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OF THE
COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF 1986 BALLOT PROPOSALS

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LETTER OF TRANSMITTAL

August 14, 1986

This analysis of statewide measures to be decided at the 1986 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and the general public pursuant to section 2-3-303, *Colorado Revised Statutes.* Four proposed constitutional measures are analyzed in this publication.

Amendments 1, 2, and 3 were referred by the General Assembly. Amendment 4 is an initiated measure. If approved by the voters, these four constitutional amendments could only be revised by a vote of the electors at a subsequent general election.

Initiated measures may be placed on the ballot by petition of the registered electors. Initiated measures require the signature of registered electors in an amount equal to five percent of votes cast for Secretary of State.

The provisions of each proposal are set forth, with general comments on their application and effect. Careful attention has been given to arguments both for and against the various proposals in an effort to present both sides of each issue. While all arguments for and against the proposals may not have been included, major arguments have been set forth, so that each citizen may decide for himself the relative merits of each proposal.

It should be emphasized that the Legislative Council takes no position, pro or con, with respect to the merits of these proposals. In listing the ARGUMENTS FOR and the ARGUMENTS AGAINST, the council is merely putting forth arguments relating to each proposal. The quantity or quality of the FOR and AGAINST paragraphs listed for each proposal is not to be interpreted as an indication or inference of council sentiment.

Respectfully submitted,

Bev Bledsoe

Representative C.B. "Bev" Bledsoe
Chairman
Colorado Legislative Council

AMENDMENT NO. 1 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An amendment to Article XII of the Constitution of the State of Colorado, requiring appointments to offices and employments in the state personnel system to be made according to merit and fitness, to be ascertained by competitive tests without regard to race, creed, color, religion, sex, national origin or ancestry, handicap, age, or political affiliation, excepting encumbered position reallocations from the competitive test requirement, exempting persons whose salaries are paid solely from federal or private grants from the personnel system, requiring a two-thirds majority on final passage by each house of the General Assembly to increase exemptions from the system, eliminating the state personnel board, granting rule-making authority to the state personnel director, authorizing the attorney general to veto personnel rules he determines to be unconstitutional, otherwise illegal, arbitrary, or capricious, permitting appointing authorities to shorten the twelve-month probationary period for initial appointments, extending provisions for temporary employment from six months to one year, making department heads or their designees the appointing authorities for their departments, except for the Colorado state patrol, whose employees the patrol chief shall appoint, providing a grievance procedure, including arbitration, for employees, and eliminating employee residency requirements.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— abolish the state personnel board and transfer its rule-making authority to the state personnel director;

— stipulate that rules promulgated by the personnel director are subject to veto by the Attorney General;

— provide that any disciplinary action of an appointing authority and any unresolved grievances be subject to appeal and settlement through an arbitration process set forth in statute, rather than be appealed to the personnel board;

— specify that the arbitrator be selected by mutual agreement between the personnel director and the appellant or his representative or, if the parties cannot agree, selected from a list supplied by the Federal Mediation and Conciliation Service;

— require that all appointments and promotions under the personnel system be made without consideration of religion, sex, national origin or ancestry, handicap, or age, in addition to the present requirements that such appointments and promotions be made without regard to race, creed, color, or political affiliation;

— provide that the heads of the principal departments of state government or their designees replace the heads of the divisions within those departments as the appointing authorities for all positions within their respective departments, with one exception — the chief of the highway patrol would appoint employees of the patrol;

— continue to exempt all positions currently exempt from the personnel system, but provide that they be listed in statute instead of the constitution;

— require that additional exemptions from the personnel system be approved by a two-thirds vote of the membership of both houses of the General Assembly, with approval of the Governor;

— exempt from the personnel system those persons whose salaries are paid solely from federal or private grants or contracts;

— authorize the substitution of job performance for competitive testing when a position is upgraded and there is an incumbent who possesses the minimum qualifications and whose job performance is satisfactory;

— repeal the requirement that appointees to positions under the personnel system be residents of the state;

— allow appointments for temporary employment to be made for up to one year, rather than the six months presently allowed; and

— transfer from the personnel board to the personnel director the authority to set probationary periods of up to one year for new appointees and provide that such periods may be shortened by the appointing authority.

Several important provisions of the Colorado Constitution are retained under this proposal. These include the requirement that applicants be selected for positions in the personnel system on the basis of merit as determined by competitive tests of competence, the "rule of three" (selection of the appointee from the top three applicants), and the veterans preference provisions. Employees in the personnel system can be terminated only upon written findings of poor performance, willful misconduct, or for conviction of a felony. Such employees would retain the right to appeal disciplinary actions.

Comments

History. The General Assembly first enacted legislation establishing a civil service system in 1907. In 1918, the voters approved an initiated constitutional amendment that set forth the basic principles which governed the system until 1970. These basic principles included requirements that appointments and promotions be based on merit, that the person with the highest test score receive the appointment ("rule of one"), that dismissed employees have a right to a hearing, and that a three-member civil service commission administer the system. The "veterans preference" provision, which provided for points to be added to the passing test score of a veteran or the widow of a veteran, was approved by the voters in 1944.

