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0217 An Analysis of 1976 Ballot Proposals

Colorado Legislative Council

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LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF 1976 BALLOT PROPOSALS

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LETTER OF TRANSMITTAL

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This analysis of measures to be decided at the 1976 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and to the general public pursuant to section 2-3-303, Colorado Revised Statutes 1973.

Ten proposed laws and constitutional amendments are analyzed in this publication. However, it is possible that one or more of the initiated proposals will be challenged subsequent to the publication of this analysis, and, in the case of a successful challenge, the proposal will not appear on the general election ballot.

Proposals 2, 3, 4, 5, 6, and 10 would amend the Colorado Constitution. If approved by the voters, these proposals could only be revised by a vote of the electors at a subsequent general election. Amendments 1, 7, 8, and 9 are statutory proposals. If approved by the voters, these items may be changed by the General Assembly. The penalty provision of Amendment No. 7, however, which would impose sanctions on the General Assembly, would tend to impose a practical limitation on possible legislative amendments, unless the General Assembly should repeal the sanction provisions.

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 the arguments most commonly offered by proponents and opponents of 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,

/s/ Senator Fred Anderson

Chairman

FA/vjk

INTRODUCTION

The ballot at the 1976 general election will contain 10 proposed laws and constitutional amendments to be accepted or rejected by Colorado voters. Four of the 10 proposals (3 constitutional amendments and 1 statute) were proposed to the voters by the General Assembly at its 1975 and 1976 legislative sessions. The remaining 6 proposals (3 constitutional amendments and 3 statutes) were initiated by Colorado citizens through petitions to the Secretary of State, on which a minimum number of qualified electors' signatures are required.

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AMENDMENT NO. 1 — STATUTE - PROPOSED BY GENERAL ASSEMBLY

Ballot Title: Shall the conduct of sweepstakes races be authorized?

Provisions of the Proposed Statute

The proposed statute would authorize an existing state agency, the Colorado Racing Commission, to organize and administer a state sweepstakes program. The sweepstakes would be a form of lottery based on horse or dog races occurring at racetracks licensed by the commission. The proposal would permit the commission to sell sweepstakes tickets throughout the state. Forty-five percent of net proceeds from the sale of tickets would be placed in a prize pool for holders of winning tickets. Net revenue or profit from the sweepstakes would be deposited into the state conservation trust fund. The purpose of the fund is to assist counties and municipalities in the acquisition, development, and maintenance of park, recreation, and other conservation areas.

Comments

The Colorado Racing Commission is a three-member body appointed by the Governor for terms of six years to oversee pari-mutuel racing and to collect the state tax on pari-mutuel receipts. The proposed statute would authorize, but not require, the commission to negotiate contracts with operators of Colorado racetracks for the conduct of sweepstakes races. The commission would be empowered to: (a) hire technical staff; (b) set the prices of sweepstakes tickets (maximum of $3); (c) establish purses for winning horses or dogs; (d) establish prizes for holders of winning sweepstakes tickets; and (e) adopt regulations for the administration of the sweepstakes.

Thirteen states have enacted lottery or sweepstakes laws. New Hampshire, the first state to establish a sweepstakes program, initiated a twice-per-year sweepstakes with $3 tickets, but revised its program to a more popular weekly lottery drawing with 50c tickets.

Comparisons of lottery ticket sales and net revenue in other states suggest that: (a) annual ticket sales have been in excess of $10 per capita; and (b) lotteries have produced a little over 1% of basic state tax revenue. Colorado's population is in excess of 2.4 million persons, and state tax revenue was about $800 million in fiscal 1975-1976. If sweepstakes ticket sales were comparable to those in other lottery states, gross receipts of about $24 million could be realized. More than half of this money would be utilized for prizes and expenses. Additional net revenue to the conservation trust fund could, however, be as much as $10 million. (For fiscal 1975-1976, the General Assembly appropriated $725,000 to the conservation trust fund.)

Section 2 of article XVIII of the State Constitution states, in part, that "the general assembly shall have no power to authorize lotteries for any purpose". Therefore, it is considered necessary for the proposed statute to be approved by a direct vote of the people. The proposal is very broad in wording but is directed toward some type of sweepstakes program. The question phrased to the electorate is "shall the conduct of **sweepstakes races** be authorized?" (emphasis added). It is not clear whether approval of the proposal by the voters would allow the General Assembly and the Colorado Racing Commission to subsequently initiate a regular lottery program without resubmitting the question to the voters for their approval.

Popular Arguments For

1. The state's conservation trust fund program is helping local governments to meet

increasing demands for outdoor recreational opportunities and open space conservation. However, the rising costs of land may make it virtually impossible, without increased state assistance, to retain and make available sufficient land for these purposes. The sweepstakes offers the possibility of providing a significant amount of new revenue for the fund without the imposition of new or increased taxes, while offering an inexpensive form of public entertainment. The recent adverse balance between revenue and expenditures has reduced the state's general fund surplus and has sharply curtailed the availability of funds for new state programs. Because of keen competition for the state's tax dollars, there is a need to develop a new source of revenue for the conservation trust fund.

2. Park and recreation programs are of direct benefit to visitors to Colorado as well as to Colorado residents, and, appropriately, the sweepstakes offers an opportunity for tourists to share in supporting the conservation trust fund. It is estimated that, during the first year of operation of New Hampshire's sweepstakes, 80% of total ticket sales were made to non-residents, even though they had to purchase tickets in New Hampshire. Recent innovations in lottery development have enhanced tourist participation — these innovations could be applied to a Colorado sweepstakes.

3. The proposed sweepstakes would increase interest in pari-mutuel racing and improve the health of Colorado's racing industry. Both increased employment opportunities and additional pari-mutuel tax revenue could result from the proposed sweepstakes program.

4. The sweepstakes could help channel universally present gambling instincts into an inoffensive and legal form of gambling. The cost of sweepstakes tickets would be a very small part of the average player's budget, and the negative social consequences of high-level participation and heavy betting associated with certain continuous forms of gambling are not present in connection with sweepstakes ticket purchases. Heavy betting is particularly unlikely on a sweepstakes, since increases in the amounts wagered do not increase the amount of prize money which can be won on a winning ticket. Strict regulation by the Colorado Racing Commission would prevent abuses and can be expected to limit the participation of minors in the sweepstakes.

Popular Arguments Against

1. Gambling does not create any economic wealth or meet any social need. The persons who can least afford to gamble may purchase sweepstakes tickets. Placing the state of Colorado in the sweepstakes business would focus publicity on pari-mutuel wagering. It is not in the best interest of Coloradoans for state government to foster or legitimize gambling. The proposed statute does not contain a prohibition on the sale of sweepstakes tickets to minors.

2. A sweepstakes is an inefficient and undependable method of raising revenue. Only a tiny fraction of state revenue may be raised by a sweepstakes program. New Hampshire shifted from a twice-per-year sweepstakes to a weekly lottery because of declining revenue, while the proposed statute appears to be limited to "traditional" sweepstakes operation. Other lottery states have experienced strong initial participation, but interest in the lottery declines quickly and can only be maintained by extraordinary promotion efforts and gimmicks. This means that a large share of gross revenue must be used for administrative expenses. There is no limit in the proposal on the amount of money to be used for advertising, racetrack operators' expenses, purses, commissions, and other expenses.

3. A prime beneficiary of the proposed sweepstakes statute would be the racing industry with which the commission would contract for the conduct of sweepstakes races. The racetrack operators would be guaranteed an off-the-top contract price, including reimbursement for "necessary and incidental" expenses, while the state would assume both the responsibility for running the sweepstakes and the risk of inadequate financial return from an ineffective sweepstakes operation.

4. The State Constitution currently authorizes the conduct of bingo games and raffles by non-profit organizations (religious, charitable, labor, fraternal, educational, and veterans' organizations, and volunteer fire departments). The proceeds of these activities are used for various kinds of public benefit programs. The citizens of Colorado have only a certain finite amount of discretionary income available for participation in charitable raffles and lotteries, and the proposed sweepstakes would provide competition for these non-profit programs and could lessen their effectiveness.

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

Ballot Title:	An amendment to section 6 of article X of the constitution of the state of Colorado relating to the classification and taxation of motor vehicles and certain other movable equipment and deleting mobile homes from said requirements and providing that the general assembly shall provide by law for the taxation of mobile homes.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Exempt mobile homes from the provisions of article X of the constitution, relating to the graduated annual specific ownership taxation of motor vehicles;

2. Continue to subject trailer coaches to the graduated annual specific ownership tax (trailer coaches are smaller than mobile homes and are commonly utilized for recreational living); and

3. Require the General Assembly to prescribe a method for the taxation of mobile homes.

Comments

Prior to 1936, motor vehicles, trailers, and semi-trailers were subject to ad valorem property taxes, which are due and payable in the year following assessment. The mobility, frequent changes in ownership, rapid depreciation, and short life spans of these vehicles made uniform administration and enforcement of the property tax difficult. To simplify motor vehicle taxes, Colorado voters, in 1936, approved an amendment to section 6 of article X of the State Constitution, which imposed a specific ownership tax in lieu of the property tax on motor vehicles, trailers, and semi-trailers. The tax was a part of the vehicle registration process and was collected in advance. Mobile homes were considered to be trailers and were subject to the specific ownership tax.

