

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

May 7, 2003

TO: Gary D. VanderArk and D. Christopher Sherwin

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #41, concerning Supplemental Tax On Tobacco Products and Cigarettes.

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.

Earlier versions of this initiative were the subject of memoranda dated January, 21, 2003. Proposals 2003-2004 #12 and 2003-2004 #14 were discussed at a hearing on January, 23, 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 article 28.6 entitled "Supplemental Tax on Tobacco Products and Cigarettes" to title 39 of the Colorado Revised Statutes.
2. To declare the following:
 - a. Over four thousand, five hundred Coloradans die each year from tobacco addiction, making it the lead cause of preventable death in our state;
 - b. Over seventy-eight thousand children in Colorado are regular smokers, and that addiction will cause a premature death on the part of one-third of them;
 - c. Health care costs in Colorado that are attributable to tobacco use exceed one billion dollars per year;
 - d. Tobacco taxes are an effective means of preventing and reducing tobacco use;
 - e. Coloradans are increasingly unable to afford the rising costs of health care; and
 - f. It is the intention of the people of Colorado to increase tobacco taxes in order to promote the public health and to generate revenues to provide programs that increase access to health care for children and families, and provide programs to prevent and reduce tobacco use.
3. To define terms as follows:
 - a. "Cigarettes" shall have the same meaning as provided in section 39-28-202 (4) of the Colorado Revised Statutes, as such provision existed on January 1, 2003;
 - b. "Manufacturer's list price" shall have the same meaning as provided in section 39-28.5-101 (3) of the Colorado Revised Statutes, as such provision existed on January 1, 2003; and
 - c. "Tobacco products" shall have the same meaning as provided section 39-28.5-101 (5) of the Colorado Revised Statutes, as such provision existed on January 1, 2003.
4. To impose the following additional taxes, effective July 1, 2004:
 - a. A statewide cigarette tax, on the sale of cigarettes by wholesalers, at the rate of four cents per cigarette; and

- b. A statewide tobacco products tax, on the sale, use, consumption, handling, or distribution of tobacco products by distributors, at the rate of fifteen percent of the manufacturer's list price thereof.
5. To specify that the taxes imposed by the proposed initiative shall be in addition to any other taxes, existing as of January 1, 2003, or thereafter adopted, on the sale or use of cigarettes by wholesalers and on the sale, use, consumption, handling, or distribution of tobacco products by distributors.
6. To specify that the taxes imposed by the proposed initiative shall be collected by the state department of revenue in the same manner as other taxes imposed on cigarettes and tobacco products.
7. To specify that, notwithstanding any other provision of law, the aggregate revenues generated by the proposed amendment shall be appropriated annually by the general assembly only in the following proportions and for the following purposes:
 - a. Seventeen percent of such revenues shall be appropriated to the Colorado department of public health and environment for purposes of implementing, administering and evaluating school and community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to second-hand smoke, with such programs designed in accordance with best practices for tobacco control programs as established by the Federal Centers for Disease Control and Prevention;
 - b. Eighty-two percent of such revenues shall be appropriated to the Colorado department of health care policy and financing for purposes of implementing and administering programs to increase access to health care for Coloradans; and
 - c. Up to one percent of such revenues shall be appropriated for purposes of the Colorado department of revenue's administration and enforcement of collection of taxes imposed by the proposed initiative, but if the costs of such administration and enforcement are less than one percent of such revenues, the excess funds shall revert proportionately in a manner that is consistent with the allocation set forth above.
8. To require that, notwithstanding any other provision of law, revenues raised pursuant to the proposed amendment that are appropriated for the purposes set forth in the proposed amendment, but are not expended in any fiscal year shall be carried forward and expended in the following fiscal year according to the purpose for which they were originally appropriated.
9. To specify that any amount that is carried forward shall include interest earned on taxes collected during a fiscal year.
10. To specify that, notwithstanding any other provision of law, all revenues raised or received by

operation of the proposed amendment shall be excluded from fiscal year spending, as that term is defined by section 20 of article X of the state constitution, and the corresponding spending limits upon state government and all local governments receiving such funds.

11. To specify the proposed amendment shall become effective on July 1, 2004.

Comments and Questions

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

Technical questions:

1. Subsection (5.5) of section 1 of article V of the state constitution requires that no measure shall be proposed by petition containing more than one subject. The proponents have labeled the new article in the proposed initiative "Supplemental Tax On Tobacco Products and Cigarettes." Is this the intended single subject of the proposed initiative? If not, what do the proponents intend to be the single subject of the proposed initiative?
2. Do the proponents consider the proposed initiative to be an issue arising under section 20 of article X of the state constitution, thereby enabling the issue to appear on the ballot in the November 2003 election?
3. The last day to file an initiative with the Secretary of State for title setting for the 2003 election is May 9, 2003. Do the proponents intend to file the initiative on said date so that the Title Board can set a title within the deadline for the 2003 election?
4. The proponents have submitted another proposed initiative that appears to achieve the same purpose as this proposed initiative. In the event that the Title Board sets a title for each of the proposed initiatives, do the proponents intend to collect signatures from the registered electors of the state for both of the initiatives?
5. In order to be consistent with standard statutory drafting, would the proponents consider making the following technical amendments to the proposed initiative:
 - a. In section 39-28.6-102 (1) and (2), C.R.S., of the proposed initiative, replacing the semicolons at the end of each phrase with a period?
 - b. In the introductory portion of section 39-28.6-104, C.R.S., of the proposed initiative, removing the reference to "C.R.S." after the cross-reference to section 39-28.6-103 (1), as cross-references to sections within the same title where the cross reference is made do not need to include "C.R.S."?

6. Colorado Revised Statutes is divided into sections and each section may be divided as follows:
39-28.6-101. Section. (1) Subsection
(a) Paragraph
(I) Subparagraph
(A) Sub-subparagraph
Would the proponents be willing to conform the references to statutory sections, subsections, and paragraphs, etc. within the proposed initiative to this format?
7. Section 39-28.6-105, C.R.S, in the proposed amendment states that "Such amounts that are carried forward shall include interest earned on taxes collected during a fiscal year." To which fiscal year does "a fiscal year" refer? How would the interest be calculated? What would be the rate and the time period for the calculation? Would the proponents consider clarifying these items in the proposed initiative?

Substantive questions:

1. In initiatives 2003-2004 #12 and #14, the proponents included a provision that provided replacement revenues to the state general fund in anticipation of a decrease in the taxable consumption of cigarettes and other tobacco products. Initiative 2003-2004 #14 also contains a provision that requires a percentage of the revenues from the increased taxes to be distributed to local governments. However, this proposed initiative contains neither of those provisions.
 - a. Do the proponents still anticipate that the taxable consumption of cigarettes and tobacco products will decrease as a result of the increased taxes pursuant to this proposed initiative?
 - b. If the proponents do believe that taxable consumption of cigarettes and other tobacco products will decrease, what do the proponents anticipate will be the affect on the state general fund and on local governments that receive a percentage of tobacco tax revenues?
 - c. Do the proponents intend that local governments be backfilled or otherwise reimbursed for the loss of revenue they may experience as a result of an increase in cigarette and tobacco taxes pursuant to this initiative?
2. Do the proponents intend that the department of public health and environment and the department of healthcare policy financing distribute the funds that are appropriated to such departments in their discretion or is it the proponents' intent that the General Assembly provide some direction to the departments concerning the distribution of such moneys? If these departments are reorganized or renamed in the future, is it the proponents' intent that these provisions apply to their successor departments?