The most recent constitutional changes in the state personnel system were made in 1970 when the voters approved two referred amendments. One amendment provided for the exemption of the heads of the principal departments (the Governor's cabinet) from the personnel system. The major provisions of the second amendment were the replacement of the full-time civil service commission with a part-time, five-member personnel board, the creation of the Department of Personnel, replacement of the "rule of one" with the "rule of three," a six-month limitation on temporary employment, and a change from department heads to division heads as appointing authorities.

Senate Bill 38. This year the General Assembly enacted Senate Bill 38, which is designed to conform statutory provisions of the state personnel system to the provisions of the amendment. The law will become effective only if the amendment is approved by the voters. In addition to the conforming provisions, the new law provides for a more detailed implementation of the amendment and would:

— enable the state personnel director to make rules regarding classification, compensation and fringe benefits;

— restrict temporary appointments to six months, unless the personnel director approves an extension not to exceed an additional six months;

— define "grievance" to mean "any complaint about employment conditions or work relationships for which redress is not otherwise provided by statute or by rules or procedures of the state personnel director";

— set forth guidelines for the grievance procedure and for appeal of any disciplinary action to an arbitrator;

— require that all applicants for state jobs be Colorado residents, but authorize the director to waive the residency requirement in special circumstances and to establish criteria for determining residency; and

— provide for a "rules advisory committee," composed of management and employee representatives, to be appointed by and give advice to the director in the promulgation of rules.

Arguments For

1) By abolishing the personnel board, the amendment would eliminate the present constitutional division of authority between the personnel director and the personnel board which hinders effective management of the personnel system. The board's rule-making authority can conflict with the responsibility of the personnel director to implement policies set forth by the Governor. The board's responsibilities to determine employee fringe benefits and standards of performance also tend to conflict with, and sometimes duplicate, those of the personnel director. The board is an unnecessary layer of government administration whose responsibilities would be more effectively carried out under the authority of the personnel director.

2) The amendment would strengthen accountability and responsibility in the state personnel system. Under the current constitution, department heads, who are ultimately responsible for the management of their agencies, cannot control the most important management tool — the selection of personnel to administer programs. The amendment would return this control by transferring appointing authority from the division heads to the department heads or their designees. As appointing authorities, department heads would be better able to hold employees accountable for their performance and could be held more accountable themselves. All appointments made by department heads would continue to be in accordance with state personnel rules which assure that merit principles are followed and only the most qualified applicants hired.

3) The amendment contains several provisions which would enable the General Assembly and those charged with managing the personnel system to respond more efficiently and effectively to changing conditions. For example, a vote of the people would no longer be required every time a new exemption from the personnel system is proposed. However, the amendment takes a cautious approach in this matter by requiring that exemptions must be approved by a vote of two-thirds of the membership of both houses and by the Governor. Also, with the ability to extend temporary employment for up to one year, agencies could minimize the circumstances under which an employee would have to be arbitrarily dismissed, such as at the end of a nine month contract or grant, or before a permanent replacement could be found. This would save the costs of the resulting recruiting, training and unemployed insurance claims. In addition, exempting persons hired on contracts or grants from the state personnel system would protect career employees from being "bumped" from their positions by employees who accepted jobs they knew were short term, but had gained seniority. Finally, the repeal of the residency requirement would allow the flexibility to establish in statute consistent, fair residency criteria and the degree of residency preference most appropriate for the state's workforce needs.

4) The amendment would establish an arbitration system for settling labor-management disputes similar to that which has been practiced for many years in private industry. An arbitrator has no vested interest in the outcome of an appeal. The procedure does not require the services of an attorney. Thus, the process could be less formal, less costly, and less time consuming than the current process in which the personnel board hears appeals. Arbitration is supported by both labor and management groups.

5) With the enactment of Senate Bill 38, much of the uncertainty regarding the implementation of the proposed amendment has been removed. This legislation was approved by the General Assembly after extensive negotiation among all the interested parties. Thus, voters are being presented with the general policy contained in the amendment and the specific implementation provisions contained in the enacted legislation.

Arguments Against

1) There is no need to abolish the state personnel board. The present system has provided balanced representation for both management and employees. Since the personnel director and three of the five members of the personnel board are now appointed by the Governor, there is adequate provision for the Governor to direct the management of the personnel system, within the guidelines established by the General Assembly. Also, since two board members are elected by classified state employees, the current system guarantees both management and employees representation in the implementation of personnel laws and rules. The amendment would elimi-

nate this important protection for employees. Employees would have no recourse against a rule in the event there is disagreement with the policy represented by the rule or with the factual basis or need for a rule. The Attorney General would be authorized to veto a rule only if it violates very limited criteria. It is not in the best interest of the state to abolish the existing system in which authority and responsibility are shared between the independent board and the personnel director who is a political appointee.

