

NOTICE OF ELECTION TO INCREASE TAXES ON A CITIZEN PETITION

STATEWIDE ELECTION DAY IS

Tuesday, November 2, 2004

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 18, 2004)



ANALYSIS OF THE 2004 BALLOT PROPOSALS

Legislative Council
of the
Colorado General Assembly

Research Publication No. 527-1

***A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and a
NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.***

**Amendment 34
Construction Liability**

**The proposed amendment to the Colorado
Constitution:**

with some exceptions, prohibits limits, including limiting damages for pain and suffering to \$250,000, on a property owner's ability to recover damages when improvements to property are not constructed in a "good and workmanlike manner"; and

defines an improvement constructed in a "good and workmanlike manner" as an improvement that is suitable for its intended purposes.

Background

Currently, state law establishes a procedure to recover damages from a construction professional when construction is defective. Under this law, a property owner may sue the responsible construction professional after giving notice and providing an opportunity to fix the defect. Construction professionals include architects, contractors, developers, and others involved in the construction business. If an agreement to fix the defect is not reached within 75 days in the case of residential property, or 90 days in the case of commercial property, the property owner may sue the construction professional responsible for the defect.

A property owner who sues, and wins, may be reimbursed for the lesser of the following three dollar amounts: 1) the value of the property without the defect, 2) the cost to replace the property, or 3) the reasonable cost to repair the defect. Medical expenses resulting from an injury are fully reimbursable. Awards for "pain and suffering" for bodily and personal injury are capped at \$250,000. In addition, if the owner can show that the construction professional knowingly violated the law that protects consumers from fraud, he or she may be awarded up to an additional \$250,000. Damage awards may also include the costs associated with moving, interest, or legal fees. Under this law, a lawsuit must

be filed within two years from the date of discovering the defect or six years from the date the construction occurred.

The proposal. This proposal creates a new section in the state constitution that repeals current law. It removes limitations on the amount of money a property owner can collect in damages, except for punitive damages and lawsuits against governments. It also sets in the state constitution the current time frames for filing a lawsuit. Finally, the proposal eliminates the current requirement that a property owner and construction professional try to resolve the problem before bringing a lawsuit. In addition to these changes to current law, the proposal restricts the types of laws the legislature can pass in the future concerning construction liability.

Arguments For

1) The proposal protects property owners by ensuring they can be fully compensated for faulty construction. For the past three years, property owners have been limited in their ability to recover damages. Damages will be determined on a case-by-case basis in a court of law, rather than through a formula that treats all property owners the same. Property owners will be eligible for compensation for the pain and suffering caused by a defect.

2) The proposal changes a system that favors construction professionals at the expense of property owners. Individual property owners do not have the necessary time or resources to effectively negotiate with construction professionals or corporations that may be responsible. It creates constitutional standards that safeguard property owners from laws that limit their ability to collect damages.

Arguments Against

1) The proposal will drive up the cost of housing. An increase in the number of lawsuits, and the awards that result from those lawsuits, could make insurance costs prohibitive. In addition to construction professionals, this proposal allows for lawsuits against anyone who makes improvements to property, not just construction professionals. The proposal creates a fundamental change in liability to include construction professionals and non-professionals alike.

2) A process already exists for property owners and construction professionals to resolve construction defect disputes without immediately turning to the courts. The current system also defines damages in a way that is fair to both property owners and construction professionals: it compensates property owners for the actual cost of fixing their property but limits excessive compensation.

Estimate of Fiscal Impact

This proposal may affect the time devoted to construction-related cases by Colorado courts. If the proposal increases the incentive for property owners to pursue claims, the caseload and the time spent per case may increase. On the other hand, if it increases the incentive for construction professionals to either increase construction quality or settle claims out of court, the time devoted to construction-related cases may decrease. Ultimately, the effect of the proposal on the courts will depend on the number of claims filed, the portion of those claims settled out of court, and the time devoted to each case that goes to trial.

