

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

February 17, 2004

**TO:** Barbara O'Brien  
Albert Yates

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2003-2004 #89, concerning tobacco tax increase for health related purposes.

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 January 30, 2004. Proposal 2003-2004 #82 was discussed at a hearing on February 2, 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 amendment appear to be:

1. To add a new section 21 to article X of the Colorado constitution that would take effect January 1, 2005, and would:
  - a. Declare that:
    - i. Tobacco addiction is the leading cause of preventable death in Colorado;
    - ii. Colorado should deter children and youth from starting to smoke;
    - iii. Cigarette and tobacco taxes are effective at preventing and reducing tobacco use among children and youth; and
    - iv. Tobacco tax revenues will be used to expand health care for children and low-income populations, tobacco education programs, and the prevention and treatment of cancer and heart and lung disease.
  - b. Impose an additional cigarette tax of three and two-tenths cents per cigarette and an additional tobacco products tax of twenty percent of the manufacturer's list price of the products taxed and prohibit the general assembly from repealing or reducing any existing cigarette and tobacco products taxes;
  - c. Exclude all revenues from the additional cigarette and tobacco products taxes from state and local government fiscal year spending for purposes of section 20 of article X of the Colorado constitution (TABOR);
  - d. Require the General Assembly to annually appropriate the revenues from the additional cigarette and tobacco products taxes for the following health related purposes and in the following proportions:
    - i. Forty-six percent to increase the number of children and pregnant women enrolled in the children's basic health plan above the average enrollment for state fiscal year 2004, and add parents of enrolled children and expand eligibility of low income adults and children who receive medical care through the "Children's Basic Health Plan Act", the "Colorado Medical Assistance Act", or any successor act;
    - ii. Nineteen percent to the department of health care policy and financing or any successor agency to be distributed proportionally by number of uninsured or medically indigent patients served to Colorado qualified providers to fund comprehensive primary care through any Colorado qualified provider:
      - A. That is a community health center; or
      - B. For which at least fifty percent of the patients served are uninsured or

medically indigent as defined by specified statutes or successor acts to those statutes or are enrolled in the children's basic health plan, the Colorado medical assistance program, or successor programs.

- iii. Sixteen percent to be appropriated through the "Tobacco Education, Prevention, and Cessation Act" or any successor act for 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;
  - iv. Sixteen percent to the prevention services division of the department of public health and environment or any successor agency to be distributed statewide with oversight and accountability by the state board of health for the prevention, early detection, and treatment of cancer, cardiovascular diseases, and pulmonary diseases; and
  - v. Three percent for health related purposes to the general fund, the old age pension fund, and municipal and county governments to compensate proportionately for tax revenue reductions attributable to lower cigarette and tobacco sales resulting from the implementation of the additional cigarette and tobacco products taxes.
- e. Prohibit amounts of the revenues from the additional cigarette and tobacco products taxes that are required to be used for specified purposes from being used to supplant moneys appropriated by the general assembly for health related purposes as of the effective date of the new section 21;
  - f. Allow the General Assembly to use revenues from the additional cigarette and tobacco products taxes for any health related purpose, to serve populations enrolled in the children's basic health plan above the average enrollment in state fiscal year 2004, and to serve populations enrolled in the Colorado medical assistance program at the level of enrollment as of the effective date of the new section 21 upon the declaration of a state fiscal emergency by passage of a joint resolution by 2/3 of the members of each house of the General Assembly and the governor that shall only apply to a single fiscal year; and
  - g. Exempt revenues appropriated pursuant to the new section 21 from the statutory limitation on general fund appropriations growth or any other spending limitation existing in law.

### **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 most of the capitalization from the head note of the proposed amendment so that it states: "**Section 21. Tobacco taxes for health related purposes.**"?
  - b. On the first line of subsection (6) of the proposed initiative, replacing "(A), (B) AND (D)" with "(a), (b), AND (d)"?

Substantive questions:

1. Paragraph (a) of subsection (5) of the proposed initiative requires a specified percentage of the revenues generated by additional cigarette and tobacco products taxes to "be appropriated to increase the number of children and pregnant women enrolled in the children's basic health plan above the average enrollment for state fiscal year 2004", which raises the following questions:
  - a. How is the average enrollment for state fiscal year 2004 to be determined?
  - b. Must any appropriations made increase both the number of children enrolled and in the children's basic health plan and the number of pregnant women enrolled in the plan, or is an aggregate increase in the combined number of children and pregnant women in the plan permissible?
  - c. Must the total amount of benefits paid to enrollees in the children's basic health plan increase or could current benefits payment levels be maintained or reduced by reducing the amount of benefits allowed to each enrollee as total enrollment increases?
2. Subsection (7) of the proposed initiative allows the General Assembly to use revenues generated by additional cigarette and tobacco products taxes "to serve populations enrolled in the children's basic health plan above the average enrollment for state fiscal year 2004, and to serve populations enrolled in the Colorado medical assistance program at the level of enrollment on the effective date of this section", which raises the following questions:
  - a. Why have the proponents chosen to use different measures of enrollment for the children's basic health plan (average enrollment for state fiscal year 2004) and the Colorado medical assistance program (enrollment as of the effective date of the new section 21)?
  - b. May revenues used for the children's basic health plan only be used to serve a number of persons enrolled in the plan equal to the difference between the number of plan enrollees in the state fiscal year for which revenues are used and the average number of plan enrollees for state fiscal year 2004? May the revenues be used to increase benefits for all plan enrollees?

- c. May revenues be used to serve a larger number of persons enrolled in the Colorado medical assistance program than the number of enrollees for state fiscal year 2004? A smaller number of enrollees?