

# STATE OF COLORADO

## Colorado General Assembly

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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 #76, concerning eliminate TABOR spending limitations.

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 purpose of the proposed amendment appears to be to repeal article X, section 20 (7) of the Colorado constitution and, by so doing, to eliminate the limitations on state and local district fiscal year spending and local district property tax revenue set forth in that constitutional provision.

#### 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)") with an amending clause that states that "Section 20 (7) of article X of the constitution of the state of Colorado is repealed."; or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 repealed as follows:" and then showing the full text of article X, section 20 (7) of the Colorado constitution in ~~strike type~~ to indicate its repeal?
2. The phrase "**Eliminate redundant spending limit**" 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."<sup>1</sup> The repeal of article X, section 20 (7) of the Colorado constitution contemplated by the proposed initiative would have at least three distinct effects: the elimination of a limitation on state fiscal year spending; the elimination of limitations on local district fiscal year spending; and the elimination of a limitation on annual local district property tax revenues, which raises the following questions:
  - a. What is the single subject of the proposed initiative?

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

- 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. 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?
- 3. 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?