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MEMORANDUM

March 18, 2004

TO: Mark Cavanaugh and Brenda Morrison

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #106, concerning rainy day funds - state TABOR refunds.

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.

An earlier version of this initiative was the subject of a memorandum dated February 11, 2004. Proposal 2003-2004 #86 was discussed at a hearing on February 13, 2004. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed initiative appear to be:

1. To add a new section 21 titled "State and local rainy day funds" to article X of the Colorado constitution;
2. To prohibit the use of tax rate increases to fund rainy day funds;
3. To prohibit the new section 21 from being interpreted to increase tax rates without the permission of the voters;
4. Effective January 1, 2005, to require the state to annually deposit at least one percent of its annual tax revenue into a newly created state rainy day fund until a reserve equal to ten percent of the state's most recent general fund budget has been accumulated, and to require the state rainy day fund to consist of cash and bonds with a maturity of two years or less so that state rainy day fund revenues are available when needed;
5. To eliminate the state emergency reserve currently required by section 20 (5) of article X of the Colorado constitution and transfer its cash funds to the state rainy day fund;
6. To require revenues in excess of the constitutional limitation on state fiscal year spending that would otherwise be refunded under section 20 (7) of article X of the Colorado constitution to be applied to compensate, in whole or in part, for any revenue shortfall in the general fund support of local public schools, including appropriations mandated by section 17 (5) of article IX of the Colorado constitution, and state and community colleges and universities, and to exempt those allocations from existing revenue and spending limits;
7. In any fiscal year in which state tax revenues, after adjustment for population growth and inflation, decline from the prior fiscal year:
 - a. To allow up to one-half of the state rainy day fund to be allocated to address the revenue shortfall;
 - b. To count any use of state rainy day fund moneys to address the revenue shortfall against existing spending limits;
 - c. To defer the expenditure of up to one-half of the increase in revenue to be allocated as required by section 17 (1) of article IX of the Colorado constitution, but to require its full restoration within the following three fiscal years; and
 - d. To suspend the requirement that revenues be allocated to the state rainy day fund;

8. To allow a two-thirds majority of both houses of the general assembly to allocate reserves from the state rainy day fund to mitigate expenses resulting from a natural or manmade disaster, and to exclude reserves allocated from existing spending limits; and
9. To authorize any local district government to propose a local rainy day fund that is tailored to meet the needs associated with a potential or actual revenue shortfall of the citizens of the district, to allow such a proposal to exclude the district from any provisions of section 20 of article X of the state constitution that affect the ability of a district to fund one or more district services during a revenue shortfall, and to require such a proposal to be approved by a majority of the voters of the district before becoming effective.

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 practices regarding the form of proposed amendments to the Colorado constitution, would the proponents:
 - a. Modify the formatting of the amending clause of the proposed initiative so that it states: "Article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:"?
 - b. Show all of the section and subsection head notes in the proposed initiative in regular text rather than in LARGE AND SMALL CAPITAL LETTERS" (e.g., "NO TAX RATE INCREASE." should be changed to "No tax rate increase."?)
2. Would the proponents delete:
 - b. The comma after the word "AND" on the ninth line of subsection (4) of the proposed initiative?
 - c. The word "OF" after the word "FUND" on the fifth line of subsection (6) of the proposed initiative?
3. Would the proponents insert commas after the word "SCHOOLS" on the fourth line of subsection (3) of the proposed initiative and after the word "CONSTITUTION" on the fifth line of subsection (3) of the proposed initiative?

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. Subsection (3) of the proposed initiative requires excess state revenues that would otherwise be refunded under section 20 (7) of article X of the Colorado constitution to be used to compensate for revenue shortfalls in general fund support of local public schools, including appropriations mandated by section 17 (5) of article IX of the Colorado constitution, and state and community colleges and universities, which raises the following questions:
 - a. What constitutes a revenue shortfall and how is the amount of a revenue shortfall to be calculated?
 - b. What constitutes a local public school? Any public school for pupils from preschool through the twelfth grade? A charter school?
 - c. Is it the proponents' intent that the General Assembly have discretion to determine the allocation of excess state revenues between local public schools and state and community colleges and to determine the specific schools or school districts, institutions and projects for which excess state revenues are to be allocated?
 - d. Is it the proponents' intent to allow excess state revenues to be used to supplant other general fund moneys currently used to meet the requirements of section 17 (5) of article IX of the Colorado constitution?

3. With respect to subsection (6) of the proposed initiative:
 - a. What constitutes a "potential or actual revenue shortfall" and who determines whether such a shortfall exists or is potentially going to exist?
 - b. Who determines which provisions of section 20 of article X of the Colorado constitution "affect the ability of a district to fund of [*sic*] one or more district services during a revenue shortfall"? Would such a determination be subject to legal challenge?