2) It would be unwise to replace the existing system for hearing appeals and settling unresolved grievances with an arbitration system that is untried in Colorado. The experience in other states suggests two factors that are important for an arbitration system to operate efficiently and effectively. A collective bargaining agreement should exist between labor and management and the decision of the arbitrator should be final. Under the proposed amendment, neither of these conditions would be present. Thus, arbitration could be more expensive, legalistic, and time consuming than the current system.

3) Shifting appointing authority from division heads to department heads would weaken current protections from political patronage in state government. At present, division heads are appointed by the department heads and can be held accountable for carrying out the goals and objectives of the department. With the exception of higher education, nearly all other employees in the personnel system are appointed by division heads who are also civil service employees. This safeguard of the merit system would be eliminated since the department heads — political appointees of the Governor — would make all appointments under their jurisdiction. Thus, appointments to many classified positions could be subject to political influence.

4) The exemption provisions of the amendment would create new opportunities to bypass the merit system. First, by allowing temporary employment for up to one year and exempting persons hired on private or federal grants, it is possible that an essentially permanent position could be exempted from the merit system for many years, even though a different person might fill the position each year. Some grants are renewed annually over a period of several years and persons hired under these circumstances would not have benefit of the protection of the state personnel system. Second, the exemption of upgraded positions from competitive testing requirements would allow appointing authorities opportunity to bypass the merit system in filling such positions. Third, by eliminating the existing requirement that any new exemptions from the personnel system be approved by a vote of the people, the amendment would take away an opportunity for people to vote on such issues and make it easier to exempt additional positions from the merit system.

AMENDMENT NO. 2 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An amendment to Section 15 of Article XIV of the Constitution of the State of Colorado, providing that, the provisions of the Section 11 of Article XII of the state constitution to the contrary notwithstanding, the board of county commissioners in each county has sole authority to fix the compensation of county officers; that no county officer's compensation may be decreased unless there is a decrease in the compensation of all county officers; and that compensation in effect on January 1, 1987, in a county shall remain in effect until changed by the county's board of county commissioners.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— amend a provision of the constitution to provide that the board of county commissioners in each county shall have sole authority to fix the salary of county officers;

— prohibit a decrease in the salary of a county officer unless there is a decrease in the salary of all county officers within said county;

— provide that the salaries for elected county officers in effect on January 1, 1987, in each county, shall remain in effect until changed by the board of county commissioners in each county; and

— allow an exception for county officers from a constitutional provision which prohibits all elected public officers from receiving increases or decreases in salary during a term of office.

Comments

Current law. The state constitution requires that the General Assembly fix the salaries of all elected county officers in non-home rule counties. In so doing, the General Assembly must give due consideration to population, assessed valuation, motor vehicle registrations, building permits, and other factors that reflect the workloads and responsibilities of county officers. Six categories of counties have been established in the statutes, and each category sets forth the base salaries for county officers (commissioners, sheriffs, treasurers, assessors, and clerks). County coroners are reimbursed a set fee for each day actually and necessarily employed in the performance of their duties. County surveyors are paid a fee for each act related to their official duties.

In 1981, the General Assembly began to involve the boards of county commissioners in the salary setting process. A law was enacted to provide that, if the boards of county commissioners acted by May 1, 1982, the salaries of elected county officials could be permanently increased or decreased within fifteen percent of the statutory base, effective January, 1983. These salaries, as set by the General Assembly in 1981 and as adjusted by the boards of county commissioners in 1982, are still in effect.

The General Assembly amended the law this year to allow the boards of county commissioners to increase the salaries of all county officers elected at the 1986 election and thereafter by up to twenty-five percent above the current salaries of such officers (up to fifteen percent in the case of county commissioners of any county having a board of five members). The increase for county clerk and recorder, assessor, and treasurer must be by the same percent for each officer. Any salary increases for the county sheriff or the county commissioners may be set at rates different than that received by the other county officers.

Effect of proposed amendment. The amendment would shift the authority and responsibility for setting the salaries of elected county officers from the General Assembly to the county governments. Each of the boards of county commissioners would set the salaries for their elected county officers. If the constitutional amendment is **approved,** the 1986 law will be repealed and the current salaries for county officers will remain in effect until changed by the board of county commissioners in each county. If the amendment is **not approved,** any increase in salaries for officers who take office after January 1, 1987, as set by the boards of county commissioners under the 1986 law, will remain in effect until changed by the General Assembly.

Increase or decrease during term of office. The Colorado Constitution (Section 11 of Article XII) prohibits elected public officials from receiving increases or decreases in salaries during their terms of office. The amendment will repeal this prohibition as it applies to elected county officials. However, a statute (section 30-2-102 (3) (e), **Colorado Revised Statutes)** also provides that no elected county officer shall have his salary increased or decreased during the term of office to which he has been elected or appointed. This statute would appear to be in direct conflict with the intent of the amendment.