Amendment 35
Tobacco Tax Increase for Health-Related Purposes

The proposed amendment to the Colorado Constitution:

increases the tax on a pack of cigarettes from 20 cents to 84 cents, or 320 percent;

doubles the tax on tobacco products other than cigarettes from 20 percent to 40 percent of the price;

specifies that the new tax revenue is to be used for health care services and tobacco education and cessation programs;

requires the legislature to maintain funding levels for existing health-related programs as of January 1, 2005, and to use the new revenue only to expand these programs;

excludes the new tax revenue from state revenue and spending limits and local government revenue limits; and

allows the legislature, by a two-thirds vote, to declare a state fiscal emergency and to use all of the new revenue only for health-related purposes for up to one budget year at a time.

Background

Cigarette taxes. Cigarette taxes are levied by the federal government and all 50 states. The federal tax rate on cigarettes is 39 cents per pack. For 2004, state tax rates range from a high of \$2.80 per pack in Rhode Island to a low of 20 cents per pack in Colorado. The national average is 98 cents per pack.

Tobacco products taxes. Taxes on non-cigarette tobacco products are levied on cigars, pipe tobacco, snuff, and chewing tobacco by the federal government and 47 states. The federal government levies its tax according to weight. States tax tobacco products based either on weight or a percentage of price. The tobacco products tax rate in Colorado is 20 percent of the price.

History of tobacco taxes in Colorado. In 1964, the state established a tax on cigarettes of 3 cents per pack. Prior to the state cigarette tax and through 1972, many local governments also taxed cigarettes. In 1973, the state raised the tax on cigarettes to 10 cents per pack and gave local governments the option of receiving a portion of state cigarette taxes or levying their own tax. No local government has levied a tax since that time. In 1986, Colorado's cigarette tax was raised to its current rate of 20 cents per pack, and the tobacco products tax of 20 percent of the price was enacted. The proposal prohibits the legislature from reducing these taxes in the future.

Current tobacco revenues. Colorado collected about \$64.8 million from cigarette and tobacco products taxes last year. About one-quarter of this amount is sent to local governments statewide to use as they see fit. The remaining three-quarters is deposited into the state's bank account, along with other state taxes, to pay for state programs. Because Colorado is a participant to the master settlement agreement between the tobacco companies and the various states, the state expects to receive approximately \$118 million per year in additional money for the next 20 years.

Current state health-related programs. In the current budget year, the state will spend about \$3.0 billion to provide health care to low-income individuals, \$4.3 million for programs on the dangers of tobacco use, and \$141.2 million for a variety of prevention programs run by the state health department.

Distribution of tobacco tax revenues under the proposal. Collection of the new tobacco taxes would begin on January 1, 2005. The proposal is expected to raise an additional \$175 million annually. Of this amount, \$169.8 million goes to targeted health care programs and \$5.2 million can be spent by the state and local governments on health-related programs of their choosing. Table 1 shows how the new revenue is required to be spent.

Table 1. Distribution of New Tax Revenue

Percentage	Purpose	Annual Estimated Distribution
46%	to increase the number of low-income children and their parents, pregnant women, and other adults served by state health care programs	\$80.5 million
19%	to pay for health care services at clinics or hospitals where at least half of the patients served are poor	\$33.3 million
16%	for school, community, and statewide education programs designed to reduce the number of children and adults who smoke and reduce the community's exposure to second-hand smoke	\$28.0 million
16%	to prevent, detect, and treat cancer, heart, and lung diseases	\$28.0 million
3%	to be used by the state and local governments for any health-related purpose	\$5.2 million

This proposal and current law. In 2004, the state legislature passed a law in anticipation of this proposal. The law does not affect how the new money raised from this proposal is distributed. However, it declares that the legislature is responsible for setting the spending levels for health-related programs funded from existing sources of revenue. The proposal directs where the new revenue will be spent but gives the legislature flexibility during a fiscal emergency to spend these dollars for other health-related purposes. At any time, the legislature may refer a measure to the people to change how this money is spent.

