

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

April 7, 2004

TO: Rutt Bridges and Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #137, concerning education funding and the contingent repeal of Amendment 23.

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 March 24, 2004. Proposal 2003-2004 #118 was discussed at a hearing on March 26, 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 subsection (6) to section 17 of article IX of the Colorado constitution that:
 - a. Provides for the sunset of said section, effective June 30, 2011.
 - b. Specifies that the sunset of said section shall only occur if, prior to January 1, 2005, a majority of voters approve an amendment to section 20 (7) of article X of the Colorado constitution that limits state spending to less than the percentage of the overall state economy that existed in the fiscal year ending in 2000, adjusted for voter approved revenue changes.
 - c. Specifies that if the voters approve the referenced amendment to section 20 (7) of article X of the Colorado constitution:
 - i. The general assembly may suspend no more than the one percentage point increase specified in section 17 (1) of article IX of the Colorado constitution in any state fiscal year in which Colorado total state personal income grows less than four and one half percent between the two previous calendar years.
 - ii. The required funding increases under section 17 of article IX of the Colorado constitution shall be extended by one fiscal year for each fiscal year that the general assembly suspends any portion of the spending requirements of said section.
 - iii. Section 17 of article IX of the Colorado constitution is repealed, effective June 30, 2011, unless the general assembly suspends any portion of the spending requirements of said section, in which case the repeal date shall be extended by one year for each fiscal year for which the spending requirements are suspended.
 - iv. Any fund balance existing in the state education fund upon the repeal of section 17 of article IX of the Colorado constitution shall be used for the purposes described in section 17 (4) (b) of article IX of the Colorado constitution and shall not be subject to the limitation on fiscal year spending set forth in section 20 of article X of the Colorado constitution and any other spending limitation existing in law.
 - d. Defines "the overall state economy" as the size of the state economy as measured by the most current total state personal income data available from the federal Bureau of Economic Analysis, or its successor agency.

Comments and Questions

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

Technical questions:

1. Would the proponents insert a space between "Section" and "17" in the amending clause of the proposed initiative?
2. To conform to standard drafting practices, would the proponents:
 - a. Change the head note to subsection (6) of the proposed initiative from "SUNSET" to "Sunset"?
 - b. In subparagraph (I) of the proposed initiative, change "ONE HALF" to "ONE-HALF"?
 - c. In subparagraph (III) of the proposed initiative:
 - i. On the sixth line, replace "SECTION 17(4)(B) OF THIS ARTICLE" with "PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION"?
 - ii. On the seventh and eight lines, replace "ARTICLE X, SECTION 20" with "SECTION 20 OF ARTICLE X"?
3. Would the proponents capitalize (in large rather than small capital letters) the word "IN" at the beginning of the second sentence of subparagraph (III) of the proposed initiative?

Substantive questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. One of the purposes of the single subject rule appears to be preventing "log rolling" or Christmas tree tactics that allow two distinct and separate purposes that are not dependent on or connected with each other to be included in a single proposal. *In Re Public Rights in Waters*, 898 P.2d 1076, 1079 (Colo. 1995). This proposed initiative appears to link modifications to section 17 of article IX of the Colorado constitution (Amendment 23) to the passage of a measure amending section 20 (7) of article X of the Colorado constitution (a portion of TABOR). Although Colorado courts have not addressed the issue directly, other courts appear to have applied a single subject analysis to measures that are linked. *Gaulden v. Kirk*, 47 So.2d 567 (Fla. 1950), *Andrews v. Governor*, 294 Md. 285, 449 A.2d 1144 (1982). (In both of these cases, the measures were found to contain a single subject.) Do the proponents take the position that two linked measures would have to contain a single subject? If so, what is the single subject of the proposed initiative and the measure to be approved by voters modifying the spending and revenue limits in TABOR?
2. The proposed initiative references both the "sunset" of Amendment 23 and its "repeal". Is there any difference between a "sunset" and a "repeal", and, if not, why have the proponents chosen to use both terms in the current version of the proposed initiative?

3. The proposed initiative makes both the "sunset" of Amendment 23 and the other provisions of the proposed initiative contingent upon the approval, no later than January 1, 2005, of an initiative that is not specifically identified by a number or formal title and that would amend subsection (7) of TABOR by limiting "state spending to less than the percentage of the overall state economy that existed in the fiscal year ending in 2000, adjusted for voter approved revenue changes," which raises the following questions:
 - a. Does the proposed initiative adequately identify the initiative that must be approved in order for the "sunset" of Amendment 23 to take effect and for the other provisions of the proposed initiative to have legal effect? For example, would approval by the voters of proposed initiative 2003-04 #126, which replaces subsection (7) of TABOR with a spending limit measured as a percentage of the overall state economy, allow the "sunset" of Amendment 23 to take effect and the other provisions of the proposed initiative to have legal effect? Do the proponents have a specific initiative to amend subsection (7) of TABOR in mind, and, if so, would they consider more specifically referencing that initiative in the proposed initiative?
 - b. It appears that if the voters approve the proposed initiative, but the initiative to amend subsection (7) of TABOR either does not get submitted to or is not approved by the voters, the provisions of the proposed initiative would take effect and become a part of the Colorado constitution but would have no legal effect or consequences. Is this the proponents intent, and, if not, would the proponents specify that the proposed initiative only takes effect if the initiative to amend a portion of TABOR is approved by the voters?
 - c. Do that proponents know what the size of the overall state economy was in the fiscal year ending in 2000 and what percentage of the overall state economy for that fiscal year consisted of state fiscal year spending? If so, have the proponents considered simply stating numerically the percentage of the overall state economy that may consist of state fiscal year spending?
4. The proposed initiative authorizes the general assembly to suspend only any portion of the additional one percentage point increase in statewide base per pupil funding and total state funding for all categorical programs required by subsection (1) of Amendment 23, but subparagraph (II) of the proposed initiative appears to require that both the annual increases in statewide base per pupil funding and total state funding for all categorical programs required by subsection (1) of Amendment 23 and the annual increases in the general fund appropriation for total program required by subsection (5) of Amendment 23 be extended by one fiscal year for each fiscal year that the general assembly suspends Amendment 23 spending requirements. Is this the proponents' intent, and, if not, would the proponents change the reference in subparagraph (II) to "this section" to a reference to "subsection (1) of this section"?
5. Subparagraph (III) of the proposed initiative specifies the manner in which any fund balance existing in the state education fund upon the repeal of Amendment 23 is to be used and treated, but

under the current language of the proposed initiative the language of subparagraph (III) itself will repeal at the same time as the rest of Amendment 23. Would the proponents modify the language that repeals Amendment 23 or move subparagraph (III) to a different section of the constitution in order to ensure that the language that specifies the manner in which any fund balance existing in the state education fund upon the repeal of Amendment 23 is to be used and treated remains in the constitution after the repeal of Amendment 23?

6. With respect to paragraph (b) of the proposed initiative, why have the proponents chosen to use total state personal income as a measure of the overall state economy? Have the proponents considered using gross state product or any other broad measure of consumption or production to measure the overall state economy?