Arguments For

1) The General Assembly should not be making decisions on local salary issues. The general powers of county government are vested in the boards of county commissioners; such powers include formulating the county budget, determining levels of administrative services, controlling disbursement of county funds, setting salaries of employees, and levying taxes necessary to defray county expenses. Salaries of elected county officers should be based on the same considerations used to set salaries of other county personnel (relative responsibilities, complexity of assignment, workloads, comparisons of job categories, and other factors), and should be related to the ability of the residents of the county to pay them. The county commissioners have a day-

to-day working knowledge of their county personnel system, know the county budget and the demands on the county budget and are in the best position to set salaries of elected county officers. The members of the General Assembly are not acquainted with the demands, workloads, and responsibilities of individual elected county officers. Furthermore, accountability is lessened when base salaries of county officers are set by state government but taxes to pay the salaries are levied by the county government. Since the board of county commissioners is the governing body of a county, it is only appropriate that the commissioners set the salaries of county officials.

2) The amendment continues a tradition of promoting reforms directed to increase local control on the part of local units of government. This proposal is another step in support of local decision making. County officials are directly accountable to the voters.

3) The amendment would permit annual cost-of-living or other salary adjustments for elected county officials. Base salaries of county officers were last set by the General Assembly in 1981, effective for those county officers elected in 1982. These salaries may not be readjusted during the four-year terms of office. County officers are penalized in comparison with other county employees who often receive annual salary adjustments. Small incremental increases could be allowed for county officers, thereby reducing the impact on county budgets in small counties when salary adjustments are made on a four-year basis. In addition, the present system often permits a newly elected commissioner to receive a higher salary than the commissioners whose terms do not expire within two years.

4) The General Assembly determines the level of compensation of elected state officers. The salaries of municipal officers are set in accordance with municipal charters and ordinances. Similarly, salaries of county officers should be determined at the county level.

Arguments Against

1) Salaries of elected county officers should be set by the General Assembly because counties are charged with carrying out various state laws and receive and disburse state funds to implement many state programs. County officers, such as the assessor and the clerk and recorder, are primarily responsible for the enforcement and administration of state law and are administrative agents of the state. Their authority is limited to that expressly delegated by state law. The state has an interest in the efficient discharge of duties by these elected county officers and these factors should be considered in establishing salaries. Many functions of these officers are performed autonomously and not under the direction of the county commissioners. If such officers become obligated to the county commissioners for salary adjustments, the autonomy of these officers could be reduced. This is not in the best interest of the state.

2) The amendment creates a potential for discriminatory action in adjusting salaries and could lead to abuse. The proposal provides that no county officer's salary may be decreased unless there is a decrease in the salaries of all county officers. It does not, however, provide that all salaries be decreased at an equal rate or at an equal dollar amount. For example, some could be reduced two percent and others reduced twenty percent. The salaries of some officers could be increased while others not increased. Local political and personality considerations could have significant influence on the determination of salaries.

3) The amendment is not necessary. The residents of a county may adopt a structural home rule charter, through which they may provide their own system for fixing salaries of elected county officials.

4) The salaries of elected county officers should be treated the same as salaries of other elected public officers. The state constitution provides that the salary of an elected public officer shall not be increased or decreased during the term of office for which elected. This prohibition applies to state, municipal, county, and special district officers. The amendment would abolish this prohibition as it applies to elected county officers. Wise public policy would be to continue to apply this prohibition to all elected public officials.

AMENDMENT NO. 3 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An Amendment to Section 4 of Article XX of the Constitution of the State of Colorado, making any franchise granted by a home rule municipality subject to the initiative and referendum.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— eliminate the present requirement that a franchise may be granted by a home rule municipality only upon a vote of the registered electors;

— provide that the registered electors of a home rule municipality may by initiative or referendum petition require an election on the granting of a franchise;

— specify that signatures of not more than five percent of the registered electors of a home rule municipality are necessary for a referendum to be held on the granting of a franchise;

— allow home rule charters to provide that fewer than five percent of the registered electors of a home rule municipality may order a referendum to be held on the granting of a franchise; and

— allow a home rule charter to require that a franchise be voted on by the registered electors.

Comments

Definition of "franchise". A franchise may be defined as a special privilege conferred by a governing authority on an individual or corporation to permit such individual or corporation to do certain things which, without the consent of the governing authority, the individual or corporation could not otherwise do. A franchise might grant the right to supply the public with electric power, cable television, fuel, or other services and might involve the right to use a portion of the public streets, alleys, and rights-of-way, many of which have been dedicated to the cities by property owners or developers for utility purposes. Such use could take the form of erecting poles and stringing wire for electric power purposes or burying gas pipes or other conduits beneath the surface of streets and alleys.