Arguments For

1) Tobacco use is the leading cause of preventable death in Colorado, killing 4,200 Coloradans each year. Annual health care costs in Colorado directly related to smoking are more than \$1.0 billion. Under this proposal, funds will be provided to prevent, detect, and treat cancer and heart and lung disease, ailments that affect many Coloradans. The new taxes will also help low-income children and adults receive health care that they could not otherwise afford. The proposal will provide money to treat individuals who have tobacco-related illnesses and will lower future tobacco-related health care costs by reducing tobacco use throughout the state.

2) Colorado is currently 50th among the states in the level of cigarette taxes. Raising tobacco taxes will deter many youth from becoming addicted to tobacco products. Almost all adult smokers started smoking when they were teenagers. In Colorado, one in every four high school students smokes and over a third use tobacco of some sort. Youth tobacco consumption in Colorado is higher than the national average. Studies have shown that as the price of tobacco products rises, an increasing number of youth will stop, or never start, using tobacco. Funding programs that educate children about the dangers of tobacco use will also discourage youth from using tobacco and will help smokers to quit.

3) This proposal will not decrease revenue to state and local governments. In every state that has raised cigarette taxes, revenue has increased despite reduced cigarette pack sales and use of the internet to purchase cigarettes. This proposal ensures that local governments will receive funds to make up for any revenue loss due to lower tobacco sales because it guarantees that local governments will receive a portion of the new tax moneys.

Arguments Against

1) The proposal puts a tax increase in the state constitution and increases the size and cost of government. Colorado smokers and tobacco users will pay 320 percent more in state cigarette taxes and 100 percent more in state taxes on other tobacco products to fund state health care programs. Taxes for a one-pack-a-day smoker would increase by \$234 each year. Existing constitutional spending requirements have limited the ability of the legislature to react to changes in the state budget and economic conditions. This proposal adds yet another inflexible spending mandate. Further, reductions in sales and consumption due to this proposal will reduce funding to local governments that depend upon current cigarette tax revenues to fund essential government functions like fire and police protection.

2) The tax increase may cause additional hardship to low-income families in Colorado. People living in poverty are 48 percent more likely to smoke than those not living in poverty. The tax takes a much larger bite out of the budgets of low-income individuals than wealthy individuals. There is no guarantee that smokers will benefit from the new health care programs. If this is the case, smokers would be paying much higher taxes, but few would receive additional health care services.

3) The proposal allocates \$28 million in badly needed state revenue to tobacco education programs which may not be needed in future years if tobacco use continues to decline. Nationally, demand is decreasing 2 percent per year, but in Colorado demand is falling even more rapidly and will decrease further if consumers turn to other sources, such as the internet, for their purchases. The new tax money may be inadequate over time to maintain some of the proposal's programs while others may have more money than they require. The legislature will not be able to fix these problems because it will have no control over the distribution of this money.

Estimate of Fiscal Impact

The proposal will raise about \$169.8 million in new revenue for health care programs and \$5.2 million for the state and local governments in the 2005-06 budget year. Additionally, the state will incur a one-time cost of \$3,500 for computer programming changes to track the new revenue. Current law reduces revenue for health-related purposes as of January 1, 2005, in order to preserve the power of the legislature to appropriate existing funds for state programs and functions.

State Fiscal Year Spending and the Proposed Tobacco Taxes

The state constitution requires that the following fiscal information be provided when a taxation question is on the ballot:

1. an estimate or actual total of state fiscal year spending for the current year and each of the past four years with an overall percentage change and dollar change for that period; and
2. for the first full fiscal year of the proposed tax increases, an estimate of the maximum dollar amount of each tax increase and of state fiscal year spending without the increase.

Table 2 shows state fiscal year spending. Table 3 shows the revenue expected from the new tobacco taxes and state fiscal year spending with and without these taxes.

Table 2. State Fiscal Year Spending History

	2000-01 Actual	2001-02 Actual	2002-03 Actual	2003-04 Estimate	2004-05 Estimate
State Spending	\$7,949 million	\$7,760 million	\$7,713 million	\$8,191 million	\$8,220 million
Four-Year Dollar Change in Spending: \$271 million from 2000-01 to 2004-05.					
Four-Year Percent Change in Spending: 3.4% from 2000-01 to 2004-05.					