As mobile homes evolved into more permanent residences and were utilized less and less as travel trailers or temporarily located residences, the specific ownership tax became less effective. Many mobile home owners did not register their vehicles for highway travel and neglected to pay the specific ownership tax. A dual tax situation developed, through which ad valorem taxes were collected on some permanently sited mobile homes, while specific ownership taxes were imposed on others.

In 1966, the constitution was again amended in an attempt to provide a single method for taxation of mobile homes. Mobile homes were specifically listed in section 6 of article X as subject to specific ownership taxes, and the General Assembly was given authority for "prescribing methods of determining the taxable value". The 1966 amendment, however, did not end the controversy over mobile home taxation.

In the past ten years, a continuously larger share of the housing market has been assumed by mobile homes. The development of condominium mobile home parks, double-wide units, and long-term financing has contributed to the location of mobile homes on permanent sites. Fixed siting has caused increased interest in equating, or establishing similar tax assessment procedures for, mobile homes and conventional site-constructed housing.

In 1973, the General Assembly adopted a law providing for the valuation of mobile homes according to a formula based on list price, providing for a depreciation schedule,

and applying local mill levies to determine the tax on a mobile home. Basically, the tax method proposed in the 1973 law was a modified form of ad valorem property taxation, but retained some characteristics of specific ownership taxation, including advance payment. The Denver District Court, however, ruled the law invalid because it provided for assessment of mobile homes at 30% of actual value, while conventional housing was assessed at a variety of lower rates, despite statutory requirements to the contrary. The court also found that the invalidated law's fixed depreciation schedule did not bear any relationship to the actual values of mobile homes.

A 1974 interim legislative committee recommended that mobile homes be taxed on a completely ad valorem basis in the same manner as conventional, site-constructed housing. The Attorney General, however, was of the opinion that this proposal would contravene the provisions of section 6 of article X of the constitution, and the General Assembly readopted the previous specific ownership tax system. The proposed constitutional amendment would modify section 6 of article X to allow ad valorem taxation of mobile homes, or a modification of ad valorem taxation, as recommended by the 1974 legislative committee.

Popular Arguments For

1. The specific ownership tax on mobile homes and the property taxes on conventional site-constructed housing provide funds for cities, towns, counties, school districts, and other local governments. The mill levy on a conventional site-constructed home varies from area to area, based upon the revenue needs of local governments. In communities in which service demands are few, property taxes are usually low. The specific ownership tax, however, does not bear any relationship to the financial needs of a community, since the specific ownership tax rate is the same for a given vehicle regardless of its location in the state. The proposed amendment would allow the General Assembly to equate taxes on mobile homes with community needs in the same manner as for conventional site-constructed housing.

2. The specific ownership tax is based on a statutory formula which does not take into consideration the actual market value of a mobile home. The present requirement that all mobile homes be taxed on the same basis of value is arbitrary because of the varying rates of depreciation of mobile homes. Two mobile home units of the same model and year may have substantially different values. Individual ad valorem assessment would be more reflective of the true value of each mobile home and would be permissible if the constitution did not require specific ownership taxation.

3. The owners of conventional site-constructed homes are afforded treatment not offered to mobile home owners. Conventional home owners may pay their taxes in two installments in the year subsequent to an assessment, while a mobile home owner must make a single payment in advance. The conventional home owner may appeal his assessment if there is an erroneous determination of value and may also receive an abatement of taxes on property destroyed during a tax year. These benefits of law are not available to the mobile home owner who must pay the entire year's taxes even if he moves from the state or if his home is destroyed. The proposed amendment could place mobile and conventional home owners on a more equal footing.

4. Theoretically, the specific ownership tax should provide tax equity among mobile home owners, but, in actuality, not all mobile homes are taxed on the same basis. The extensive popularity of double-wide units has encouraged the placement of mobile homes on permanent foundations. In many instances, these units are taxed on an ad valorem

basis. This situation is confusing to county assessors, county clerks, and mobile home owners. Specific ownership taxes have evolved from the relationship between vehicles and highway use, although mobility is no longer an important factor in mobile home living. The tax structure should be revised to conform to present trends toward permanent siting of mobile homes.

5. Formerly, mobile homes were designed to provide temporary shelter for transients or short-term residents. They were car-type structures which depreciated rapidly in value. The specific ownership tax structure was developed to meet the mobility of these units. The general public did not view mobile homes as permanent parts of the community's tax base. Nonetheless, in recent years, the character of mobile home living has changed dramatically. Mobile home owners are permanent residents with a stake in a community's development. The specific ownership tax, however, is a vestige of the past which contributes to a negative public image, affecting zoning practices and the financing of mobile homes. Equalizing mobile home taxation with the taxation of conventional homes would help to eliminate this discrimination against mobile homes and would possibly foster cooperation between mobile home owners and other community residents.

Popular Arguments Against

1. Mobile homes generally depreciate in value from the time of initial purchase, while most conventionally constructed homes increase in value. Thus, in fairness to the mobile home owner, his home should be taxed at a constantly decreasing rate, as currently provided under the specific ownership tax formula. This constantly decreasing rate, however, would not necessarily be included in an ad valorem taxation system. As a matter of practice, county assessors do not examine individual properties each year, and mobile home assessments might not be adjusted on an annual basis.

2. The specific ownership tax standardizes the tax rate for similar mobile home models, makes, and years of manufacture. This equity of taxation among mobile home owners would be lost in a transition to an ad valorem tax system. Under ad valorem taxation, the mobile home owner who makes an effort to improve his residence could be penalized through higher property tax assessments, since the county assessor would value each mobile home independently. There is very little uniformity in assessment practices for conventional homes, and it is likely that similar disparities would exist for mobile homes.

3. Unique designs encourage extensive use of so-called "built-ins" in the furnishing of mobile homes. Conventional site-constructed housing does not contain these features to the same extent. The "built-ins" are part of the structure and result in higher assessment under an ad valorem tax system. Conventional home owners have fewer "built-ins", and detached personal property is exempt from the ad valorem tax. Initial sales of mobile homes in Colorado are subject to the state sales and use taxes. The relative tax burden for mobile home owners could be higher than for conventional home owners if mobile homes were subjected to ad valorem taxation without consideration of these factors.

4. Mobile homes have been unfairly criticized for not yielding revenue to local governments in amounts equivalent to those yielded by conventional site-constructed housing. This argument is illogical, since an average mobile home is simply not equal in value to many conventionally constructed single-family dwellings. An ad valorem tax, based on value, will not produce equivalent revenue (on the average) from mobile homes and conventional houses. Present under-assessment of conventional housing, however,

suggests that mobile home owners, through the specific ownership tax, are paying their fair share of taxes.

5. The proposed amendment is likely to result in a one-year break in the continuity of the payment of taxes on mobile homes, with negative effects on local governments which receive the revenue from those taxes. If the proposal is adopted, the General Assembly will probably require ad valorem taxation of mobile homes as a substitute for present constitutionally required specific ownership taxation. In this event, specific ownership taxes would probably not be paid on mobile homes for 1978. Mobile homes would be placed on the ad valorem tax rolls as of January 1, 1978 (the ad valorem assessment date for that year), but no ad valorem taxes on those homes would actually come due until January 1, 1979.

AMENDMENT NO. 3 — CONSTITUTIONAL AMENDMENT - INITIATED BY PETITION

Ballot Title:	An amendment to article XVIII of the Colorado constitution requiring approval by two-thirds of each house of the general assembly prior to any construction or modification of a nuclear power plant or related facility; providing that prior to any vote, the general assembly must conduct extensive hearings throughout the state concerning the safe operation of such plant or facility; and requiring the waiver of federally imposed limits on liability for damage resulting from the operation of any such plant or facility.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would condition construction or expansion of nuclear fission power plants, other facilities handling nuclear materials, and related projects on the following:

1. Extensive hearings throughout the state by a joint committee of the General Assembly, testimony taken under oath, and publication of the information developed;

2. Adoption of an act by the General Assembly containing a declaration of the effectiveness of the safety systems of the nuclear project, findings on tests of similar systems in actual operation, and a statement that storage and disposal of the facility's nuclear fuels and radioactive wastes will not pose an unreasonable danger to health and safety;

3. Approval of the project by a two-thirds vote of the members of each house of the General Assembly;

4. Waiver of any federally imposed limitations on liability for damages resulting from the existence or operation of the nuclear power facility; and

5. Assurance that full compensation will be granted for damages resulting from the escape or diversion of radioactive materials.

Additional provisions of the proposed amendment include: (a) publication, review, and testing of evacuation plans for each nuclear power project; (b) exemption of small-scale nuclear reactors used for educational purposes, or nuclear materials used for educational, welding, and medical purposes; (c) procedures for judicial review and enforcement of provisions of the proposal; and (d) a provision that strict liability for damages resulting from the escape of radioactive materials would exist regardless of proof of negligence.

