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MEMORANDUM

March 1, 2003

TO: Carol Hedges
Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #96, 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.

Earlier versions of this initiative were the subjects of memoranda dated October 15, 2003, and December 5, 2003. Proposal 2003-2004 #71 was discussed at a hearing on October 17, 2003, and proposal 2003-04 # 73 was discussed at a hearing on December 8, 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 and increases in tax rates.
4. To limit maximum fiscal year spending by the state of Colorado to the level of spending in fiscal year 2000, measured as a percentage of total personal income for Colorado, unless voters approve a revenue change in a state general election, biennial local district election, or in an election held on the first Tuesday in November of odd-numbered years.
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 require the general assembly to deposit money in the rainy day fund when general fund revenues exceed general fund expenditures.
10. 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 word "General", wherever it appears in the proposed initiative?
 - b. Modifying the subdivision numbering and lettering in subsection (4) of the proposed initiative as follows:
 - i. Replacing "**a**" and "**b**" with "(a)" and "(b)"?
 - ii. Replacing "**I.**" and "**II.**" with "(I)" and "(II)"?
 - c. Inserting a hyphen between the word "ONE" and "HALF" on the first line of subparagraph **I.** of paragraph **b** of subsection (4) of the proposed initiative?
2. Would the proponents replace the word "RATES" with the word "RATE" on the last line of subsection (1) of the proposed initiative.

Substantive questions:

1. Section 1 of article V of the Colorado constitution requires all proposed initiatives to have a single subject. The proposed initiative 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 initiative 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 initiative?
2. In the current version of the proposed initiative, the proponents have changed the base year for determining the level of permissible fiscal year spending by the state of Colorado from 1992 to 2000, which raises the following questions:
 - a. What is the proponents' intent in making this change?
 - b. Is the level of fiscal year spending for the state of Colorado in fiscal year 2000, measured

as a percentage of total personal income for Colorado, known at the present time? If so, have the proponents considered specifying that percentage numerically in the proposed initiative instead of referencing the base year 2000?

3. The proposed initiative would allow voters to approve a revenue change to fiscal year spending by the state of Colorado in a "biennial local district election," which raises the following questions:
 - a. Since not all biennial local district elections occur at the same time, it appears that the proposed initiative would allow a ballot question to be submitted to and approved by a group of registered electors that does not include all of the registered electors of the state. If this is the proponents' intent, would an affirmative vote by a majority of the registered electors voting in those local districts holding elections on the date the ballot question is submitted be sufficient to approve the ballot question?
 - b. If the proponents do not intend to allow a ballot question seeking voter approval for a revenue change to fiscal year spending by the state of Colorado, what is the proponents' intent in allowing a revenue change to be approved in a biennial local district election?