Table 3. State Fiscal Year Spending and the Proposed Tobacco Tax Increases

	2005-06 Estimate
State Spending without New Taxes	\$8,483 million
New Cigarette Tax of \$0.64 per Pack	\$162 million
New Tobacco Products Tax of 20%	\$13 million
Total New Tobacco Taxes*	\$175 million
State Spending with New Taxes*	\$8,658 million

* The new tobacco tax revenue is not subject to the state's fiscal year spending limits.

**Amendment 36
Selection of Presidential Electors**

The proposed amendment to the Colorado Constitution:

eliminates the current system in which the presidential candidate receiving the most votes gets all of the state's electoral votes;

allocates Colorado's electoral votes based on the percentage of votes for each presidential candidate; and

makes the changes effective for the November 2004 presidential election.

Background

In the United States, the president and vice president are elected using a system called the electoral college. Under this system, each state is allotted electoral votes equal to the number of the state's representatives and senators in the U.S. Congress. The electoral college currently consists of 538 electors from all 50 states and the District of Columbia. Colorado has nine of these electors. In all but two states, the candidate who gets the most votes receives all of the state's electoral votes. A candidate must receive

at least 270 electoral votes to win the presidency. If no candidate obtains a majority of electoral votes, the presidency is decided by the U.S. House of Representatives, with each state allotted one vote.

In Colorado, each political party designates nine electors. Electors pledge to support that party's candidate for president and vice president. After each presidential election, electors from the winning party meet at the State Capitol to cast their vote for president and for vice president. All 50 states have a similar process for choosing electors.

Under this proposal, beginning with the November 2004 election, Colorado would allocate its electoral votes according to the percentage of ballots cast for each presidential ticket. Electoral votes would be divided, in whole numbers, among the competing candidates according to the number of votes each candidate receives. For example, if Candidate Smith gets 55 percent of the votes and Candidate Jones gets 45 percent, then Smith would receive five electoral votes and Jones would receive four.

The proposal also adds procedures and timelines to the state constitution for certifying election results and recounts related to the vote on this proposal.

Arguments For

1) This proposal makes Colorado's electoral vote more accurately reflect the statewide vote. Under the current winner-take-all system, one candidate automatically gets all of the state's electoral votes, even if he or she doesn't win a majority of votes on election day. Instead, Colorado's electoral votes should reflect all candidates who have widespread support, not just the candidate who gets as few as one more vote than another.

2) This proposal may motivate more people to vote because the votes of more Coloradans will be represented in the electoral college. Under the current system, eligible citizens may not bother to participate in elections if they believe that their vote will have no impact on the outcome, especially voters not affiliated with a political party. The proposal may also encourage minor-party

candidates to pay more attention to Colorado issues, in hopes of winning an electoral vote.

3) There can be no delay in the election of the president because of this change to the Colorado Constitution. The U.S. Constitution requires that the electoral college meet and cast votes in December following a presidential election, and that timing is unaffected by this proposal. Further, the Colorado courts have approved other proposals that are retroactive in nature.

Arguments Against

1) Colorado will likely become the least influential state in presidential elections because our current nine electoral votes will almost always be split 5-4. By awarding nine electoral votes to the winner, the current system encourages candidates to campaign in the state on issues of importance to Coloradans. In contrast, the proposal reduces the incentive to campaign in Colorado when a candidate might only pick up one or two additional electoral votes.

2) By making it easier for minor-party candidates to win electoral votes in Colorado, the proposal could lead to a situation where no candidate wins a majority of the electoral vote nationally. If this happens, the presidency would be determined by the U.S. House of Representatives with each state getting only one vote. Smaller states then would have disproportionate power, further weakening the popular vote by increasing the chance that the U.S. Congress, not the public, will elect the president.

3) Because the proposal attempts to be retroactive, it may be subject to legal challenge on the issue of timing, which could delay a final decision in Colorado on who wins the presidency in 2004. Further, voters in the 2004 election cycle may not realize that the outcome of the vote on this proposal will affect how Colorado's electoral votes are allocated in 2004.

Estimate of Fiscal Impact

This proposal does not significantly affect state or local expenditures.