Comments

How nuclear power plants operate. The heart of a nuclear fission power plant is a reactor core comprised of numerous containers packed with thousands of uranium oxide ceramic pellets or other nuclear fuels. When the containers are placed in close proximity to each other in the presence of a moderator, a controlled nuclear chain reaction produces intense heat. The reactor core is constantly bathed with a water, gas, or other coolant to control its temperature, to prevent excessive heat and pressure buildup, and to transfer heat to a steam turbine system which generates electricity.

Types of coolant systems. Two types of coolant systems are now used in commercial nuclear power plant reactor cores. The 55 operating nuclear power plants in the United

States use water coolant systems. Colorado's Fort St. Vrain nuclear power project, a new facility, uses a gas coolant system.

A **water-cooled reactor** includes various safety systems and fast-acting emergency core cooling systems to ensure a continuing supply of water coolant to the reactor core. Without sufficient cooling, the residual core heat could melt the core and the reactor pressure vessel, which could cause failure of the containment building and result in radiation leakage. This occurrence would allow radioactive materials to escape into and be distributed in the environment. The radioactive materials could, in strong concentrations, be fatal to humans. In weaker concentrations, the materials could cause cellular malfunctions, such as cancer, or genetic damage. To date, the effectiveness of fast-acting emergency core cooling systems has been evaluated through computer simulations and laboratory tests. The federal Nuclear Regulatory Commission has initiated actual physical testing of emergency core cooling systems at a federally owned model reactor.

A **gas-cooled reactor** contains a core made of high-temperature, high-strength graphite. Helium gas is circulated around the core for cooling and heat-transferring purposes. The helium gas coolant is contained entirely within the system's reactor core vessel and, since helium is "transparent" to activation processes, it remains radioactively "neutral" as it transfers heat to the turbine system outside the containment vessel. Helium transfers heat to the turbine system more efficiently than does the water in a water-cooled nuclear reactor. The gas coolant system is designed to eliminate the need for the type of fast-acting emergency core cooling systems critical to water-cooled reactors, since the helium coolant remains in a gaseous state even during coolant system accident situations and retains heat-transferring properties.

Radioactive wastes. As a result of the nuclear fission process which occurs in the reactor core, nuclear fuels are broken down into various highly radioactive waste products (including plutonium) which do not occur, or which occur only in extremely small amounts, in nature. Because of the radioactive nature and long radioactive life spans of nuclear wastes, disposal requires isolation from the environment and careful handling for generations.

The federal role in nuclear power plant regulation. The federal Atomic Energy Act of 1946 vests complete jurisdiction over nuclear fissionable materials with the Nuclear Regulatory Commission (NRC). (In 1975, the NRC replaced the previous regulatory agency under the act, the Atomic Energy Commission.) The act was expanded in 1954 to allow the commission to grant licenses to private industry for possession of fissionable materials and construction or operation of facilities which either produce or utilize such materials. The commission was given **exclusive** power to regulate the commercial use of nuclear energy.

The use of nuclear energy for commercial purposes raised questions of liability in cases of nuclear accidents. In response to these questions, Congress enacted the Price-Anderson Act of 1957. This act requires that owners and operators of nuclear power plants obtain the maximum amounts of liability insurance available from private insurance companies and, for small premiums, maintain indemnification agreements with the federal government which establish total aggregate liability at $560 million per accident.

Although Congress, in 1954, allowed the states to enter into agreements with the NRC for the regulation of certain types of nuclear materials, federal jurisdiction has been retained in regard to the construction and operation of nuclear power plants and over disposal of radioactive wastes from such plants. Federal jurisdiction has been sustained in the case of **Northern States Power Company v. State of Minnesota** (447 F.2d 1143, 1971). The United States Court of Appeals for the Eighth Circuit ruled in **Northern States**

Power that the State of Minnesota was preempted by the supremacy clause of the United States Constitution from enforcing nuclear power plant radiation emission standards which were more restrictive than the federal standards promulgated under the Atomic Energy Act of 1954. The United States Supreme Court has upheld this decision.

The state role in nuclear power plant regulation. The development of nuclear fission power for the generation of electricity involves both issues connected with radiation hazards and other questions of state and local interest such as zoning and the distribution of electrical power. The Atomic Energy Act of 1954, as amended, permits state or local agency regulation of nuclear facilities ". . . for purposes other than protection against radiation hazards" and allows states to regulate the generation, sale, and transmission of electric power produced by nuclear power plants if the state regulation does not ". . . regulate, control, or restrict any activities of the [Nuclear Regulatory] commission".

In Colorado, the system of licenses, permits, and certificates issued by various state and local agencies which control conventional power plants also applies to nuclear power plants. State controls include: air pollution source emission permits, water quality discharge permits, and sewage treatment site location permits administered by the Colorado Department of Health; water storage permits issued by the State Division of Water Resources; and certificates of public convenience and necessity issued by the state Public Utilities Commission. Local controls include county and municipal building and zoning regulations.

Despite the **Northern States Power** case, a number of questions concerning the precise delineation of federal and state authority over nuclear power plants exist. The proposed amendment, for example, does not provide for direct approval or disapproval of nuclear power plants, but rather prohibits any type of state or local certificate from being issued if the plant is not approved by the General Assembly. The proposal appears to raise fundamental legal questions in regard to the doctrine of federal supremacy and preemption. It is extremely difficult to determine the degree to which a state's regulations (designed to provide safe, efficient, and reliable electric service for its citizens) impinge on the federal government's role in the regulation of nuclear power. These matters will probably necessitate extensive litigation in the courts.

California Proposition 15. In some respects, the provisions of Amendment No. 3 are similar to the provisions contained in the nationally publicized Proposition 15, recently defeated by the voters in California. Like Amendment No. 3, Proposition 15 would have required: a) waiver of federal limitations on the liability of nuclear power facilities and assurance of full compensation for accidents; b) determination by a two-thirds vote of the legislature that reactor safety systems have been found effective by testing of similar systems in actual operation, and that nuclear fuels, wastes, and other materials can be safely stored or disposed of; and c) that the Governor annually publish, publicize and update evacuation plans for areas proximate to nuclear facilities. Unlike Amendment No. 3, however, the California initiative would have forced existing nuclear power plants to restrict electrical output to 60 percent of their licensed power level if requirements could not be met, and derate electrical production by an additional 10 percent per year for each year the requirements remained unsatisfied. Proposition 15 would have provided an appropriation of $800,000 for necessary expenditures.

Popular Arguments For

1. The production of nuclear power involves complex socio-economic issues which concern not only today's citizens, but also future generations. Nuclear power production results in the generation of intensely radioactive materials which are dangerous to all

forms of life. Nuclear power plants may be subject to acts of terrorism and sabotage. The radioactive waste materials from such plants contain plutonium, an ingredient of some nuclear weapons. The handling of radioactive materials is subject to errors in human judgment (the release of radioactive contamination from the Rocky Flats nuclear plant and the use of uranium mill tailings in public and residential construction in Grand Junction have already resulted in economic hardship and affected the welfare of some Colorado citizens). The issues involved in the use of nuclear power are serious and should be carefully considered by elected policy-makers. Management of nuclear power production should not be left to scientists alone. The proposed amendment would force elected state officials to weigh the pros and cons of nuclear power issues and require them to determine whether essential safeguards would be established for the protection of the citizens of this state.

2. Studies have indicated that an accident at a nuclear power plant could cause death, human suffering, and property losses valued in the billions. Under current federal law, the owners and operators of a nuclear power plant can only be held liable for $560 million in judgments. Private industry insures only a little over 20% of this amount, and the remainder is insured by the federal government at lower premiums. Many victims of a nuclear power plant disaster might not be compensated for their losses and could only ask for help from Congress. The proposal, if adopted, would require the removal of limits on liability and require assurance of full compensation, regardless of fault, for accidents related to any phase of the nuclear power cycle.

3. Nuclear waste disposal poses many problems. First, no permanent disposal facility has been developed by the Energy Research and Development Administration, although nuclear power plants continue to produce tons of waste materials. Second, transportation of the materials to a central storage location, when one is designated, increases risks to great numbers of people as waste shipments are transported around the country. Third, because of the long-lived nature of some of the wastes, they must be isolated from the environment and safeguarded for thousands of years. The toxicity of these wastes requires extreme caution and implementation of maximum security measures. Under the proposed amendment, state elected officials would have to approve procedures for the transportation, storage, and disposal of nuclear wastes. Any accident occurring during this phase of nuclear power production would require full compensation.

4. Nuclear power has been promoted on the basis of efficiency and economy, despite the inherent safety problems associated with the handling of radioactive materials. Recent events, however, have not justified this promotion. Nuclear power production meets only a tiny fraction of the nation's energy needs. The cost of uranium fuel for nuclear power plants has risen dramatically. Orders for nuclear reactor power plants dropped from 35 in 1973 to four in 1975. Dramatic cost over-runs have been encountered in the Fort St. Vrain project. The corporation constructing this plant cancelled ten orders for similar gas-cooled reactors, and this company is withdrawing from the manufacture of nuclear reactors. In view of the declining economic competitiveness of nuclear power and the inherent dangers involved in the handling of nuclear materials, the development of additional nuclear power plants is unlikely in Colorado through the short- or mid-term of the energy crisis. The nation's resources need to be redirected to better energy conservation and to other energy alternatives. Energy conservation could create significantly more jobs than reliance on generation of electricity through nuclear power.

