

STATE OF COLORADO

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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 #79, concerning replace TABOR - vote on taxes
- modify school spending requirements.

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 declare that:
 - a. The people of Colorado desire to restore appropriation powers to the state and its political subdivisions, but reserve for themselves the powers to increase taxes.
 - b. Over the last two decades, the Colorado constitution has been amended to take away the original appropriation powers of the state and its subdivisions, and that the amendments

have removed the powers of the state and its subdivisions to make appropriations as necessary to address economic cycles and the needs of Colorado's citizens.

2. To replace the existing provisions of article X, section 20 of the Colorado constitution ("TABOR") with a new article X, section 20 that would require only that the state or any local government obtain prior voter approval before imposing any new tax or increasing any existing tax.
3. To add a new subsection (6) to article IX, section 17 of the Colorado constitution ("Amendment 23") that would suspend specified Amendment 23 education funding growth requirements in any fiscal year in which economic conditions cause general fund revenue to be less than the general fund revenue in the preceding fiscal year, but would nonetheless prohibit statewide base per pupil funding and total statewide funding for all categorical programs in any fiscal year from being reduced below funding levels for the preceding year.

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. Specifying where in the Colorado constitution the "Declaration of Purpose" set forth in the proposed initiative is to be located?
 - c. Deleting the amending clause that is the introductory portion to subsection (2) of the proposed amendment and that states "Amend of the Constitution. The constitution of the state of Colorado is amended as follows:"? This amending clause is not necessary because more specific amending clauses that have article and section references can sufficiently identify the constitutional provisions to be amended.
 - d. Either:
 - i. Replacing the amending clause that is the introductory portion to paragraph (2) (a) of the proposed initiative and that states "The TABOR amendment. Article X, section 20 is replaced with the following:" with an amending clause that states that "Section 20 of article X of the constitution of the state of Colorado is REPEALED

AND REENACTED, WITH AMENDMENTS, to read:", showing the head note to paragraph (a) (the language that states "Section 20. The Taxpayers' Bill of Rights.") in **bold**, and showing the rest of paragraph (2) (a) in LARGE AND SMALL CAPITAL LETTERS to indicate that it is new language; or

- ii. Replacing that amending clause with an amending clause that states that "Section 20 of the constitution of the state of Colorado is amended to read:", showing the head note to paragraph (a) in **bold**, and then showing the full existing text of article X, section 20 of the Colorado constitution in ~~strike-type~~ to indicate its repeal followed by the text of the new article X, section 20 shown in LARGE AND SMALL CAPITAL LETTERS to indicate that it is new language?
- e. Replacing the amending clause that is the introductory portion to subsection (6) of the proposed initiative and that states "Amendment 23. Article IX, section 17(5) is amended by the addition of the following section (6) at the end of the provision:" with an amending clause that states "Section 17 of article IX of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:", adding the existing head note to article IX, section 17 (the language that states "**Section 17. Education - Funding.**", and showing the text of the new subsection (6) in LARGE AND SMALL CAPITAL LETTERS to indicate that it is new language?
- f. Removing the capitalization from the word "People" in the new article X, section 20 set forth in the proposed initiative?
- g. In the new subsection (6) of the proposed initiative:
 - i. Inserting "of this section" after "(5)" on the third line; and
 - ii. Replacing "section 17" with "this section" on the fourth line.
- 2. Should "subdivision" be replaced with "subdivisions" on the third line up from the bottom of the "Declaration of Purpose" of the proposed initiative?
- 3. Would the proponents consider replacing "Nor withstanding" at the beginning of the second sentence of subsection (6) of the proposed initiative with "Notwithstanding"?
- 4. Would the proponents consider replacing "stateside" with "statewide" in the last sentence of subsection (6) of the proposed initiative?
- 5. The phrase "**Restoring Legislative Power to Appropriate**" 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. Also, the Colorado Supreme Court has held that: (1) 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; (2) TABOR "contains multiple subjects"²; and (3) An initiative has multiple subjects if it proposes to repeal an entire constitutional provision that contains multiple subjects.³ Colorado case law thus suggests that the proposed initiative has multiple subjects because it proposes the repeal of TABOR. In addition, the proposed initiative modifies Amendment 23. Do the proponents believe that the proposed initiative has a single subject, and, if so, what is the single subject of the proposed initiative?
2. With respect to subsection (1) of the proposed initiative, why do the proponents believe that the appropriation powers of the state and its subdivisions have been taken away by constitutional amendments over the last two decades?
3. Are "the people" who must approve a new tax or increase in any existing tax under the terms of the new article X, section 20 of the proposed initiative the people who reside within the jurisdiction of the government proposing the new tax or tax increase? The people of the state?
4. With respect to subsection (6) of the proposed initiative:
 - a. Most of the state budgeting process for any given state fiscal year occurs during the prior fiscal year, and the General Assembly passes both the "long" appropriations bill and the annual school finance bill for any given fiscal year during the prior fiscal year. Therefore, it seems that the General Assembly would have to make decisions regarding the amount of funding to provide for education for a fiscal year before it knows whether or not general fund revenues have decreased in that fiscal year and thereby suspended the existing Amendment 23 funding requirements, which raises the following questions:
 - i. Would the General Assembly, when considering the "long" bill and the annual school finance bill, be permitted to use revenue forecasts to determine whether it

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)).

² *Title, Ballot Title and Submission Clause for Proposed initiative 2001-02 # 43*, 46 P.3d 438, 442 (Colo. 2002) (additional citation omitted).

³ *Id.* (additional citation omitted).

would have to fund existing Amendment 23 funding requirements? If so, what forecasts would be used?

- ii. Would the General Assembly be required to always appropriate moneys for education in compliance with existing Amendment 23 funding requirements and then simply have the option of making negative supplemental appropriations if the requirements were suspended?

- b. What events other than "economic conditions" might cause general fund revenues to decline?