**Amendment 37
Renewable Energy Requirement**

The proposed amendment to the Colorado Revised Statutes:

requires certain Colorado utilities to generate or purchase a portion of their electric power from renewable energy resources beginning in 2007;

defines the renewable energy resources that may be used to meet the requirement;

limits the amount that an average residential electric bill can increase as a result of the requirement to 50 cents per month;

provides financial incentives to certain customers and utilities to invest in renewable energy; and

allows a utility to hold an election to either exempt or include itself in the renewable energy requirement.

Background

Colorado is served by 60 utilities that generate electricity using primarily coal and natural gas, and some hydroelectric power. Colorado utilities are not required to use renewable energy sources to generate electricity; however, roughly 2 percent of electricity currently generated in Colorado comes from the renewable energy sources defined in this proposal. To date, 16 other states have adopted renewable energy requirements. The maximum amount and source of the renewable energy vary by state, ranging from 1.1 percent of the total electricity generated in Arizona (mostly solar) to 30 percent in Maine (mostly hydroelectric).

The proposal requires Colorado utilities with 40,000 or more customers to generate or purchase a percentage of their electricity from renewable sources according to the following schedule:

- 3 percent from 2007 through 2010;
- 6 percent from 2011 through 2014; and
- 10 percent by 2015 and thereafter.

Of the electricity generated each year from renewable sources, at least 4 percent must come from solar technologies. Initially, nine Colorado utilities serving over 80 percent of the state's electric customers will be required to comply with this proposal.

Eligible sources of renewable energy. Utilities may use a variety of renewable energy sources to satisfy the new requirement. These are: wind; solar; geothermal heat, such as underground reservoirs of steam or hot water; biomass facilities that burn nontoxic plants, methane from landfills, or animal waste; small hydroelectric power stations; and hydrogen fuel cells.

Financial incentives. Under the proposal, utility customers may earn a rebate for installing solar electric generation equipment on their property. Any electricity generated from the solar equipment in excess of the customer's annual use may be sold to the utility. In addition, for-profit utilities may earn extra profit and bonuses if their investment in renewable energy technologies reduces the retail cost of electricity to their customers.

Tradeable renewable energy credit system. A system of tradeable renewable energy credits will allow utilities that do not generate the required amount of electricity from renewable energy sources to purchase "credits" from those utilities that exceed the requirement.

Procedure for exemption and inclusion. Affected utilities may hold elections to exempt themselves from the renewable energy requirement. Similarly, utilities not subject to the requirement may hold elections to be included. At least 25 percent of the utility's customers must vote on the issue of exemption or inclusion, with a majority vote required for passage. In addition, a municipal utility or a rural electric cooperative may develop a similar renewable energy requirement and be exempted from this proposal. To qualify, the utility must: 1) use at least one of the eligible renewable energy sources, 2) follow the same schedule for electricity generation from renewable sources, and 3) offer an optional pricing program that allows customers to support emerging renewable technologies. Utilities that choose this option are not required to generate electricity from solar sources.

Role of the Colorado Public Utilities Commission.

The Public Utilities Commission must adopt rules to implement this proposal. The Commission will monitor and enforce the compliance of those utilities required to meet the new renewable energy requirements.

Arguments For

1) Using renewable energy makes economic sense.

Conventional fuels are finite, while renewable energy sources are unlimited. As time passes, supplies of coal and natural gas will diminish and these resources will likely become more expensive. In contrast, the price of renewable energy will decrease as technologies improve. Generating a percentage of electricity from renewable resources contributes to energy diversity and reduces Colorado's vulnerability to fluctuations in the price or supply of fuel.

2) Electricity generated from renewable sources has less

harmful environmental impacts than electricity generated from conventional fuels. The environmental benefits of using renewable energy include cleaner air and water, more efficient use of water, and less damage to the landscape. Both coal and natural gas-fired power plants emit significant amounts of air pollutants. According to the federal Environmental Protection Agency, generating 10 percent of electricity from renewable sources is roughly equal to eliminating the carbon dioxide emissions from 600,000 cars annually.