The granting of franchises is an important governmental function because of the large investment of resources by companies providing the services and the welfare of the citizens receiving such services. The purpose of a franchise should be to further the public interest, and the exercise of rights under the franchise must be subject to public control. Under Colorado law a perpetual franchise cannot be granted by a municipality. The common practice is to limit the duration of a franchise to ten, fifteen, or twenty years. Such limits on the duration of franchises may be set forth in home rule charters.

Granting of municipal franchises. Municipalities in Colorado have had different procedures over the years for the granting of franchises. Prior to establishing the City and County of Denver as a home rule entity in 1902, the Denver city council granted franchises. Since receiving its home rule authority, Denver grants franchises only with the approval of the electorate. Further amendments to the constitution to allow any municipality to adopt the home rule form of government have extended the requirement for franchise elections to all home rule municipalities.

Non-home rule municipalities, by statute, are authorized to grant franchises by ordinance without a vote of the people. However, elections are not precluded in these cities. Franchise questions are to be decided in an election if five percent or more of the registered electors petition therefor in non-home rule cities.

Cost of franchise election. The constitution provides that the applicant for a franchise shall pay the expense of the mandated franchise election. Under the proposed amendment, when a referendum is offered to be submitted to the voters, the applicant for a franchise is required to pay the expense of the referendum election.

Scope of initiative powers. The constitutional language for home rule municipalities presently provides that "(n)o franchise. . . shall be *granted* except upon the vote of the registered

electors. . ." (emphasis added). The amendment would change this language to state that ". . .(a)ny franchise. . . shall be *subject to* the initiative and referendum powers. . ." (emphasis added). Some persons believe that this change in language would not be substantive because the general initiative powers currently provided in the constitution make all municipal ordinances, including those used for adopting a franchise, subject to the initiative process. In practice, however, the initiative process has not been used to change a franchise once it is granted. Under the proposed language, would a franchise be subject to the initiative powers of the people to amend or repeal the franchise at any time during the duration of the franchise? Can the initiative powers only be utilized to require a vote of the people on the initial granting of a franchise? It is not clear how the proposed language is to be interpreted.

Arguments For

1) Statutory municipalities are authorized by statute to grant franchises without an election. In most areas concerning the powers and authority of municipalities, a home rule municipality has more flexibility than statutory municipalities. The exception to this rule is in the granting of franchises. The amendment will place home rule municipalities on the same basis as statutory municipalities.

2) Eliminating the election requirement will avoid unnecessary costs to the franchise grantee and consumers. Although special elections for the purpose of granting franchises do not occur frequently, the costs of such elections to a company seeking the franchise are significant. These costs are passed on to the consumers or subscribers.

3) Mandating an election to grant a franchise to the only company that can provide the service does not make sense. In many instances, approval of the franchise is almost automatic since there is only one company capable of delivering the service. In most franchise elections, the franchise is approved and a low voter turnout is recorded.

4) The amendment protects the rights of voters by providing for initiative and referendum procedures to hold a franchise election. Signatures of not more than five percent of the registered electors may force an election. Further, home rule charters may establish that fewer than five percent of such electors may be required on such petitions and home rule charters may continue mandatory elections if the municipality so decides. Thus, the voters' right to demand an election if one is desired is preserved.

Arguments Against

1) The constitutional provision has worked well for over eighty years and there is no compelling need to change the mandatory franchise election requirement at this time. Many home rule municipalities already have a mandatory franchise election provision in their home rule charters. Few benefits would be gained by abolishing this requirement for the other home rule municipalities which have not incorporated the franchise election requirement into their charters. Adoption of the amendment would create confusion with some municipalities requiring an election and other municipalities not requiring an election.

2) The voters have the right to determine whether the granting of a franchise is in their best interest and whether the franchise will bring them the best service. Since the granting of a franchise is for the purpose of serving the public welfare, the public should always have the right to vote on such matters. Municipal governing authorities and the recipients of a municipal franchise are likely to be more accountable to the public under the mandatory election provision.

3) The outcome of municipal franchise elections is not automatic in all instances. The franchise for some services (cable television, for example) may be sought by several competing companies, and the determination of the voters in a franchise election may make a difference in the quality and cost of the service provided by the franchise holder.

AMENDMENT NO. 4 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title: An amendment to the Colorado Constitution prohibiting new or increased state or local taxes without the approval, at a biennial election, of the voters of the unit of government proposing or increasing the tax, and requiring the state to provide the funds for any increase in spending it mandates for a political subdivision.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— require that, as of January 1, 1987, any new tax or any increase in taxes of the state or any local government brought about by increased rates or by changes in the method of computation may be imposed only with the approval of the voters in the unit of government proposing the new tax or tax increase;

— provide that such voter approval be in the form of an act passed by a majority of those voting in the general election held in even numbered years;

— define tax to include any means by which a unit of government imposes obligations upon and collects money from the people, except for licenses, fees, fines and permits, which are exempt from the voter approval requirement;

— permit the state to mandate increased spending by a political subdivision only when the state provides the funds to be spent;

— provide "electors" with standing to sue for enforcement of the provisions of the amendment and require units of government to reimburse such electors within thirty days for the costs of such suits when the action is sustained;

— provide that any tax increase now scheduled to become effective after 12:01 a.m. on January 1, 1987, shall not become effective unless previously approved by a majority of the voters in the unit of government in which the tax is to be effective; and

— supersede any conflicting constitutional provisions.

