qualified providers to fund comprehensive primary care through any Colorado qualified provider:
 - A. That is a community health center; or
 - B. For which at least fifty percent of the patients served are uninsured or medically indigent as defined by specified statutes or successor acts to those statutes or are enrolled in the children's basic health plan, the Colorado medical assistance program, or successor programs.
 - iii. Sixteen percent to be appropriated through the "Tobacco Education, Prevention, and Cessation Act" or any successor act for school and community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to second-hand smoke;

- iv. Sixteen percent to the prevention services division of the department of public health and environment or any successor agency to be distributed statewide with oversight and accountability by the state board of health for the prevention, early detection, and treatment of cancer, cardiovascular diseases, and pulmonary diseases; and
 - v. Three percent for health related purposes to the general fund, the old age pension fund, and municipal and county governments to compensate proportionately for tax revenue reductions attributable to lower cigarette and tobacco sales resulting from the implementation of the additional cigarette and tobacco products taxes.
- e. Prohibit amounts of the revenues from the additional cigarette and tobacco products taxes that are required to be used for specified purposes from being used to supplant moneys appropriated by the general assembly for health related purposes as of the effective date of the new section 21;
 - f. Allow the General Assembly to use revenues from the additional cigarette and tobacco products taxes for any health related purpose and to serve populations enrolled in the children's basic health plan and the Colorado medical assistance program as of the effective date of the new section 21 for a given fiscal year upon the declaration of a state fiscal emergency by passage of a joint resolution by 2/3 of the members of each house of the General Assembly and approval of the joint resolution by the governor; and
 - g. Exempt appropriations made pursuant to the new section 21 from the statutory limitation on general fund appropriations growth or any other spending limitation existing in law.

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 consider:
 - a. Modifying the amending clause of the proposed initiative so that it states: "Article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:"?
 - b. Removing the "ALL CAPS" typeface and some of the other capitalization from the head note of the proposed amendment so that it states: "**Section 21. Tobacco taxes for health related purposes.**"?

- c. In subsection (2) of the proposed initiative, removing the capitalization from the paragraph lettering so that the paragraphs are lettered "(a)" and "(b)"?
- d. In subsection (3) of the proposed initiative:
 - i. On the third line, replacing "PASSAGE OF THIS AMENDMENT" with "THE EFFECTIVE DATE OF THIS SUBSECTION (3)"?
 - ii. On the last line, striking "STATE"?
- e. On the third line of subsection (4) of the proposed initiative, replacing "ARTICLE X SECTION 20 OF THE STATE CONSTITUTION," with "SECTION 20 OF ARTICLE X OF THIS CONSTITUTION,"?
- f. In subsection (5) of the proposed initiative, removing the capitalization from the paragraph lettering so that the paragraphs are lettered "(a)", "(b)", "(c)", "(d)", and "(e)" and replacing subparagraph headings "I." and "II." with "(I)" and "(II)"?
- g. In paragraph (A) of subsection (5) of the proposed initiative, replacing the last three lines with the following language: "'CHILDREN'S BASIC HEALTH PLAN ACT', ARTICLE 19 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, OR THROUGH THE 'COLORADO MEDICAL ASSISTANCE ACT', ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT"?
- h. On both the third line of the introductory portion of paragraph (B) of subsection (5) of the proposed initiative and the third line of subparagraph II. of paragraph (B) of subsection (5) of the proposed initiative, inserting "THE 'COLORADO MEDICAL ASSISTANCE ACT,'" after "IN"?
- i. On both the third line of the introductory portion of paragraph (B) of subsection (5) of the proposed initiative and the third line of subparagraph II. of paragraph (B) of subsection (5) of the proposed initiative, replacing "26 OF THE" with "26,"?
- j. On the sixth and seventh lines of paragraph (C) of subsection (5) of the proposed initiative, replacing "THE TOBACCO EDUCATION, PREVENTION, AND CESSATION ACT, ARTICLE 3.5 OF TITLE 25 OF THE COLORADO REVISED STATUTES," with "THE 'TOBACCO EDUCATION, PREVENTION, AND CESSATION ACT', PART 8 OF ARTICLE 3.5 OF TITLE 25, COLORADO REVISED STATUTES,"?
- k. On the last line of paragraph (D) of subsection (5) of the proposed initiative, replacing "25 OF THE" with "25,"?
- l. In subsection (6) of the proposed initiative:
 - i. On the first line, replacing "SUBSECTION (5) (A), (B) AND (D)" with "PARAGRAPHS (A), (B), AND (D) OF SUBSECTION (5)"?