3) Using a variety of resources to meet Colorado's increasing

electricity needs will improve the stability and security of Colorado's electricity supply. Increasing Colorado's use of renewable energy will reduce its dependence on conventional fuels. The state must prepare for the future by requiring a percentage of its electricity to be generated from renewable resources.

4) Renewable energy facilities, typically located in rural areas,

boost rural economies. The construction and maintenance of renewable energy facilities will create jobs in rural Colorado. Some farmers and ranchers will be able to tap into a new source of income by using agricultural waste to generate electricity and by leasing their land for wind facilities. In addition, renewable energy

facilities provide tax revenues that can be used by local governments to pay for services such as schools and hospitals.

Arguments Against

1) Electricity generated from renewable resources is oftentimes more expensive than electricity generated from conventional fuels. Colorado utilities with over 40,000 customers will be required to generate electricity from renewable resources, regardless of cost. Currently, utilities generate electricity using the least expensive fuel source. The proposal requires at least 4 percent of renewable energy to come from solar sources, one of the most expensive renewable energy sources. The proposal also prohibits utilities from counting electricity generated from large hydroelectric projects that are already in place toward the new requirement.

2) Consumers may pay more for electricity under this proposal. Utilities will pass any additional costs on to consumers, such as those for building or acquiring more transmission lines. While the proposal caps the amount that an average residential electric bill can increase as a result of the renewable energy requirement, it provides no such cap for non-residential customers such as business, industrial, government, or wholesale.

3) Colorado requires a continual and reliable means of energy production. A certain amount of electricity must be available at all times, and a certain amount must be maintained in reserve. Renewable energy, especially wind and solar resources, are intermittent and may not be available when needed. This could cause problems during peak energy demand periods or in emergencies.

4) The use of renewable resources should be a choice not a mandate. Colorado utilities are already using renewable energy resources when they are cost-effective. Further, most utilities have programs that give customers the option to purchase all or a share of their electricity from renewable sources.

Estimate of Fiscal Impact

State impact. The renewable energy requirement will be administered by the Colorado Public Utilities Commission. Average annual administrative costs to the Commission are estimated at roughly \$60,000, with the potential for an additional one-time start-up cost of up to \$80,000. These costs will be covered by fees charged to affected utilities. In addition, to the extent that this proposal changes retail electricity rates, state and local governments will see changes to their electric utility bills.

Impact on retail electricity rates. Changes in retail electricity rates as a result of this proposal will vary by service provider, and will depend upon several factors, including:

- the amount of renewable generation the provider has installed versus the amount it must acquire from other providers in the form of renewable energy credits;
- the cost difference of generating electricity from renewable sources versus conventional fuel sources;
- the price of natural gas and coal;
- whether federal tax credits for renewable energy facilities are available;
- the amount of solar generation the provider currently has in place; and
- the number of customers choosing to install on-site solar facilities.

Referendum A State Personnel System

The proposed amendment to the Colorado Constitution:

exempts about 140 additional state employees from the state civil service system, also known as the state personnel system;

changes testing and hiring procedures for filling vacancies in the state personnel system;

transfers certain oversight responsibilities from the State Personnel Board to the executive director of the Department of Personnel and Administration;

allows the legislature to change certain state personnel policies and procedures by law; and

expands veterans' hiring preferences to include members of the National Guard.

Background

What is the state personnel system? Colorado voters amended the state constitution in 1918 to create the state personnel system. It requires that state employees be hired and promoted according to merit. This proposal makes a number of changes to the constitution and in certain instances gives the legislature the authority to change the personnel system.

Currently, there are about 31,000 state employees in the state personnel system. Most are employees of the state's 19 departments, and some are employees of state higher education institutions. About 29,000 additional state employees are exempt from the state personnel system, including department heads, faculty of public universities, and employees of the legislature, the Governor's Office, and the state courts. This proposal exempts an additional 0.45 percent of the number of employees in the state personnel system, or about 140 senior state officers and support staff combined. Table 1 shows the personnel system employment requirements under the constitution and this proposal.