5. If a nuclear accident occurred in Colorado, a panic situation might result because of general public unfamiliarity with evacuation procedures. The proposal would alleviate this

situation since it would require the Governor to be responsible for publicizing evacuation plans. Further, the Governor would be directed to review and test the evacuation plans on an annual basis to maintain their consistency with changes in traffic patterns, population densities, and land use.

6. Nuclear fission power production generates plutonium. The primary health concern involved in the handling of plutonium and other radioactive materials is their ability (in very small amounts) to cause cancer. There are uncertainties as to the effects of low-level radiation on workers in the entire cycle of nuclear power production. The issue of genetic damage remains unresolved. These unanswered public health questions suggest that the development of nuclear power should be approached with extreme caution, as proposed by the safeguards contained in the proposed amendment.

7. Other industrialized nations consume far less energy per capita than the United States, indicating that much greater emphasis should be placed on energy conservation in this country. A large proportion of current energy production is being wasted. A comprehensive energy policy with emphasis on conservation is needed, including plans for the development of alternative energy sources — solar, hydrological, wind, and geothermal power. Solar heating and cooling is used successfully today. These alternatives make the risks of nuclear energy unnecessary. Adoption of the proposal would encourage public officials to explore alternative programs.

Popular Arguments Against

1. The proposed amendment would effectively eliminate nuclear power production and nuclear-related industries in Colorado. The cumbersome procedures and requirements contained in the proposal would destroy the incentive for private industries to invest the capital necessary for construction of nuclear power plants. The comprehensive testing of a full-scale design to determine the possibility of a catastrophic event is simply economically unfeasible. In addition, the legislative branch of state government would be forced to assume the role of a highly technical regulatory agency under the proposal. A two-thirds majority of the members of each house of the General Assembly would be required even for approval of construction of a new transmission line or a new road to a nuclear power plant or a uranium processing mill. If any aspect of a proposed nuclear power plant or other nuclear facility were at all controversial, the two-thirds vote of approval would be nearly impossible to obtain. Hearings on the licensing of a nuclear facility take as long as three years, extending beyond a legislative biennium. Legislators conducting hearings in one biennium may not be serving in the next.

2. The Fort St. Vrain high-temperature gas-cooled reactor is a second-generation nuclear power plant with the most advanced of safety systems. The graphite core of the reactor has excellent high-temperature strength which, along with the gas coolant, greatly reduces the possibility of a "melt-down". The project has been under development for over ten years and is expected to meet over 10% of Colorado's electrical needs in 1977. The proposed amendment would jeopardize the operation of the facility, depending on whether additional licenses, permits, or certificates are required by state and local governments. Even the construction of a road or bridge to the nuclear power plant could initiate the hearing process required by the proposal.

3. The production of nuclear energy is the only current commercially feasible alternative to generation of large amounts of electricity from fossil fuels. Forecasts estimate that nuclear power could be cheaper than coal for generation of electricity. The technology for

harnessing solar and wind power for the generation of electricity is simply not sufficient to meet all foreseeable energy needs. The burning of fossil fuels also produces unacceptable amounts of pollution — serious problems of global dimension may arise from the increases in carbon dioxide in the earth's atmosphere due to the combustion of coal and other fossil fuels. Other forms of air and water pollution, and environmental damage from strip mining of coal, are well known. Foreclosure of the only alternative source of energy which can alleviate these problems does not seem to be a prudent course of action.

4. The safety record of the nuclear power industry is unmatched by that of any other business or commercial activity. A nuclear reactor accident has never resulted in death or injury to any member of the general public. The Nuclear Regulatory Commission is well aware of the dangers associated with radioactive materials and has made increasingly stringent safety demands on the nuclear power industry. Because there has never been a claim against the liability insurance policies carried by nuclear utilities, $8 million of the $11.8 million paid by the utilities in liability insurance premiums has been returned to them. The provision of the amendment for testing evacuation procedures in the event of a nuclear accident, involving "full public participation", places an intolerable burden on affected communities. Communities subject to the hazards of flooding, for example, are not required to follow such procedures.

5. The proposal would be without ultimate substance or effect in law. As confirmed by the ruling in **Northern States Power v. State of Minnesota,** upheld by the Supreme Court, state regulation of the radiological aspects of nuclear power plant safety has been preempted by the federal government. The proposed amendment would base the General Assembly's approval of nuclear facilities on findings concerning radiological safety, and it is likely that such action would be in direct conflict with the federal Atomic Energy Act. The United States Constitution specifies that the Constitution and laws of the United States are the "supreme law of the land", regardless of the requirements of state constitutions and laws. The proposed amendment to the Colorado Constitution would only delay nuclear power plant planning, construction, and operation during the course of litigation of federal-state jurisdictional disputes.

6. There is a direct correlation between development of energy resources and growth in the productivity of the nation's economy. The availability of energy at a reasonable cost is essential to maximizing employment opportunities and to the production of food and other essential goods. There are four billion persons on the earth today, and it is estimated that in 25 years this figure will increase to seven billion. A reduction in energy development would bring a decline in economic opportunity. Delaying or foreclosing the option for the development of nuclear power would limit economic opportunities for Coloradoans.

7. The provisions of the proposal calling for unlimited liability and a guarantee of full compensation for nuclear accidents without regard to fault are unreasonable. The establishment of maximum limits on liability in insurance agreements is common to a number of programs — workmen's compensation, aircraft insurance, federal mortgage insurance, and no-fault auto insurance, for example. Operators of nuclear reactors must obtain the maximum amounts of liability insurance available. The federal government guarantees additional liability to a maximum of $560 million. The 1975 amendments to the federal law provide for a gradual phase-out of federal liability and the establishment of a self-insurance pool by the nuclear industry. Congress also has agreed to take whatever action is deemed appropriate if damages from a nuclear accident exceed the $560 million aggregate liability.

AMENDMENT NO. 4 — CONSTITUTIONAL AMENDMENT - PROPOSED BY GENERAL ASSEMBLY

Ballot Title: An amendment to section 13 of article XII of the constitution of the state of Colorado, to allow exemption by law from the state personnel system of the heads of divisions of principal departments in the executive department of the state, the heads of state correctional, mental, and mental retardation institutions, and the personal secretary to the executive director of each principal department.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Allow the General Assembly to exempt, by law, the heads of certain state agencies and institutions from the state personnel system; and

2. Exempt from the state personnel system the position of personal secretary to the executive director of each of the principal departments within the executive branch.

Comments

Current operation of the state personnel system. Three methods are currently used to fill jobs in state government: (a) the Governor appoints most top-level managers; (b) these top-level managers select most middle-management personnel; and (c) the middle managers select the other employees within the state personnel system, which is commonly referred to as the civil service system.

The top-level managers appointed by the Governor are the executive directors of fourteen of the nineteen principal departments of state government — the five exceptions are those executive directors who are elected to their positions or who are appointed by state-level boards and commissions. The middle-management personnel are the heads of divisions and institutions within the principal departments.

The appointment of top-level managers by the Governor is not subject to the requirements of the personnel system (confirmation by the Senate **is** required). All other appointments, however, including the appointment of middle managers (division and institution heads), are made in accordance with the personnel system's requirements.

A person appointed to a position under the personnel system must be one of three persons ranking highest on an eligibility list for that position, developed on the basis of merit "ascertained by competitive tests of competence". (This procedure is referred to as the "rule of three".) Personnel system employees hold their positions "during efficient service", with dismissal, suspension, or discipline only upon written findings by the appointing authority of: (a) failure to comply with standards of efficient service or competence; (b) willful misconduct; (c) willful failure or inability to perform duties; or (d) final conviction of a felony or offense involving moral turpitude. These written findings are subject to appeal to the State Personnel Board. (A wide variety of misconduct on the job can fall within these criteria for dismissal.)

Effect of the proposed amendment. The exemption of individual middle-management positions from the personnel system would be dependent on action by the General Assembly. If the proposed amendment is approved by the electorate, the General Assembly would be required to develop a list of exempted positions during its 1977 session, should it deem such exemptions appropriate. The list would be written into law and would be subject to change during subsequent legislative sessions.

contracts for highway and other construction projects. These functions require continuity, expertise, and nonpartisan direction, and should be in the hands of qualified professionals who can best be recruited, trained, promoted, and retained through relatively standardized testing and certification. Exemption of middle-management positions could weaken the "transition" between gubernatorial administrations. Colorado has been free from the types of public scandals occurring in other states, and it would be a mistake to subject sensitive programs to political biases and pressures of special interest groups.

4. The number of positions which would be exempt from the personnel system under the proposed amendment is unknown. The term "division" is not defined. The only limitation to exemptions would be that each position must be designated by the General Assembly. When the voters approved the "little cabinet" concept in 1970, the maximum number of exempt positions (twenty) was spelled out in the constitution. Similar protection is not provided in this proposal.

5. In 1970, the voters of Colorado approved an amendment to the constitution modernizing the state personnel system. That amendment allowed top-level management to discharge middle managers for failure to comply with standards of efficient service. The top-level manager has only to submit these findings in writing to initiate the dismissal process. Also, in appointing a middle manager, any one of the three top candidates may be selected. These standards are reasonable and flexible. The proposed amendment would mean that a middle manager could be dismissed without cause and appointed regardless of qualification.