General Comments

The amendment would limit the taxing ability of the state and local governments to new taxes or tax increases approved by the voters. The amendment would not impact federal taxes or eliminate or reduce any state and local taxes currently in effect.

Thirty states, including Colorado, have had limitations on local property taxes for several decades. Since 1976, limitations on state-level revenues or expenditures have been imposed in nineteen states, including Colorado. Limitations in two of these states (Utah and New Jersey) are no longer in effect. Twelve of the remaining seventeen states (Arizona, Hawaii, Idaho, Louisiana, Michigan, Missouri, Montana, Oregon, South Carolina, Tennessee, Texas and Washington) restrict revenue or expenditure growth to the rate of increase in personal income; three states (Alaska, California and Nevada) use the growth in inflation and population as a standard; and two states (Colorado and Rhode Island) set a flat percentage limit. During this same period, twenty states, including Colorado, imposed new revenue and expenditure limitations on local governments and many existing local limits were made more restrictive. (SOURCE: U.S. Advisory Commission on Intergovernmental Relations.)

The amendment differs from the limitations imposed in other states in that it does not set a specific limit on the growth in revenues or expenditures. Such limitations allow changes in the tax structure as long as total revenues or expenditures do not exceed the limit. The amendment provides that existing taxes may not be increased or new taxes imposed without voter approval. Any change in the tax structure which results in an increase in taxes would have to be submitted to the voters.

Tax and expenditure limitations in Colorado. Colorado has imposed local government property tax revenue and mill levy limitations since 1913. Each of the state's counties, municipalities (excluding home rule cities), and special districts are limited by state law to a flat percentage increase in their annual property tax revenues (five and one-half percent for 1987 and six percent

for 1988 and thereafter). Many home rule cities have adopted similar limitations. Home rule cities are subject to the five and one-half percent limit for the 1987 tax year. Through the Public School Finance Act, state law also limits the amount of general fund revenue that school districts may raise from property taxes. Since 1977, the General Assembly has imposed a seven percent limit on the amount of state general fund expenditures which may be allowed over the previous year's expenditures.

Special districts may exceed the property tax increase limitation either by approval of the Division of Local Government or a vote of the people. Municipalities and counties may only exceed the property tax increase limitation by invoking full disclosure procedures or by submitting the question to a vote of the people. Cities under two thousand population may exceed the limitation by invoking full disclosure, seeking approval of the Division of Local Government, or seeking approval of the voters. School districts may exceed their revenue raising limitation by approval of the State Board of Education or a vote of the people. The General Assembly can exceed the seven percent state expenditure limit by the passage of a law.

The voters of Colorado have rejected initiated tax and expenditure limitation proposals on four different occasions. Two initiated constitutional amendments that would have either eliminated or severely curtailed local property taxes for education were defeated in 1972. An initiated constitutional amendment which would have required the approval of a majority of the registered electors to increase any state or local tax was defeated in 1976. A proposed expenditure limitation initiative which would have limited increases in per capita expenditures of state and local governments to the percentage increase in the national Consumer Price Index was defeated in 1978.

Comments on the Proposed Amendment

Several provisions of the amendment may be subject to conflicting interpretations. Discussed below are practical and legal questions which are raised concerning the implementation of those provisions.

Changes in the method of computation. The amendment would require that a majority of the voters in a unit of government must approve any increase in taxes brought about by "changes in the method of computation." Does this language refer only to increases in the total amount of revenue raised? Would the amendment apply if the tax liability of certain categories of individuals increased, while the liability of others decreased, even though the total estimated revenue from the tax remains unchanged? Would any change in tax laws which altered tax liability, but not total revenue, require approval of the voters?

Property taxes. There is a concern as to how this provision would affect the administration of property taxes. With the reassessment in 1987 and every two years thereafter, it is expected that assessed valuations across the state will increase. Even if local governments reduce mill levies to avoid an overall increase in property tax revenues, the reassessment may cause certain properties within a class to experience an increase in taxes. Would a separate vote on the reassessment in each affected unit of government be required? Would local governments be required to develop different mill levies for each class of property, or even each individual property? Would the property tax levies have to be set for two years? Would tax levies set in 1986 for collection in 1987 be ineffective if not previously approved by the voters?