Table 1: Current and Proposed State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Hiring and Promotions	Prohibits discrimination based on race, religion, and political affiliation.	Adds prohibitions on discrimination based on sex and age, unless otherwise permitted by law.
Residency	Requires state employees to reside in Colorado.	Allows the legislature to make exceptions to the Colorado residency requirement, provided employees are United States residents.
Discipline	Sets criteria for disciplining an employee in the constitution.	Allows the legislature to address certain disciplinary policies in law.
Temporary Employees	Limits temporary employment to six months.	Limits temporary employment to nine months in any 12-month period.

How is the state personnel system governed? The five-member State Personnel Board sets the policy for the state personnel system, and the executive director of the Department of Personnel and Administration takes care of day-to-day operations. Table 2 describes the current duties of the board and the executive director and the proposed changes.

Table 2: Oversight of State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Board Membership	Limits members' terms to five years. Prohibits state employees from serving on the board.	Limits members' terms to two five-year terms. Allows state employees to serve on the board.
Board Duties	Requires the board to make rules governing the state personnel system and to hear appeals from employees and job applicants.	Transfers the board's rule-making authority over hiring, job classifications, compensation, performance standards, and voluntary departures to the executive director. Retains the board's powers over grievances, discipline, involuntary dismissals, and appeals. Allows the legislature to transfer duties between the board and executive director.
Executive Director Duties	Manages the state personnel system and approves temporary employment of up to six months.	Expands the executive director's duties to include rule-making over hiring, job classifications, compensation, performance standards, and voluntary departures.

How are job applicants hired? Current law identifies how employees are hired and promoted. Table 3 describes current law pertaining to testing and hiring procedures and the proposed changes.

Table 3: Hiring of State Personnel System Employees

Issue	The Current Personnel System:	The Proposed Personnel System:
Testing	Requires applicants for jobs in the state personnel system to be hired based on competitive testing.	Requires job applicants to be hired based on a comparison of qualifications. Requires the legislature to determine the methods for comparing applicants.
Interview Eligibility List	Limits the eligibility list to the three highest scoring applicants.	Increases the eligibility list to six applicants.
Veterans' Preference	Adds preference points to the passing test scores of veterans who served during war time.	Extends the preference to National Guard veterans who served during war time. Requires that all veterans who served during war time be interviewed if scored testing is not used.

How will this proposal be implemented? During the 2004 legislative session, a state law was passed that defines procedures and sets limits on issues addressed in this proposal. Most of the law will go into effect only if this proposal is adopted. Among other provisions, the bill prohibits more than 15 exempt officers and employees in any department and changes the laws regulating contracts for services. Table 4 shows the current limits on such contracts and the new requirements.

Table 4: Contracts for Services

Issue	Current Service Contract Law:	House Bill 04-1373:
Service Contracts	Permits contracting only for state government functions not traditionally performed by employees in the state personnel system. Prohibits contracts that eliminate a position within the state personnel system.	Repeals current law pertaining to when the state may use contracts for services. Allows contracts for all state government functions as long as the security of state, local, and national information systems are not compromised. Allows positions to be eliminated as long as employees are moved to new positions within the state personnel system.
Notice and Appeal	Not addressed in law.	Requires notification of the public and affected employees prior to eliminating jobs in the state personnel system. Allows employees to request a review of the contract by the executive director of the Department of Personnel and Administration and the courts.
Contract Oversight	Requires contract approval by the Department of Personnel and Administration executive director.	Requires approval by the contracting department's executive director.
Foreign Contractors	Not addressed in law.	Permits, if the contract maintains quality of service, protects privacy, and discloses work performed outside the United States.

Arguments For

1) The constitution needs to be updated to allow the state's workforce to keep pace with the work environment of the 21st Century. The state personnel system has not changed significantly in the past 85 years. This proposal increases the flexibility of the personnel system by eliminating unnecessary detail from the constitution and allowing the legislature to adjust the system to respond to changing circumstances. Colorado is one of only 15 states whose personnel system is tied to the state constitution. Requiring a vote of the people every time an aspect of the system becomes outdated or unworkable is inefficient.

2) Taxpayer money should be used to hire the best candidate for a job. The current personnel system favors people who are the best test takers, not necessarily the most qualified candidates. This proposal helps ensure that the best candidate is hired by expanding the pool of eligible candidates and allowing a more effective comparison of desired job qualifications.

