

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

December 5, 2003

TO: Carol Hedges
Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #73, concerning fiscal stabilization

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.

An earlier version of this initiative was the subject of a memorandum dated October 15, 2003. Proposal 2003-2004 #71 was discussed at a hearing on October 17, 2003. 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 amendment appear to be:

1. To add a new section 21 to article X of the Colorado constitution.

2. To specify that the purpose of the proposed new section is to enhance the ability of the state and local districts to support essential services throughout economic upturns and downturns while preserving the requirement for voter approval of new taxes and tax rate increases.
3. To specify that the intent of the proposed new section is to preserve and affirm the requirements of section 20 (4) of article X of the Colorado constitution, including the requirement of voter approval of new taxes or increases in tax rates.
4. To limit maximum fiscal year spending by the state of Colorado to the level of spending in fiscal year 1992, measured as a percentage of total personal income for Colorado, unless voters approve a revenue change in a state authorized election.
5. To specify that the state of Colorado spending limit shall be the only limitation on state and local district spending and revenue under section 20 of article X of the Colorado constitution ("TABOR").
6. To create a state rainy day fund in the state treasury.
7. To fund the state rainy day fund with revenue collected in excess of the state of Colorado spending limit and appropriations and transfers approved by the Colorado General Assembly, and, specifically, to require the first \$100 million in revenue collected in excess of the state of Colorado spending limit in any fiscal year to be deposited into the fund.
8. To limit the balance of the state rainy day fund to a maximum of fifteen percent of total state general fund appropriations for the prior fiscal year, and to require any excess revenue that would be deposited to the fund but for the fifteen percent limit to be refunded to taxpayers pursuant to TABOR.
9. To allow moneys to be expended from the state rainy day fund only if:
 - a. Total personal income for Colorado increased by less than four and one half percent in the prior four quarters; or
 - b. The Colorado General Assembly authorizes the appropriation of moneys from the fund by an affirmative vote of three-fifths of the voting members of each house.

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. Removing capitalization (except at the beginning of sentences or head notes) from the following words and phrases that appear in the proposed amendment:
 - i. Fiscal Year?
 - ii. Rainy Day Fund?
 - iii. General Assembly?
 - iv. General Fund Revenues?
 - v. General Fund Expenditures?
 - b. Capitalizing the word "fiscal" on the first line of subsection (3) of the proposed amendment?
 - c. Eliminating the introductory portion of paragraph (A) of subsection (4) of the proposed amendment ("DEPOSITSTO THE RAINY DAY FUND"), which appears to be head note-type descriptive language rather than substantive language that has legal effect?
 - d. Modifying the subdivision numbering and lettering in subsection (4) of the proposed amendment as follows:
 - i. Replacing "(A)" and "(B)" with "(a)" and "(b)"?
 - ii. Replacing "1)" and "2)" with "(I)" and "(II)"?
 - e. Replacing "4.5%" with "FOUR AND ONE-HALF PERCENT" on the first line of subparagraph 1) of paragraph (B) of subsection (4) of the proposed amendment?

Substantive questions:

1. Article V, section 1 of the Colorado constitution requires all proposed initiatives to have a single subject. The proposed amendment appears to do several different things, however, including changing the manner in which the state of Colorado spending limit that limits state fiscal year spending is calculated, eliminating existing TABOR limitations on state and local district spending and revenue, creating a state rainy day fund, and requiring certain excess state revenues that would otherwise be refunded to be deposited into the state rainy day fund. Does the proposed amendment have a single subject to which all of its purposes are necessarily and properly connected? If so, what is the single subject of the proposed amendment?

2. Subsection (1) of the proposed amendment indicates that "local districts . . . include cities, counties, special districts and school districts". Are towns also local districts for purposes of the proposed amendment? Are the city and county of Denver and the city and county of Broomfield local districts for purposes of the proposed amendment?
3. With respect to subsection (3) of the proposed amendment:
 - a. The proposed amendment does not define the phrase "fiscal year spending", which raises the following questions:
 - i. Does the phrase include all state government spending?
 - ii. If not, do the proponents intend that this phrase have the same meaning for purposes of the proposed amendment that it does for purposes of TABOR, and, if so, would the proponents consider adding language to the proposed amendment to indicate this? If the phrase does not have the same meaning for purposes of the proposed amendment that it does for purposes of TABOR, would the proponents consider defining the phrase in the proposed amendment?
 - b. The proposed amendment does not define "spending" as it appears without the qualifying words "fiscal year" on the second line of subsection (3), which raises the following questions:
 - i. Do the proponents intend that "spending" have the same meaning as "fiscal year spending"?
 - ii. If not, how are "spending" and "fiscal year spending" different?
 - iii. Is it the proponents' intent that the new state of Colorado spending limit be adjusted to account for any changes in the sources of revenues that are included in fiscal year spending (e.g., to take into account the qualification and disqualification of enterprises after 1992)? If so, would the proponents consider adding language to the proposed amendment to specify that such an adjustment should be made?
 - c. In calculating the new state of Colorado spending limit for any given fiscal year:
 - i. How and by whom is total personal income for Colorado to be calculated?
 - ii. For what period is Colorado total personal income measured? The income tax year that ends during the fiscal year? Some other period?

4. With respect to subsection (4) of the proposed amendment:
 - a. The proposed amendment does not define the phrases "general fund revenues" and "general fund expenditures". Do these phrases include any moneys that are ever deposited into or expended from the general fund? Do they include any other moneys?
 - b. Subparagraph 2) of paragraph (A) requires the General Assembly to "deposit money in the Rainy Day Fund when General Fund Revenues exceed General Fund Expenditures", which raises the following questions:
 - i. Since state government revenues and expenditures fluctuate over the course of any given fiscal year, for what period must general fund revenues exceed general fund expenditures before the General Assembly must make a deposit?
 - ii. How soon after a period in which general fund revenues exceed general fund expenditures must the General Assembly make a deposit?
 - iii. Must the General Assembly deposit the entire difference between general fund revenues and general fund expenditures into the rainy day fund? What happens if a deposit would cause the balance of the rainy day fund to exceed fifteen percent of total state general fund appropriations for the prior fiscal year?
 - c. Is information regarding the amount of total personal income growth for Colorado for any given quarter available soon enough to allow the General Assembly to know whether or not it may expend moneys from the rainy day fund as permitted by subparagraph 1) of paragraph (B)?