- ii. On the third line, replacing "LEGISLATURE" with "GENERAL ASSEMBLY"?
 - iii. On the fourth line, replacing "ACT," with "SUBSECTION (6),"?
 - m. In subsection (7) of the proposed initiative:
 - i. On the first line, striking "STATE"?
 - ii. On the fifth line, replacing "DATE OF PASSAGE OF THIS AMENDMENT" with "EFFECTIVE DATE OF THIS SUBSECTION (7)"?
 - n. On the first line of subsection (8) of the proposed initiative, inserting "OF THIS SECTION" after "(7)"?
2. To conform to grammatical rules or clarify the meaning or the proposed initiative, would the proponents consider:
- a. On the last two lines of subsection (1) of the proposed initiative, unless the proponents intend that the word "CANCER" modify the word "DISEASE", replacing "CANCER, HEART AND LUNG DISEASE." with "CANCER AND HEART AND LUNG DISEASE."?
 - b. On the second to last line of subsection (3) of the proposed initiative, replacing "ITS" with "THEIR"?
 - c. In the introductory portion of paragraph (B) of subsection (5) of the proposed initiative, changing "COLORADO QUALIFIED PROVIDERS," to "ANY COLORADO QUALIFIED PROVIDER" and changing "MEET" to "MEETS" to match the singular references in subparagraphs I and II of that paragraph?
 - d. On the second and third lines of paragraph (D) of subsection (5) of the proposed initiative, unless the proponents intend that the word "CANCER" modify the word "DISEASES", replacing "CANCER, CARDIOVASCULAR, AND PULMONARY DISEASES." with "CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES."?
 - e. For consistency within the proposed initiative, replacing the words "funds", "funding", and "moneys" with the word "revenues" throughout subsections (4), (6), and (8), and paragraphs (B) and (D) of subsection (5) of the proposed initiative

Substantive questions:

1. Article V, section 1 of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Subsection (3) of the proposed initiative would prohibit the General Assembly from repealing

or reducing existing cigarette and tobacco products taxes. Would this provision only prevent the General Assembly from directly repealing or reducing one or both taxes or would it also prevent the General Assembly from referring legislation that would reduce or repeal one or both of the taxes to the voters of the state? Does subsection (3) "constitutionalize" existing taxes impose pursuant to statutes?

3. On the first line of subsection (4) of the proposed initiative and on the first line of the introductory portion of subsection (5) of this section, should the references to "SUBSECTION (1)" be changed to references to "SUBSECTION (2)"?
4. Subsection (5) of the proposed initiative requires revenues from additional cigarette and tobacco products taxes to be appropriated to a variety of programs and agencies created and existing under existing statutes or "any successor act", which raises the following questions:
 - a. Does subsection (5) "constitutionalize" these programs and agencies by preventing the General Assembly from eliminating them?
 - b. Could the General Assembly eliminate a program or agency if it replaced the program or agency by enacting a "successor act"?
 - c. What is a successor act?
 - d. If a program or agency is eliminated, what happens to the revenues from the additional cigarette and tobacco products taxes that were earmarked for the program or agency?
5. With respect to subparagraph I. of paragraph (B) of subsection (5) of the proposed initiative, what would happen if the federal definition of "community health center" was repealed? Would it still be possible for a qualified provider to meet the eligibility criteria for funding specified in paragraph (B)? If not, how would the money earmarked for qualified providers be used?
6. With respect to paragraph (E) of subsection (5) of the proposed initiative:
 - a. What are "health related purposes"?
 - b. At the present time, are the revenues from municipal and county government taxes imposed on sales of cigarettes and tobacco products used only for "health related purposes"?
 - c. Would municipal and county governments have to use compensation paid to municipal and county governments as compensation for tax revenue reductions only for "health related purposes" and, if so, does this restriction implicate or override constitutional home rule provisions?
7. Does subsection (6) of the proposed initiative prohibit the General Assembly from ever

reducing funding for health related purposes? Must the General Assembly maintain funding levels even if the need for health related services declines due to increased federal assistance, decreasing state populations, or other reasons?

8. Would the proponents consider modifying subsection (9) of the proposed initiative to reflect the possibility that the certification of the results of the vote on the proposed initiative could occur after the specified effective date (e.g., by making the effective date January 1, 2005, or the date of certification of the vote)?
9. Is it the proponents' intent that the additional cigarette and tobacco products taxes would be imposed as soon as the proposed amendment becomes effective? Would the proponents consider modifying the proposed initiative to delay the imposition of the additional taxes (perhaps until April 1, 2005 or July 1, 2005) to allow the department of revenue and businesses that collect the taxes sufficient time to prepare for and administer the additional taxes?
10. Article XXIV, section 2 of the Colorado constitution requires eighty-five percent of the net revenues of any excise tax to be credited to the old age pension fund, which raises the following questions:
 - i. Do the proponents believe that Article XXIV, section 2 of the Colorado constitution applies to cigarette and tobacco taxes?
 - ii. If so, since the proposed initiative does not specify that eighty-five percent of the additional taxes on cigarettes and tobacco products are to be credited to the old age pension fund, do the proponents intend that the proposed initiative override Article XXIV, section 2 of the Colorado constitution?
11. Do the proponents believe that the imposition of additional taxes required by the proposed initiative would compromise or in any other way affect the tobacco litigation master settlement agreement?