

STATE OF COLORADO

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MEMORANDUM

March 2, 2004

TO: Jon Caldera
Randal De Hoof

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #92, concerning repealing Amendment 23

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 the appended proposed initiative.

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 determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained 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 repeal section 17 of article IX of the Colorado constitution, also known as "Amendment 23."

Comments and Questions

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

Technical questions:

1. When repealing a section of the Colorado constitution, the practice is to strike all of the language of the section, including subsection numbers and paragraph letters, but retain the actual section number and headnote in the constitution for historical purposes. Would the proponents consider retaining the reference to "**Section 17. Education - Funding.**" in the constitution so that if the measure passes, future versions of the Colorado constitution will show the following: "**Section 17. Education - Funding. (Repealed)**"?

Substantive questions:

1. If the proposed measure takes effect in the 2004-05 state fiscal year, and the General Assembly has already appropriated moneys to fund increases in the statewide base per pupil funding and total state funding for all categorical programs, as required by section 17 (1) of article IX of the Colorado constitution, would the repeal of section 17 (1) allow or require the General Assembly to rescind the increases in the statewide base per pupil funding and categorical program funding in the 2004-05 fiscal year?
2. What do the proponents intend to happen to any fund balance existing in the state education fund at the time the proposed measure becomes law? Under section 17 (4), the moneys that are diverted to the state education fund are exempt from state fiscal year spending under TABOR and from the statutory limitation on general fund appropriations growth. How do the proponents intend the fund balance to be treated for purposes of TABOR? Would the moneys continue to be exempt from TABOR? Could the General Assembly expend the moneys in the fund for any purpose? Would the expenditures be exempt from TABOR and the statutory limitation on general fund appropriations growth? Do the proponents intend the moneys in the fund to be included in state fiscal year spending and refunded if required under TABOR? Would the proponents consider specifying their intent with regard to the moneys in the state education fund?
3. Amendment 23 exempts a portion of income tax revenues from TABOR state fiscal year spending. By repealing Amendment 23, it appears that these revenues are again included in state fiscal year spending.
 - a. Is it the proponents' intent that the portion of income tax revenues collected are again included in state fiscal year spending?
 - b. Is it the proponents' intent that revenue collected on or after the effective date of this proposal be included in state fiscal year spending?
 - c. Is it the proponents' intent that the General Assembly define how those revenues are calculated?

- d. If the money currently diverted to the state education fund reverts to the general fund during a year in which state fiscal year spending would have been at its maximum, all of the money would be refunded to taxpayers in accordance with TABOR. For example, the state is currently projected to reach its maximum state fiscal year spending in the 2004-05 fiscal year, which is the fiscal year in which this proposal would become effective. Therefore, the income tax revenue that becomes subject to the state fiscal year spending limit would be refunded. Is this the proponents' intent?
4. By enacting implementing legislation in the 2001 legislative session, the General Assembly essentially included the requirements of section 17 of article IX of the Colorado constitution in article 55 of title 22 of the Colorado Revised Statutes. By repealing section 17, do the proponents intend to also repeal article 55 of title 22, C.R.S.? Could article 55 of title 22 remain in effect if this measure passes? Would the state education fund still exist? Would a portion of federal taxable income still be diverted to the fund? If any new revenues are diverted to the fund, would the revenues be subject to the limitation on state fiscal year spending?
5. Education programs currently receive approximately \$350 million from the state education fund. Assuming that state revenues do not increase as a result of this proposal or that general fund revenues within the statutory six percent general fund appropriations limit increase by less than the amount currently provided by the state education fund (or do not increase at all), this proposal could result in a reduction of funding for education or a reduction in funding for other state programs and services to maintain current education funding levels. Is this the proponents' intent?
6. If this initiative becomes effective in December 2004, is it the proponents' intent that the first state fiscal year this initiative will impact is the 2005-06 fiscal year? Would the proponents consider including an effective date clause in the proposal to specify when the proposal is to take effect?