6. The governmental reorganization and "little cabinet" amendments approved by Colorado voters in 1966 and 1970 granted the Governor and the top-level managers of principal departments effective control over state agency activities. Pursuant to these amendments, nearly all state agencies were placed in one of nineteen principal departments by either a **type 1** or **type 2** transfer. Under a **type 1** transfer, the Governor's appointed top-level manager controls the agency's budget, purchasing, and related management functions. Under a **type 2** transfer, **all** statutory powers, duties, and functions of the agency are vested in the top-level manager. If the General Assembly wishes to provide the Governor with more direct control over all agency actions and programs, the **type 1** transfer could be abolished, leaving each gubernatorially appointed top-level manager with absolute authority over all agencies within his jurisdiction.

AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT - PROPOSED BY GENERAL ASSEMBLY

Ballot Title: An amendment to article XIV of the constitution of the state of Colorado, allowing county commissioners to set the compensation of county elected officials and prohibiting an increase or decrease in salary during a term of office in accordance with the constitution of the state of Colorado.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the State Constitution would:

1. Repeal provisions of the constitution directing the General Assembly to fix the salaries of elected county officers (in setting salaries, the General Assembly must presently give consideration to variations in county populations and resources and in the workloads and responsibilities of elected officers);

2. Require the respective boards of county commissioners in each county to fix the salaries and compensation of those elected officers (unless otherwise provided by the charter of a home rule county);

3. Within each county, require that salaries and compensation of county commissioners be fixed at an equal rate, except that holdover commissioners would not be eligible to receive increases or decreases in salary until elected or appointed to succeeding terms of office; and

4. Continue the present constitutional requirement prohibiting all elected county officers from receiving increases or decreases in salary during individual terms of office.

Comments

The purpose of the proposed amendment is to shift the responsibility for setting the salaries of elected county officers from state to local government. On or before May 1 of each even-numbered year, the boards of county commissioners would set the salaries and compensation for their respective county elected officers: the commissioners, sheriff, assessor, clerk and recorder, treasurer, coroner, surveyor, and county superintendent of schools (if the latter office has not been abolished). Salaries would be set for the entire subsequent term of office, since the constitution prohibits elected officials from receiving increases or decreases in salaries during individual terms of office. Salaries would be fixed well before elections, in order that a potential candidate for county office would know the salary for the term for which he might be elected.

One purpose of the proposed amendment is to allow each county commissioner to receive a salary adjustment at the beginning of a new four-year term of office. Variations in the actual salaries of individual commissioners would occur because of staggered terms and the constitutional requirement that salaries not be adjusted during terms of office. Within these limitations, however, commissioner salaries would be fixed at an equal **rate.** This would preclude the chairman of the board of county commissioners from receiving additional reimbursement for his services as chairman.

Popular Arguments For

1. The general powers of county government are vested with the boards of county commissioners. The commissioners are responsible for formulating the county budget, determining levels of administrative services, controlling disbursements of county funds,

setting salaries of employees, and levying the taxes necessary to defray county expenses. The administrative costs of county government should be related to the ability of the residents of the county to support such services. Accountability is lessened when expenditure levels (such as salaries of county officers) are set by state government and taxes are levied by county government. Salaries of local government officials should **not** be set by state government.

2. In setting salaries for county personnel, attention is given to relative responsibilities, complexity of assignments, workloads, comparisons among classes or types of job categories, and a variety of other economic and social factors. The salaries of county officers should be based on similar considerations and should be set in accordance with the salaries of other county employees. County commissioners have a day-to-day working knowledge of their respective county personnel systems, and the commissioners are in the best position to set salaries of county officers in relation to local needs. The members of the General Assembly are simply not in a position to be acquainted with the demands, workloads, and responsibilities of individual county officers. There are as many as ten counties in some legislative districts. It is difficult for the individual legislators from these districts to be acquainted with the county personnel systems in their respective districts, and virtually impossible for other members of the General Assembly. Under current constitutional provisions, the General Assembly must make decisions on what are essentially local matters.

3. County government in Colorado has been closely tied to state government. The State Constitution outlines the basic organization of county government, and counties administer certain state functions. In recent years, the county's role as a unit of local government has received increased attention. Constitutional and statutory reforms have been directed towards increased self-determination on the part of county government. The proposal is another step in support of local decision-making.

4. The General Assembly sets the levels of compensation of elected state officers. The salaries of municipal officials are set in accordance with municipal charters and ordinances. The salaries of county officers should be set by boards of county commissioners or specified by the charters of home rule counties.

Popular Arguments Against

1. The proposal would not permit periodic cost-of-living adjustments for the nearly 500 elected county officials in Colorado, nor would it change the basic constitutional requirement which prohibits an elected county official from receiving a salary adjustment during his term of office. Salary adjustments for county officers were made by the General Assembly in 1974. These salaries may not be readjusted until 1978, the expiration of most four-year terms of office. A holdover county commissioner elected in 1976 must wait until 1980 for adjustment of a salary set in 1974. At the present inflationary rate, he is severely penalized in comparison with other public employees.

2. The proposed amendment is not needed and could be counter-productive. Salaries of elected county officers may currently be set at the local level — the residents of a county may adopt a structural home rule charter, through which they may provide their own system for fixing salaries. A county is an administrative arm of state government. Counties receive and disburse state funds for programs such as social services and roads and bridges. State government has an interest in the efficient administration of these programs and in attracting the best talent available to serve county governments. These

factors should be considered by state government in the setting of salaries for county officials.

3. If adopted, the proposal could lead to abuses. The autonomy of each elected county officer could be reduced, if county office-holders were obligated to the county commissioners for salary adjustments. Local political considerations and the personalities of incumbent elected officials could play much more important roles if the salaries of county officers were set by the commissioners. If the proposal were adopted, commissioners might tend to set their own salaries at unreasonably low levels, discouraging qualified candidates from seeking the office of county commissioner.

AMENDMENT NO. 6 — CONSTITUTIONAL AMENDMENT - INITIATED BY PETITION

Ballot Title:	An act to repeal section 29 of article II of the constitution of the state of Colorado, which section provides for equality of rights under the law on account of sex.

Provisions of the Proposed Constitutional Amendment

The proposal would repeal section 29 of article II of the State Constitution. Section 29 is commonly referred to as the Colorado Equal Rights Amendment, and presently provides that:

> Equality of rights under the law shall not be denied or abridged by the state of Colorado, or any of its political subdivisions, on account of sex.

Comments

The Colorado Equal Rights Amendment (ERA) was proposed by the General Assembly as an addition to the State Constitution in 1972. It was adopted by the voters at the general election in November of that year, and took effect on January 11, 1973.

Effect of the state Equal Rights Amendment. Although the Colorado ERA has been a part of the State Constitution for nearly four years, its effect on state law and public policy is largely unknown. Several Colorado judicial decisions have been made on the basis of the state ERA, including one district court ruling concerning a school athletic program. However, litigation in Colorado's courts has not been extensive enough to date for the development of firm conclusions as to how judicial decision-making will proceed under the state ERA. In its major interpretations of the ERA, the Colorado Supreme Court has stated that "legislative classifications predicated on sexual status must receive the closest judicial scrutiny" (**People v. Green,** 514 P.2d 769, 1973) and that the ERA:

> . . . prohibits unequal treatment based exclusively on the circumstance of sex, social stereotypes connected with gender, and culturally induced dissimilarities. However, it does not prohibit differential treatment among the sexes when, as here, that treatment is reasonably and genuinely based on physical characteristics unique to just one sex (**People v. Salinas, et al.,** No. 26325, June 21, 1976).

In recent years, the General Assembly has made an effort to incorporate sex-neutral terminology in the normal process of revising and amending state laws. The state ERA cannot be said to be the direct catalyst for such revisions and amendments themselves, but it may have been a factor in the choice of sex-neutral wording in the law.

Application of the state Equal Rights Amendment. The Colorado ERA prohibits the denial or abridgement of rights on the basis of sex "by the state of Colorado, or any of its political subdivisions". Accordingly, the legal effect of the state ERA's prohibition of sex discrimination is confined to and applies only to activities which fall within the category of "state action". Briefly, in the context of the Colorado ERA, "state action" includes: (a) the development and implementation of state and local laws and ordinances; (b) the regulatory activities of state and local government officials and employees; and (c) the actions of private entities which are "public functions" or so "significantly involved" with the state that they constitute "state action". Purely private activities and social arrangements are not affected by the Colorado ERA.

Distinction between state and federal Equal Rights Amendments. The Colorado ERA should not be confused with the **proposed federal** Equal Rights Amendment. The federal

ERA was originally proposed by Congress as an addition to the United States Constitution in 1972. In order to take effect, the federal ERA must be ratified by 38 state legislatures, and only 34 such ratifications have occurred to date. Two state legislatures subsequently acted to rescind their ratifications. Colorado's General Assembly ratified the proposed federal ERA during its 1972 legislative session, prior to submitting the state ERA to the Colorado electorate. It should be noted that the federal ERA involves issues which tend to be broader than those involved with the state ERA — issues such as compulsory federal military service, social security benefits, and interstate commerce laws.