Income taxes. There is a similar concern with regard to state individual and corporate income taxes. Would a restructuring of the tax brackets in which total revenue collected remains constant, but the tax liability of categories of individuals or corporations increases, be considered a tax increase brought about by a change in the method of computation? Both the individual and corporate income taxes are linked to federal income tax law. It is conceivable that changes in federal law could result in increased Colorado tax liability, because federal changes are incorporated into the state's tax computation. Would changes in federal law resulting in increases in state liability have to be submitted to a vote of the people?

State funding of mandates. The amendment would require that "the state can only mandate increased spending by a political subdivision when the state provides the funds to be spent." The exact meaning of this provision is unclear. Does "increased spending" refer to the costs of new state programs enacted subsequent to the effective date of the amendment? Could the state require local governments to increase funds for any existing program?

Does "the state" only refer to the General Assembly, which passes the laws, or does the term also include the executive branch, which promulgates the rules and regulations, or both? Could "the state" be interpreted to include rulings from state courts? For example, if the state supreme court ordered a county to upgrade its jail facilities, would "the state" be required to fund the improvements?

Would the following be considered mandated spending increases which must be fully funded by the state:

— a state court finding of liability of a local government and granting of a judgment;

— stricter sentencing laws, which could be interpreted as requiring additional local spending for jails and prisons;

— a change in the state share for public school finance which results in increases in the local share for certain school districts;

— cost increases associated with maintaining existing levels of services because of population growth, inflation, and increased demand;

— increased benefits under workers' compensation and unemployment insurance;

— changes in pension benefits or contribution rates;

— increased public assistance costs as a result of increases in case load;

— an order by the state health department directing a county to upgrade its landfill, or a municipality to upgrade its water facilities, to meet state standards?

General election. The proposed amendment would require that questions of a tax increase could be submitted to the voters only at the general election which is held on the first Tuesday in November in even numbered years. This provision would supersede existing laws which allow local governments to submit property tax and sales tax increase questions to the voters at either a general election or a special election.

The amendment could create a significant time lag between a decision by a government entity to ask for an increase in taxes and the date of the next general election. For example, if, at any time during the fiscal year (July 1 to June 30), the General Assembly determined that projected revenues would fall behind appropriated expenditures (for instance, as a result of a downturn in the economy), under current law it could raise taxes, cut expenditures, transfer money from trust funds, or enact some combination of these. Under the proposed amendment, taxes could not be raised until the question was put to the voters at the general election.

Similar situations could occur for local governments. The situation for local governments would be further complicated by the property tax assessment cycle. For example, mill levies are set by local units of government following the establishment of assessment levels by the county assessor. If, following the assessment, a unit of government determines that an increase in the mill levy is required, it would be unable to submit a tax increase to the voters until the following general election, one or possibly two years later.

Emergency situations. The amendment does not include a provision for emergency situations which may be experienced by the state and local governments. By comparison, other states with revenue limitations provide a procedure for exceeding the limitation in emergency situations. In Michigan and Missouri, the Governor must specify an emergency, then the legislature must concur by a two-thirds vote in each house. In Washington, the emergency must be declared by two-thirds vote of the legislature, then the legislature must approve specific additional appropriations by two-thirds vote. None of the states with revenue or expenditure limitations requires a vote of the people at a general election to exceed the limit in order to meet emergency situations.

Arguments For

1) The amendment is necessary to protect residents of the state or local jurisdictions from increases in taxes, because of increased rates or other changes in the method of computation, without direct voter approval. According to a recent Colorado Public Expenditure Council report,

"Colorado Tax Burden and Income 1954-1984", Colorado is near the national average in combined state and local taxes but has the seventh highest level of local taxes relative to personal income. The amendment would allow increases in revenue to state and local governments which reflect normal growth in the economy. For example, as retail sales in Colorado increase with population growth, increases in tourist activity, or simply expansion of business activity, sales tax revenues would increase proportionately. Any additional taxes or tax increases would have to be justified directly to those who must pay those taxes.

2) The amendment would slow the growth of government programs and services. Despite efforts by the legislature to limit increases in property taxes by local units of government, the current system of property taxation has resulted in increases in property taxes beyond the established limits. Colorado has followed a so-called base-year system for setting assessment levels. In 1983, property assessments were changed from 1973 to 1977 levels of value. Taxes collected in 1984 increased 14.2 percent based on that new valuation. In 1987, the base year will be changed from 1977 to 1985 levels. This change probably will result in significant increases in assessed values in many communities. Although mill levies may be proportionately adjusted in such communities to reduce the impact of higher levels of assessment, it is likely that current tax limitations will not be effective in protecting some property owners from increases in property taxes. Property tax increases are a particular burden to those persons on fixed incomes. The amendment would help protect residents from any property tax increases which have not been approved by the residents affected.

3) Because the state would have to pay for any increased spending the state imposed on local governments, local governments would be protected from unexpected and undesired outside pressure on already tight budgets. The state and local governments would have an incentive to work together more closely to review program and service priorities. This would encourage the streamlining of programs and promote comprehensive planning for the provision of governmental services.

