

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

March 23, 2004

TO: Carol Hedges and Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #110, concerning government spending limits and local property taxes

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 initiative appear to be:

1. To repeal article X, section 20 (7) of the Colorado constitution and replace it with a new section 20 (7) that specifies that:
 - a. Fiscal year spending by the state of Colorado shall not exceed the level of spending in fiscal year 2000, measured as a percentage of total personal income for Colorado, unless voters approve a revenue change.

- b. Each local district's property tax revenue limit is the property tax revenue limit that existed in 2000, plus the sum of local growth since 2000 and the percentage of change in total personal income for Colorado since 2000, adjusted for revenue changes approved by voters after January 1, 2000, and reductions allowed pursuant to article X, section 20 (8) (b) and (9) of the Colorado constitution.
- c. If revenue from sources not excluded from fiscal year spending exceeds the limits calculated as specified in the proposed initiative in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset.
- d. Qualification or disqualification as an enterprise shall change district bases and future year limits.
- e. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, property tax revenue by the annual debt service so funded.
- f. Debt service changes, reductions, refunds allowed by article X, section 20 (1) and (3) (c) of the Colorado constitution, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base.
- g. Voter-approved revenue changes do not require a tax rate change.
- h. Other state and local limits on district revenue and spending may be strengthened or weakened by state or local legislative action, but this shall not affect the powers granted to home rule municipalities or counties.
- i. Nothing in the proposed initiative shall be construed to weaken any of the provisions of article X, section 20 (4) of the Colorado constitution, including the requirement of voter approval of new taxes and increases in tax rates.
- j. Nothing in the proposed initiative shall be construed to invalidate any district election pursuant to article X, section 20 of the Colorado constitution held prior to the effective date of the proposed initiative.

Comments and Questions

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

Technical questions:

1. To conform to standard drafting practice, would the proponents consider changing the amending

clause of the proposed initiative to read as follows: "Section 20 (7) of article X of the constitution of the state of Colorado is REPEALED AND REENACTED, WITH AMENDMENTS, to read:"?

2. In subsection (7) (c) of the proposed initiative, in the first sentence, would the proponents consider specifying "these limits" by replacing that language with "the limits specified in paragraphs (a) and (b) of this subsection (7)" or similar language?
3. In subsection (7) (f), would the proponents consider changing "Article X, section 20" to "this article"?
4. Standard drafting practice is to show all new language in "SMALL CAP" type and deleted language in "~~strike type~~". Since the proposed initiative is replacing existing language with new language, would the proponents consider placing the text of the proposed initiative, excluding the headnote, in "SMALL CAP" type?

Substantive questions:

1. What are the first fiscal, calendar, or tax years to which the proposed initiative would apply? By repealing the existing spending and property tax limits, is it the proponents' intent to repeal any existing obligations, including refund obligations, for prior years? Would the proponents consider addressing these issues in the text of the initiative?
2. With respect to subsection (7) (a) of the proposed initiative:
 - a. By "level of spending in fiscal year 2000", do the proponents mean the amount of state fiscal year spending allowed under current law for the 2000-01 state fiscal year? Are the proponents aware of a specific number to be used for this calculation, or may the general assembly determine the number to be used?
 - b. What is "total personal income for Colorado"? How and for what time period is it calculated? How is it calculated for "fiscal year 2000"? For the calendar year ending during the 2000-01 state fiscal year? For the calendar year ending during the immediately preceding state fiscal year? How is it calculated for subsequent fiscal years? May estimates be used if final figures are not available? Are the proponents aware of a specific number to be used for this calculation for fiscal year 2000, or may the general assembly determine the number to be used?
 - c. Given that the level of spending in fiscal year 2000 and total personal income at that time are amounts that may be currently determined, have the proponents considered simply stating the percentage of total personal income that cannot be exceeded in any state fiscal year? (e.g., "Fiscal year spending by the state of Colorado in any state fiscal year shall not exceed six percent of total personal income in Colorado for the calendar year ending

during the immediately preceding state fiscal year.")

- d. What types of revenue changes may be approved by voters? Are there any restrictions on the amounts, time periods, or structure of changes that may be approved? May the voters approve an unlimited number of years for a change? May they approve the use of a base year other than the year 2000 to calculate the limit? A standard other than personal income?
3. With respect to subsection (7) (b) of the proposed initiative:
 - a. Is the property tax limit calculated for tax revenues owed for each property tax year, which are generally collected in the following calendar year? For tax revenues received in each calendar year? For tax revenues received during a local district's fiscal year?
 - b. Is personal income for Colorado calculated any differently under this subsection than in subsection (7) (a)? Is it the proponents' intent that the rate of change for property tax revenues in a local district be indexed to personal income statewide in Colorado rather than personal income growth within the local district? What year is used to calculate the limit for a given year's property tax revenues?
 - c. How is the limit for a local district that did not exist in the year 2000 to be calculated?
 - d. Given that subsection (7) (c) specifies that voter-approved revenue changes are exceptions to, and not part of any district base, what is the effect, if any, of revenue changes approved by voters prior to January 1, 2000? Does the "property tax revenue limit that existed in 2000" include any revenue changes approved by voters up to that point?
 4. Is it the intent of the proponents that the proposed initiative repeal existing constitutional spending and revenue limits on local districts? Would this affect any outstanding obligation a local district may have to refund excess revenues as of the effective date of the proposed initiative?
 5. Subsection (7) (c) of the proposed initiative repeals existing language in the constitution that specifies that future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending. Is this the proponents' intent? Is this language deleted because local governments are no longer subject to spending and revenue limits and the state cannot issue debt?
 6. With respect to subsection (7) (d) of the proposed initiative:
 - a. Is it the proponents' intent that the state be allowed to take legislative action to strengthen or weaken a state or local limit on district revenue or spending? Can a county, city, or other local government take legislative action that contradicts such legislative action by the state? Can a local government only take legislative action on a limit that affects the local

government itself? Would the proponents consider clarifying this provision?

- b. What is intended by the second sentence? What powers are being referred to?
- 7. What is the purpose of including subsection (7) (e)? What provisions of the proposed initiative might be construed to weaken the provisions of section 20 (4) of article X of the Colorado constitution?
- 8. What is the purpose of including subsection (7) (f)? What provisions of the proposed initiative might be construed to invalidate a district election?
- 9. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?