"Yes" and "no" votes. The proposal would repeal existing language in the State Constitution. Therefore, those who oppose the Colorado ERA should vote "yes" on the proposal, and those who support the Colorado ERA should vote "no" on the proposal.

Popular Arguments For Repeal of the Colorado ERA

1. The state Equal Rights Amendment has a distinct negative effect outside the realm of law and government action. Americans have traditionally viewed the differences between the sexes as appropriate and desirable — family life, marriage, and religious organizations in this country are based on different, but complementary, sex-based roles. As the "law of the land", however, the Colorado Equal Rights Amendment contradicts this traditional way of thinking and will only lead to conflict in the basic institutions of our society — marriage, the family, and the church.

2. The state Equal Rights Amendment prohibits the use of sex-based distinctions in the application of state laws, local ordinances, and governmental practices and regulations. This approach to the elimination of sex discrimination is inflexible. Historically, women's legal rights have been advanced on a law-by-law, case-by-case basis under the "equal protection clause" of the federal constitution. Legislative reform has led to both state and federal statutes requiring equal pay for equal work, non-discriminatory provision of credit, and equality of opportunity in employment, education, and housing. This approach to the expansion of women's legal rights is more flexible than that of the Colorado Equal Rights Amendment and takes into account the genuine differences between the sexes which should be reflected in public policy — this approach can achieve the goals of the state ERA without its possible negative social consequences.

3. Since the Colorado Equal Rights Amendment requires that all laws and governmental programs in Colorado ignore the differences between the sexes, it can be expected to have serious negative social consequences. The amendment could lead to changes in governmental policy which would result in interference in the development of roles within marriage and the family, undesirable sex-integration in publicly supported schools and colleges (and particularly in school athletic programs), loss of protective benefits for women, and undesirable sex-integration in public facilities.

4. The repeal of the state Equal Rights Amendment would encourage the General Assembly to rescind its 1972 ratification of the proposed federal ERA. In addition, the repeal of the state ERA would encourage other state legislatures to defeat the proposed federal amendment.

Popular Arguments Against Repeal of the Colorado ERA

1. The Colorado Equal Rights Amendment is necessary as a permanent constitutional guarantee of equality of rights under the law. Only a specific constitutional statement of equality of the sexes will provide for continued elimination of sex discrimination in

governmental action. The assertion that the Colorado ERA is unnecessary in light of the "equal protection clause" of the federal constitution does not take into account the history of equal protection doctrine in sex discrimination lawsuits — the courts have not applied that doctrine to sex discrimination cases in a clear or consistent manner. It was not until 1971 that a sex-discriminatory statute was held unconstitutional under the equal protection clause, and the application of the clause to sex discrimination has never been as complete as in cases of race discrimination. In addition, the expansion of women's rights under the equal protection clause depends too heavily on expensive, time-consuming lawsuits — the state Equal Rights Amendment is an impetus for reform without lengthy litigation.

2. The courts are very unlikely to interpret the state Equal Rights Amendment in such an extreme manner as to bring about the negative social consequences feared by its opponents. These consequences have not occurred in the four years since the Colorado ERA took effect, and litigation under the amendment has been minimal. An absolute interpretation of the state ERA will be tempered by judicial consideration of the unique physical characteristics of the sexes, of the rights of privacy, and of the acceptability of "separate but equal" public facilities for each sex in appropriate contexts. (The rights of privacy have been construed by the United States Supreme Court on the basis of the Bill of Rights of the federal constitution in several cases since 1965 — see **Griswold v. Connecticut,** 381 U.S. 479 (1965); **Eisenstadt v. Baird,** 405 U.S. 438 (1972); and **Roe v. Wade,** 410 U.S. 113 (1973).) It must be noted that the application of the amendment is limited to governmental action and does not extend to such purely social arrangements and institutions as the family and the church. Predictions of the ill effects of the Colorado Equal Rights Amendment on the family, the "marriage contract", religious freedom, women's employment, and public facilities are based on a misinterpretation of the process of judicial decision-making.

3. The Colorado Equal Rights Amendment provides an essential moral and ethical statement that rights and privileges before the law are not to be denied to the citizens of this state on the basis of their sex. Significant disparities continue to exist in the relative positions of men and women in this country — disparities in economic power, opportunities to participate in athletic programs, and positions in the legal and political arenas and in the higher levels of the business world. The state ERA was overwhelmingly adopted by the voters in 1972.

4. Retention of the state Equal Rights Amendment would serve as encouragement to the legislatures of other states to ratify the proposed federal Equal Rights Amendment. This encouragement would hasten the eventual adoption of the federal ERA.

AMENDMENT NO. 7 — STATUTE - INITIATED BY PETITION

Ballot Title:	An act to exempt food and food products, with certain exceptions, from state sales and use taxes and repeal the food sales tax credit, to require the general assembly to enact severance taxes and corporate income taxes to offset any revenue lost therefrom, and to provide penalties for legislators if such severance and corporate income taxes are not enacted in 1977.

Provisions of the Proposed Statute

The proposed statute would:

1. Exempt most food and food products from the present 3% state sales tax beginning July 1, 1977 (sales of food prepared by the vendor for immediate consumption, sales through vending machines, and sales of fermented malt liquor and alcoholic beverages would continue to be taxed);

2. Permit local units of government to levy, or continue to levy, a sales tax on food;

3. Require the General Assembly to impose severance taxes on metallic minerals, coal, oil shale, and oil and natural gas;

4. Require the General Assembly to increase income taxes on corporations with net profits in excess of fifty thousand dollars;

5. Require that the total of increases in corporate tax revenue and new severance tax revenue be sufficient to replace state sales tax revenue estimated to be lost as a result of the proposed exemption of food from sales taxation;

6. Require that a portion of severance tax revenue be used to aid local governments in areas of the state which are affected by the production of metallic minerals, coal, oil shale, and oil and natural gas;

7. Repeal the $7-per-person credit on the state income tax for sales taxes paid on food and food products for taxable years beginning on or after January 1, 1977;

8. Continue the state collection of local sales taxes and obligate the executive director of the state Department of Revenue to administer and collect any local sales tax on food and food products; and

9. Prohibit any member of the 51st General Assembly from receiving further per diem or expense allowances if the 1977 legislative session adjourns without the enactment of replacement revenue.

Comments

A national consumer expenditure survey was conducted by the federal government between July 1973 and June 1974. Although food prices, as measured by the federal Consumer Price Index, have increased by about 20% since that time, the survey may be helpful in illustrating the relative tax savings of the proposed exemption of food from the state sales tax.

ESTIMATED TAX SAVINGS OF THE PROPOSAL WHEN APPLIED TO NATIONAL CONSUMER EXPENDITURE SURVEY CATEGORIES

Fiscal 1973 - 1974

(1) Decile 1/	(2) Annual Average Family Income In Each Decile 1/	(3) Est. Aver. Weekly Expend. For Food At Home	(4) Est. Ann. Expend. For Food At Home	(5) Est. Annual Tax Savings When Applying Proposal to Column (4) Savings Per Average Family 2/	(6) Savings Per Family Member 2/
1	$ 1,198	$13.19	$ 686	$ 9.38	$5.86
2	2,957	17.25	897	13.61	7.16
3	4,626	19.64	1,021	14.53	6.32
4	6,447	22.20	1,154	16.42	6.32
5	8,360	24.31	1,264	18.32	6.54
6	10,307	27.76	1,444	21.62	6.97
7	12,330	28.49	1,481	21.33	6.46
8	14,916	31.07	1,616	23.98	6.85
9	18,654	34.23	1,780	28.20	7.83
10	30,079	37.40	1,945	32.45	8.77

1/ National ranking of all families from lowest 10% to highest 10%. Average family size increases steadily from 1.6 to 3.7 from the lowest 10% to the highest 10%.

2/ Tax savings computed by the Legislative Council staff on the basis of the size of the average family in each decile, repeal of the state sales tax on food at 3%, and elimination of the $7-per-person food sales tax credit.

Impact on revenue. For the current fiscal year, the state sales tax on food may raise about $51 million. Growth projections of food sales tax revenue for subsequent years are estimated at 10% annually. Sharp increases in food prices could raise these estimates. Supporters of the proposed statute suggest replacement of the entire $51 million in state food sales tax revenue through:

(a) repeal of the $7-per-person food sales tax credit allowed under the state income tax;

(b) an increase in corporate income taxes on corporations with annual net incomes in excess of $50,000; and

(c) the imposition of a new severance tax.

Repeal of the food sales tax credit would mean additional income tax revenue of $17 million (estimate for fiscal 1976-1977). The balance of replacement revenue, $34 million, would have to be made up from a new severance tax and increased corporate taxes as required by the proposal.

House Bill 1109, 1976 session. The General Assembly considered severance taxes in the 1976 legislative session (House Bill 1109). The severance tax bill, as passed by the House of Representatives, would have raised an estimated $18.1 million for fiscal

1977-1978. The version of this bill which passed the Senate would have raised $8.5 million for the comparable period, with a portion of this amount ($1.9 million) going to local governments. (Agreement was not reached between the houses on a final act.)

