2nd Draft

Amendment ?
Ethics in Government

Amendment ? is an amendment to the Colorado Constitution that:

- prohibits public officials and government employees from accepting any amount of money or any gift worth more than $50;
- bans lobbyists from giving gifts or meals to public officials or employees or the immediate family members of the public officials or employees;
- prohibits statewide elected officeholders and state legislators from lobbying certain elected state officials for pay for two years after leaving office; and
- creates a new ethics commission to hear state and local complaints, assess penalties, and issue advisory opinions.

Summary and Analysis

Acceptance of gifts by public officials. Current law prohibits state elected officials from accepting the following gifts, when the gift is related to the person's official duties:

- ✓ any money; or
- ✓ any equipment, supplies, or services worth more than $50, such as a fax machine, an office computer, a newspaper subscription, or donated office space.

The prohibitions apply to the following state elected officials, as well as candidates for these offices: governor, lieutenant governor, secretary of state, attorney general, treasurer, state legislators, district attorneys, members of the State Board of Education, and regents of the University of Colorado.

Amendment ? expands the current gift ban to cover money or gifts given for any reason. The ban includes favors or services, travel, meals, entertainment, and honoraria, as well as promises of future employment. Amendment ? also extends the restrictions to apply to heads of departments of state government, salaried members of state boards and commissions, county and municipal officials, and most government employees, including independent contractors.

Gifts from lobbyists and lobbying by former government officials. Amendment ? prohibits professional lobbyists from giving gifts of any kind, including meals, to public

officials and government employees or their family members. It also prohibits statewide elected officeholders and state legislators from lobbying professionally for two years after leaving office. This restriction applies only to lobbying a state legislator or a statewide elected officeholder. Professional lobbying is when a person is paid to advocate an interest or position to policymakers.

Ethics commission. Under current law, elected officials must file a quarterly report with the Secretary of State disclosing certain gifts they have received. In addition, public officials and government employees are subject to a code of ethics. Ethics complaints against statewide elected officeholders, governor appointees, and employees of state departments are heard by a board of ethics appointed by the Governor. Complaints filed against legislators are heard by a legislative ethics committee. Many local governments also have procedures in place to handle ethics complaints.

Amendment ? creates a new ethics commission to hear complaints, issue findings, assess penalties, and issue advisory opinions. Any person can file a complaint with the commission alleging a violation of the money and gift ban, lobbying restrictions, or any other standard of conduct or reporting requirement specified in law. The commission must investigate the complaint, hold a public hearing, and issue findings, unless the complaint is found to be frivolous. The commission has the power to subpoena documents or witnesses. It can also assess penalties if it finds an ethics violation occurred. In addition to investigating complaints, the commission can issue advisory opinions in response to a written request from a public official or government employee.

The commission consists of five people. The state Senate, the state House of Representatives, the Governor, and the Chief Justice of the Colorado Supreme Court each appoint one person to the commission. The fifth person is a local government official or local government employee selected by the other members. No more than two members may be members of the same political party, and members must have been continuously registered with the same political party, or continuously unaffiliated, for at least two years before their appointment.

Arguments For

1) The credibility and integrity of the political process is damaged when public officials accept gifts from lobbyists. Amendment ? strengthens public confidence by reducing actual or perceived conflicts of interest. When lobbyists give gifts to public officials, the perception is that they gain access and influence that other citizens in the state do not have. Current law prohibits only gifts that relate to the official duties of a state elected official, leaving no limit on gifts such as tickets to sporting events, meals, and lodging.

2) Amendment ? eliminates the temptation for elected officials to make decisions based on the potential of future employment. Requiring lawmakers to wait two years

before they can lobby ensures that policy decisions are based upon what is best for constituents.

3) Elected officials may not always objectively judge the ethics of their peers. Instead, an independent forum is needed where citizens can file legitimate concerns about possible ethical violations by their elected representatives. The ethics commission created by Amendment ? is charged with enforcing standards of conduct for both state and local public officials and provides a central venue for filing ethics complaints from across the state.

Arguments Against

1) Amendment ? is unnecessary because elected officials are already held accountable to voters. They can be investigated for ethics violations, recalled, or removed from office when they run for reelection. Standards currently exist at the state level that prohibit a state official from accepting money or certain gifts related to his or her official duties from lobbyists, corporations, and labor organizations. In addition, state officials must report any money over $25 and most gifts worth more than $50. These reports are filed four times a year and are open to the public for review.

2) Amendment ? unfairly restricts what a public official can do to make a living after leaving public service. Former lawmakers often have expertise in specific policy areas that can benefit the public, and private companies should be allowed to hire the person they believe will best represent their interests. The responsibility for making policy decisions in the public interest lies with current public officials, not former public officials.

3) The ethics commission is not truly independent. It may not be able to objectively judge the ethics of other government officials because its members are appointed by, and it may actually include, government officials. Procedures already exist to address ethics complaints at every level of government in Colorado. Establishing a new commission adds unneeded bureaucracy that may duplicate the work of existing ethics oversight entities.

Estimate of Fiscal Impact

Amendment __ is expected to increase state government expenditures and state and local government revenues. The increase in expenditures will be depend upon the number of staff employed by the ethics commission and the cost of office space and supplies. Staff will be needed to investigate complaints, advise the commission, and prepare subpoenas. State revenues will increase to the extent that public and elected officials are fined for ethical violations. Most existing ethical laws and standards are similar to this proposal. As such, any state or local government revenue from fines is anticipated to be minimal.