4) The amendment provides that the vote on tax increases occur on general election days. This would help to reduce the cost of holding more frequent special elections and would encourage the maximum degree of citizen participation in tax increase issues. The amendment would encourage governments to be more responsible in providing citizens with an understanding of the need for new revenue.

5) The amendment provides that all taxes and all governmental units are subject to the amendment. This would prevent state government from shifting the burden of taxes to local governments. By exempting licenses, fees, fines, and permits, the amendment would allow government to focus cost increases on those who use government services. For example, such non-tax revenue sources include: student tuition and activity fees, admission price for athletic events, fines for overdue library books, clerk's fees for copies of legal papers, parking meter fees, bus fares, fees for swimming pools and golf courses, traffic fines, business licenses, motor vehicle licenses, water and sewer fees, and building permits. Taxpayers would be afforded a greater degree of stability and reliability in the taxes they must pay.

6) The amendment would foster greater citizen involvement in state and local government, reduce some of the pressure on public officials for various funding requests, and weaken the influence of special interests in setting taxes. Flexibility is provided by allowing new taxes or increases in existing taxes when the voters approve. The voters can be trusted to exercise sound judgment on such issues and are most capable of determining the legitimate needs of government and voting accordingly.

7) The amendment will not prevent governments from responding to emergency situations. The "Colorado Disaster Emergency Act of 1973" provides a mechanism for meeting the needs of citizens in case of disasters or emergencies. Pursuant to that law, funds to meet disaster emergencies are to be available.

Arguments Against

1) The amendment would weaken representative government and local control. Local governments would be subject to an inflexible state limitation, whether the citizens of a particular

unit of government approved or not. Officials are elected for the express purpose of making the many day-to-day decisions which affect our lives, including those which modify the tax structure. The amendment could require direct voter approval for even relatively minor adjustments to the tax structure, while allowing other, possibly more important governmental decisions to be made without voter approval. Such direct legislation is cumbersome, expensive and not subject to the checks and balances built into representative government. Elected officials are responsible for and can be held directly accountable for their decisions at the ballot box.

2) The proposal goes far beyond the announced purpose of curtailing growth in government. Many governments are already experiencing problems in providing government services because of revenue shortfalls and reduced federal funding. These factors alone have resulted in reductions in important government services. The amendment would make it even more difficult for governments to raise the funds necessary to continue to provide the governmental services essential to the health of the state's economy. The ability of the state and local governments to improve transportation, maintain quality water services, support education and provide other governmental services critical to promoting economic development and job creation would be weakened. Uncertainty created by the amendment in regard to future payment of the interest and principal on bonds and the long range uncertainty of a local government's ability to maintain assets and demonstrate revenue growth may reduce the bond rating of such governmental units. This would translate into higher interest costs and further inhibit the ability of governments to provide the kind of capital projects necessary to accommodate economic growth.

3) The amendment could result in increases in licenses, fees, fines and permits to finance the operations of government. Since the amendment is so restrictive with regard to the tax system, governments would have an incentive to increase fees and other charges, especially in emergencies, because these actions can be taken without voter approval. Increased charges and fees may put some services out of reach of middle- and low-income persons and persons on fixed incomes.

4) The language of the amendment is broad, vague and would be subject to conflicting interpretations. Extensive and expensive litigation may be required to resolve the meaning of the terms used in the proposal. This would have the undesirable effect of involving the courts in the administration of state and local governments, adding many cases to an already overloaded court docket, and increasing the cost of government.

5) The proposal would prevent prompt governmental response in times of emergency or special need. For example, if a major natural disaster occurred, the state and local governments would have to wait until the next general election to raise the necessary additional funds to respond. If a community had an opportunity to attract new business, but needed additional revenue to facilitate the relocation, the opportunity for economic development could be lost. Under such circumstances, a government would either have to cut other services or wait until the next general election.

6) The amendment would alter the present system for financing public schools in Colorado and make it extremely difficult for the state to balance the goal of educational opportunity with the ability of taxpayers to finance the public school system. The present state formula for funding school programs is designed to allow annual adjustments among districts based on need and the ability of the districts to raise revenues. Each year the state sets the figure that determines state and local shares. The setting of this figure causes property levies in some districts to increase and in others to decrease. The school districts in which mill levies would increase would be required to hold an election. If the voters in such districts rejected the proposed increase in mill levies, the basis for eligibility for receipt of state funds would be eliminated. Thus, the current concept of state assistance to education or state attempts to provide equity in state funding would be altered by the amendment.

7) The amendment is unnecessary. Colorado's existing laws and tax limitations provide mechanisms to protect residents from excessive taxation. In times of revenue surplus, the General Assembly has reduced taxes, more than $2 billion over the past eight years. The amendment would impose restrictions on the ability to reform and modernize the tax structure and to provide for equity among taxpayers as changes occur in the state's economy.