The amount of revenue to be raised by a new severance tax would, as implied by the proponents of the proposal, be a major factor in consideration of increased levels of corporate income taxes. An increase in corporate income taxes on targeted corporations from the present rate of 5% of net income to 6% of net income would yield about $12 million for fiscal 1976-1977.

It should be emphasized that the proposed statute does not itself outline a specific formula for replacement of state revenue lost through the exemption of food and food products from the state sales tax. The General Assembly, in its 1977 session, would be responsible for the implementation or revision of the proposed statute. The combination of additional taxes might be far different from those considered in the past.

Other states. Forty-five states levy some form of sales tax. Twenty-six of these states levy some form of sales tax on food, and 19 exempt food from sales taxes. Louisiana grants a partial (33%) exemption for food under its sales tax. Food purchased with federal food stamps is exempt in Iowa. In South Dakota, senior citizens are eligible for a food tax exemption.

According to tax theorists, a primary reason for exempting food from sales taxation is to reduce the regressivity of the tax. (A "regressive" tax is one which has a relatively heavier impact on lower-income groups than on persons with higher incomes.) Alternative approaches to reduce the regressivity of sales taxes have been tried in ten states. Colorado's food sales tax credit allowed under the state's income tax is an example. The current food sales tax credit is $7 per person, and, in 1974, a credit of $21 per person was allowed for one year only. Tax credit plans have been developed on a sliding scale with the intent of providing greater assistance to lower-income groups.

Aid to local governments. The proposal calls for a portion of any new severance tax to be allocated to local governments serving metallic mineral, coal, oil shale, and oil and natural gas production areas. The proposal provides that " . . . the general assembly shall consider the effect upon affected production areas . . .". The General Assembly would designate eligible areas and the amount of funds to be made available to these areas. The Senate version of House Bill 1109 (1976), previously mentioned, would have allocated severance tax revenue of $1.9 million (fiscal 1977-1978) for local governments.

Colorado has adopted a state-collected, locally-shared cigarette tax system. Under this system, revenue is apportioned to local governments on the basis of collections of state sales taxes. The proposal could affect the distribution of this revenue — some communities with relatively high proportions of food sales could be adversely affected without revision of the formula for revenue distribution.

Constitutional requirements. In 1936, Colorado voters approved the "old age pension amendment" to the State Constitution, which required that 85% of all excise tax revenue, including revenue from sales taxes, be allocated to the state's old age pension fund. The revenue from such taxes far exceeds the requirements of the fund and "spills over" into the state general fund. However, the "old age pension amendment" includes a limitation on laws which reduce sales taxes:

> **Revenues for old age pension fund continued.** The excise taxes on sales at retail . . . are hereby continued in full force and effect beyond the date on which said taxes . . . would otherwise expire, and shall continue until repealed or amended; provided, however, that no law providing revenue for the old age pension fund shall be repealed, nor shall any such law be

amended so as to reduce the revenue provided for the old age pension fund, except in the event that at the time of such repeal or amendment, revenue is provided for the old age pension fund in an amount at least equal to that provided by the measure amended or repealed during the calendar year immediately preceding the proposed amendment or repeal (section 5, article XXIV, Colorado Constitution).

Although the proposed statute would require that the replacement of food sales tax revenue be carried out through the imposition of increased corporate and new severance taxes, it does not provide a specific tax plan. (The proposal provides penalties for the members of the General Assembly if sufficient replacement revenue is not made available.)

The following questions have been raised concerning the proposal:

(a) The proposed statute does not condition repeal of the state sales tax on food on the actual provision of replacement revenue. Does section 5 of article XXIV require the replacement revenue for the state old age pension fund be provided at the time the proposal becomes law?

(b) The proposed requires the 51st General Assembly to provide replacement revenue from specific sources. One General Assembly normally cannot bind a future General Assembly to specific action. Can an initiated statute bind a future General Assembly in this way?

Litigation may be necessary to resolve these issues.

Popular Arguments For

1. Tax economists have long recognized that sales taxes take a much higher proportion of the income of poor persons than of individuals with higher levels of income. The sales tax is particularly regressive when applied to food. A family suffering an economic reversal or loss of wages may delay expenditures on clothes and other items, but the food budget is essential for survival. Economic inflation makes it extremely difficult for elderly persons on fixed incomes and for other low-income families to maintain adequate food budgets. The proposal would provide relief in regard to escalating food expenditures by reducing annual sales taxes on such expenditures.

2. A food tax credit system complicates income tax administration. Roughly 89,000 income tax returns were processed in fiscal year 1975 for the food sales tax credit only. Had the proposal been in effect, it would not have been necessary to process those returns. This means that the State of Colorado is in the business of collecting a tax and redistributing a portion of the revenue back to the same individuals from whom the tax was originally collected. Further, a time lapse exists between tax payments and receipt of the tax credit. There are individuals who pay the food sales tax in this state but who do not take advantage of the food sales tax credit. Some of these individuals are part-year residents, but others are entitled to the full $7 credit per person. Population studies suggest that many persons are eligible or partly eligible for the food sales tax credit but are not filing for the credit. The exemption of food from state sales taxes would be an automatic benefit which would ensure tax relief on all food purchased for home consumption. Tax credit programs cannot provide such a guarantee. The public also pays the grocery industry for collection of the sales tax on food.

3. The proposal would revise Colorado's state sales tax in accordance with the trend in other states toward providing direct sales tax exemptions for food. Voters in Michigan recently approved an exemption of food from sales taxes. Six other states have provided exemptions or partial exemptions in the last five years. More than half the states recognize the inequities of sales taxes on food. Nine Colorado cities with about 40% of the state's

population — Aurora, Colorado Springs, Commerce City, Denver, Edgewater, Englewood, Greenwood Village, Northglenn, and Pueblo — have eliminated the local sales tax on food.

4. The proposal would shift the burden of taxation on Colorado residents from a regressive sales tax on food to taxes on the severance of coal, metals, oil shale, and oil and natural gas and on corporations earning in excess of $50,000 per year in net profits. Colorado mineral resources and products sold in national and international markets would be the vehicles for redistribution of much of this tax burden to nonresidents. It is easier for the mining industry and large corporations to absorb or transfer the impact of a tax than it is for retirees, the unemployed, and other low-income persons to pay a 3% tax on food, particularly in view of current rates of inflation.

5. Colorado's corporate tax rate is lower than those of most states which tax corporate incomes. The increase in state corporate and severance taxes which would occur if the proposal were implemented would be absorbed in part by the federal government because of a reduction in the federal tax liability of affected corporations. The federal tax rate on corporate earnings in excess of $50,000 per year is 48%. Since state taxes are deducted prior to the federal income tax levy, the actual burden of the state tax would be reduced by nearly 50%. A larger share of these business taxes would remain in Colorado rather than being sent to the federal government. State taxes have little effect on locational decisions of most businesses. The availability of markets, resources, and labor, and access to transportation, are prime factors in business location.

6. Colorado is becoming an important supplier of energy resource materials. Gross proceeds from the production of Colorado natural gas, oil, and coal are expected to escalate rapidly — 1975 gross proceeds were nearly four times 1970 gross proceeds. States with similar resources have moved towards increasing severance taxes. Montana and Wyoming, for example, recently increased severance taxes. The proposal follows this trend of levying taxes on irreplaceable natural resources.

Popular Arguments Against

1. Tax policy involves extremely complex interrelationships affecting the entire economy of the state. Major changes in sales, income, severance, and corporate taxes should be considered only after careful study and should be made in terms of the revenue needs of the state, the impact of taxes on the state's economy, and tax equity and stability. Each tax should be considered on its own merits. The proposal makes a popular appeal for eliminating state sales taxes on food, but does not provide for specific replacement revenue. The individual voter cannot judge or forecast the impact of the proposal. There are many aspects of the proposal which should be considered by the state's policy-makers in the actual legislative process, including: (a) the reliability of replacement revenue for the proposed food sales tax exemption; (b) the need for reducing state expenditures; (c) the need to minimize the impact of changes in the tax structure by implementing those changes in phases; and (d) the possible effect of the proposal on certain local sales tax programs and on tourist revenue in those communities. The initiative procedure tends to overlook such considerations.

2. The proposal calls for increases in taxes on the state's largest corporations, which have played a major role in providing thousands of new jobs over the past ten years for the state's economy. In view of the nation's high unemployment rates, Colorado must meet substantial competition from other states in attracting new industries and encouraging plant expansion of Colorado's major corporations. An increase in corporate taxes could adversely affect Colorado's business climate. Colorado's effective corporate income tax rate is higher than the average effective corporate income tax rate of the seven

surrounding states. In addition to increased corporate taxes, the proposal would impose a severance tax on the mining industry, which would be singled out for both a corporate tax increase and a new severance tax. It is unreasonable to impose such burdens on one industry at the same time.

3. A basic issue involved in the exemption of food from the sales tax is the reduction of its regressive features. The proposal would achieve some reduction in regressivity, at the expense of about $34 million in new taxes. However, an even greater reduction in the regressivity of the sales tax could be achieved through revision of the state's existing food tax credit program. A sliding-scale credit system could be designed to help those whose need is the greatest. This system could be initiated at far less cost than could the proposal. A revised food tax credit program could achieve the goal of eliminating sales tax regressivity without unnecessary tax breaks to high-income households and without losing food sales tax revenue paid by tourists.