3) This proposal allows a governor's administration to select about 140 more individuals who share the governor's values to carry out the administration's policies. The state personnel system has grown from about 1,000 employees in 1916 to over 31,000 in 2004. However, the ability of a governor and the administration to appoint high-level state administrators has not changed. With this proposal, future governors will be able to get off to a quick start on their policy initiatives because senior personnel from past administrations can be easily replaced.

4) The state will spend taxpayer money wisely if it can hire well-qualified employees and improve the use of service contracts, resulting in an efficient personnel system that provides high quality services. Further, all state contracts will continue to be subject to current purchasing, financial, employee conduct, and disclosure requirements. These requirements protect the new system against awarding contracts as political favors.

Arguments Against

1) This proposal gives governors and their appointees too much power to control state government. Each administration will be given about 140 additional appointments. Also, the governor-appointed executive director of the Department of Personnel and Administration will now have policy-making authority over areas of the personnel system that the State Personnel Board has traditionally overseen. Those areas include hiring, job classifications, compensation, performance standards, and voluntary departures. The proposal also allows the legislature to shift further power from the State Personnel Board to the executive director. Making the personnel system subject to annual changes by the legislature could disrupt the personnel system. These changes combined may make the state personnel system less predictable and vulnerable to abuse.

2) Comparing applicant qualifications, rather than testing, could be manipulated to allow state employees to be hired based on their political connections and not on merit. Testing candidates to determine the best candidate for a job is the most efficient and fair way to hire employees.

3) More contracting with private companies could shift jobs out of Colorado to other states and countries. Also, there is no guarantee that unregulated contract workers will provide services to the state in the most cost-effective manner. State contracts awarded by appointees may lead to abuses if contracts are used as political favors.

4) This proposal could result in more political appointees. More political appointees in management positions may not lead to better state government. Instead, institutional knowledge will be lost as experienced senior personnel system employees are displaced by appointees who may not have the necessary skills to perform the job.

Estimate of Fiscal Impact

This proposal is not expected to significantly affect state or local expenditures.

**Referendum B
Obsolete Constitutional Provisions**

The proposed amendment to the Colorado Constitution:

removes provisions that are obsolete;

strikes references to one-time events that have already occurred; and

removes voting requirements found unconstitutional by the Colorado Supreme Court in 1972.

Background

Obsolete provisions. A requirement that the Superintendent of Public Instruction serve as the state librarian is deleted because the superintendent position no longer exists. The Commissioner of Education replaced the Superintendent of Public Instruction in 1948. A provision concerning the eligibility of a person living in a poorhouse to vote or run for office is also deleted. Poorhouses, or publicly supported homes for the poor, no longer exist in Colorado.

References to one-time events. The constitution required all agencies of state government to be divided among no more than 20 state departments by June 30, 1968. This requirement stemmed from a major reorganization of state government in the 1960s. The proposal removes the reference to June 30, 1968, but does not change the limit on the number of departments. The proposal also removes language regarding the expiration of terms for former State Board of Land Commissioners since they are no longer in office.

Unconstitutional provisions. The proposal strikes a requirement in one section of the constitution that citizens live in the state for three months before being eligible to vote and a requirement in another section that citizens live in the state for at least one year before being eligible to vote. The Colorado Supreme Court held in 1972 that voting is a fundamental right that cannot be limited by imposing a three-month residency requirement. The court based its ruling on a U.S. Supreme Court decision that a

similar residency requirement violated the U.S. Constitution. State law currently establishes a 30-day residency requirement for voters for all elections.

Argument For

1) The proposal continues an effort to update the constitution by deleting unconstitutional and outdated language. Unconstitutional language can be confusing and misleading to readers who do not know the language has been nullified by a court. Outdated language clutters the constitution.

Argument Against

1) All provisions of the constitution have historical significance. Removing these provisions may diminish the historical character of the constitution and make research of constitutional provisions and state laws more difficult.

Estimate of Fiscal Impact

The proposal does not affect state or local revenues or expenditures.