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MEMORANDUM

January 7, 2004

TO: Carol Hedges
Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #78, concerning TABOR spending limit - 1992 percentage of personal income.

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 the existing provisions of article X, section 20 (7) of the Colorado constitution with new provisions that would:
 - a. Limit state fiscal year spending to the level of state fiscal year spending for fiscal year 1992, measured as a percentage of total personal income for Colorado, unless voters approve a revenue change in a state authorized election; and

- b. Clarify that this limitation would be the only limitation on state and local district spending and revenue under article X, section 20 of the Colorado constitution.

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 capitalization of words in the enacting clause so that it matches the enacting clause required by article V, section 1 (8) of the Colorado constitution, which reads: "Be it Enacted by the People of the State of Colorado"?
 - b. Either:
 - i. Replacing what appears to be the amending clause of the proposed initiative (the language that states "An amendment to the constitution of the state of Colorado, striking Article X, Section 20, (7) and replacing it with the following:") with an amending clause that states that "Section 20 (7) of article X of the constitution of the state of Colorado is REPEALED AND REENACTED, WITH AMENDMENTS, to read:"; or
 - ii. Replacing the amending clause with an amending clause that states that "Section 20 (7) of article X of the constitution of the state of Colorado is amended to read:" and then showing the full existing text of article X, section 20 (7) of the Colorado constitution in ~~strike type~~ to indicate its repeal followed by the text of the new article X, section 20 (7) shown in LARGE AND SMALL CAPITAL LETTERS as it is currently shown in the proposed initiative?
 - c. Capitalizing the word "FISCAL" where it immediately follows the head note on the first line of the last paragraph of the proposed initiative and eliminating the capitalization of the phrase "FISCAL YEAR" on the next line of the proposed initiative?
 - d. Replacing "SECTION 20 OF THIS ARTICLE" with "THIS SECTION" on the last line of the proposed initiative?
2. The phrase "**Spending limit linked to 1992 percentage of personal income**" appears before the enacting clause in the proposed initiative and therefore is neither substantive constitutional text nor part of the amending clause that identifies the constitutional provisions to be amended, or in this

case repealed, by the proposed amendment. What is the proponents' intent in including this phrase as part of the proposed initiative?

Substantive questions:

1. Article V, section 1 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 repeal of article X, section 20 (7) of the Colorado constitution contemplated by the proposed initiative would have at least four distinct effects: The elimination of a limitation on state fiscal year spending; the elimination of limitations on local district fiscal year spending; 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. In calculating the new state fiscal year spending limit for any given fiscal year:
 - a. How and by whom is total personal income for Colorado to be calculated? Specifically, considering that estimates of total Colorado personal income for any given calendar year are revised several times:
 - i. Which estimate would be used to calculate the new maximum state fiscal year spending limit?
 - ii. Who would calculate the new maximum state fiscal year spending limit? Would the general assembly be able to designate by law which estimate to use? Would the state controller or some other executive branch agency or officer be able to choose which estimate to use?
 - iii. Would the maximum state fiscal year spending limit for a state fiscal year be adjusted retroactively to reflect revised estimates of Colorado personal income that revise the estimate originally used to determine the limit? Would the maximum state fiscal year spending limit for future fiscal years be adjusted in light of revised estimates?

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)).

- b. For what period is Colorado total personal income measured? The income tax year that ends during the fiscal year? Some other period?
 - c. Is it the proponents' intent that the new state fiscal year spending limit be adjusted to account for any changes in the sources of revenues that are included in fiscal year spending (e.g., to take into account the qualification and disqualification of enterprises after 1992)? If so, would the proponents consider adding language to the proposed amendment to specify that an adjustment should be made?
3. What is a "state authorized election"? Is a "state authorized election" the same thing as a statewide election?
4. Section 24-77-103, C.R.S., contains a statutory limitation on state fiscal year spending that implements the existing constitutional limitation on state fiscal year spending contained in article X, section 20 (7) of the Colorado constitution, which raises the following questions:
- a. Would adoption of the proposed initiative:
 - i. Repeal section 24-77-103, C.R.S., by implication or otherwise eliminate the ability of the General Assembly to preserve the state fiscal year spending limit by declining to repeal section 24-77-103, C.R.S., or by enacting a new statutory state fiscal year spending limit?
 - ii. Allow the General Assembly to repeal the state fiscal year spending limit in section 24-77-103, C.R.S., (thus weakening a spending limit) without voter approval?
5. Since the terms "inflation" and "local growth", as defined by article X, section 20 (2) (f) and (2) (g) of the Colorado constitution, otherwise appear only in subsection (7) of article X of the Colorado constitution, which the proposed initiative would repeal, should the proposed initiative also repeal article X, section 20 (2) (f) and (2) (g) of the Colorado constitution?