4. The exemption of food from sales taxation raises difficult questions regarding which sales are taxable and which are exempt. Not all purchases in grocery stores would be exempt from taxation. Studies of grocery chains in Denver reveal a wide range of taxable and non-taxable items. For small stores with unsophisticated bookkeeping, it would be difficult to determine accurately the extent of taxable and non-taxable sales. Further, there is no guarantee that elimination of the state sales tax on food would actually result in lower total food expenditures for Colorado residents. Food prepared for immediate consumption would be subject to taxation. It is unclear what effect this would have on the "fast food" industry. Administration of the sales tax would become more complex with the exemption of food and food products.

5. The economic impact of the state food sales tax on Coloradoans would continue to be felt, although in different ways, under the proposal. A new severance tax could mean higher coal prices. Public utilities, in particular, are large consumers of coal, and coal severance taxes would be reflected in rising fuel costs. Utility companies would pass these increased fuel costs on to consumers through higher electricity rates. The proposal calls for additional state funds to be used in a new program of aid to local communities with mining activities, suggesting that additional levels of state expenditure will be necessary.

6. The proponents of the proposed statute argue that food is a basic necessity which should not be subject to the state sales tax. Clothing, fuel, electricity, and shelter materials, however, are essential items which would continue to be subject to sales taxes. The proposal is inconsistent. It eliminates state sales taxes on food but obligates the state to continue to collect any local food sales taxes imposed. Further, some low-income and elderly persons cannot prepare their own meals and must depend on the services of inexpensive restaurants. These meals would continue to be subject to food sales taxes.

7. If the severance tax is to raise a major portion of the replacement revenue for the sales tax on food, it may require excessively high rates which could depress the mineral industry in Colorado. A high severance tax could place the Colorado mineral industry at a competitive disadvantage in national and world markets and discourage mineral exploration and development in Colorado. The mining industry in Colorado is not in a position to increase the sale prices of metals to cover the additional costs which the tax would impose. Marginal mining activities, important to some small communities, could be forced out of business by excessive severance taxes. A weakened mineral industry could also mean a decline in economic activity for mining suppliers and related industries. The proposal may weaken conservation practices in the mining industry. Increased costs could discourage the mining of lower quality ores.

AMENDMENT NO. 8 — STATUTE - INITIATED BY PETITION

Ballot Title:	An act to require a minimum deposit refund value for beverage containers for malt liquor, including beer, and carbonated soft drinks manufactured, distributed, or sold for use in this state; to require recycling or reuse of returned beverage containers; and to provide civil penalties for violations.

Provisions of the Proposed Statute

The major provisions of the proposed statute are detailed below.

1. After April 15, 1978, beer, malt liquor, and carbonated soft drinks would have to be sold in returnable containers. (Beverages manufactured in Colorado for sale outside the state would not be affected.)

2. A minimum deposit refund value of 5c would be required on each container.

3. All returned beverage containers would have to be reused or recycled.

4. Manufacturers and distributors of, and dealers in, malt liquor, beer, and carbonated soft drinks would have to provide a deposit refund value for each returnable container of the same type which they manufacture or distribute.

5. A violation of these requirements could result in a fine of from $100 to $1,000 for each day of violation.

Comments

Two states have enacted legislation relating to returnable beverage containers — Oregon and Vermont. Basically, both state laws apply to containers for beer and carbonated soft drinks.

The Oregon legislature enacted the first returnable container law in 1971, effective in October of 1972. The Oregon law is a mandatory deposit law — i. e., a minimum deposit is required on each beverage container. The law does not specifically require recycling or reuse of containers. A unique feature of the Oregon law is the provision for certification of beverage containers of uniform shape, size, and capacity which may be used by more than one manufacturer or bottler. The minimum deposit for such certified containers is less than that for non-uniform containers. A major restriction in the Oregon law is a prohibition on the sale of metal beverage containers with pull-tabs.

Vermont also adopted a mandatory deposit system. In 1975, the Vermont law was amended to ban non-refillable glass bottles, pull-tabs, and plastic-ring six-packs, beginning in January of 1977.

Recently, South Dakota adopted legislation which would ban beverage containers which are not reusable or biodegradable. The implementation date for this law was postponed during the 1976 legislative session from July 1, 1976, to July 1, 1978.

The language of the proposed Colorado statute is similar in some respects to the Oregon and Vermont laws. It requires a minimum deposit refund value of 5c on beverage containers and mandates refunds from manufacturers, distributors, and dealers. The Colorado proposal does not exempt biodegradable beverage containers from the requirements for deposit refund values, as is the case in Vermont, nor does it prohibit pull-tabs and plastic-ring six-packs. The Colorado proposal diverges from the Oregon-Vermont example by directly requiring the reuse or recycling of all beverage containers.

Reuse and recycling in Colorado. It has been estimated that about 45% of soft drink

containers sold in Colorado are returnable glass bottles. Beer containers are mostly non-returnable bottles and cans — at least 80% of the beer container market. For non-returnable containers, voluntary recycling programs are receiving increased attention. Scrap aluminum cans are being reclaimed at 15c per pound, steel cans at 2c per pound, and glass bottles at 1c per pound. It is estimated that about 7,500 tons of aluminum beverage cans are sold in the Denver metropolitan area each year. In the first six months of 1976, one Denver area voluntary program recycled about 702.3 tons of aluminum cans. On an annual basis, this could increase to about 20% of the amount sold. A Colorado brewer is taking advantage of the availability of scrap aluminum cans, and the volume of aluminum cans recycled is equivalent to 64% of the firm's Colorado sales.

Complexity of the returnable container issue. There have been a number of reports and studies on the impact of mandatory deposit legislation. The issues are extremely complex, involving forecasts, estimates, and actual changes in marketing practices, or the so-called "container mix" of the beverage industry. A mandatory deposit system would probably result in changes in patterns of employment within the beverage industry in order to handle the volume of returnable containers. Energy consumption can also be affected in a variety of ways, depending on the type of container mix, industry practices, and consumer response to the returnable container system. Beverage containers are a small fraction of the nation's solid waste, but, because of their high metal content, they constitute a valuable part of that waste. Mandatory deposit programs have reduced roadside beverage container litter. However, a variance of opinion exists on the effect which returnable container legislation has on the total volume of litter. Tax revenue is likely to be affected, at least temporarily, because of income tax deductions for obsolete equipment and lost wages incurred during the transition to a returnable container system. A returnable container law could have both favorable and adverse impacts in the areas of employment, resource recovery programs, the handling of solid waste, consumer prices and convenience, capital investments in industry, and energy conservation. The complexity of these issues makes it extremely difficult to accurately forecast the impact of the proposal on Colorado's environment and economy.

Popular Arguments For

1. The proposed statute is symbolic of the trend to conserve the natural resources of our state and nation. Generation of waste in the United States far exceeds that in other societies. Convenience packaging and the increased use of disposable containers are important factors in the increased volume of urban solid waste materials. Twenty years ago, 80% of all beverage containers in the United States were refillable bottles, compared to 30% in recent years. A federal study indicates that effective use of refillable bottles (i.e., an effective rate of return) offers lower overall resource consumption and environmental impact than does the use of one-way containers. The reuse of beverage containers would save raw materials and reduce the levels of mining and manufacturing involved in the production of new containers. Maximizing the use of returnable containers would result in substantial energy savings in the processing of raw aluminum for cans and in the manufacture of other disposable containers. The proposal would provide an incentive for return of beverage containers and stimulate the recovery, reuse, and recycling of those containers.

2. A 1971-1972 study of highway **litter** in Colorado estimated that monthly accumulations of **litter** consisted of 22.7% beverage cans and 4.4% beverage bottles. Over longer periods, the study found that beverage cans and bottles assumed an even larger

proportion of highway litter. The state Department of Highways is spending approximately $600,000 in the current fiscal year to pick up litter. Although it is nearly impossible to gauge the total dollar costs of litter, such factors as health hazards to human and animal life must be considered. From an aesthetic point of view, beverage containers are a critical factor in the litter problem because of their long life spans. The proposal would focus greater public awareness on litter and, by providing a deposit refund value for discarded containers, should enhance container litter collection by individuals. Oregon's returnable container law reduced the volume of beverage container **litter** in Oregon by over 60% in the first year, and, following adoption of the Vermont law, beverage container **litter** declined by 75% during the first year in that state. The proposal would help Colorado meet its litter problems in the same way.

3. The proposal is flexible in that it does not place any restrictions on types of containers and does not differentiate between deposit requirements for cans and certain bottles, as provided for in the Oregon law. Both bottles and cans may be returned for a deposit refund value. Industry in Colorado has already developed voluntary procedures for recycling or reuse of bottles and cans. Although voluntary programs recycle only a portion of beverage containers, such programs support the view that techniques exist for more massive recycling and,reuse activities. Industry has the technical skills to implement a refundable deposit program at this time. Beverage cans lend themselves to recycling because they do not require processing to remove paper labels, and a large proportion of bottles are already returnable.

4. The extremely high value of scrap aluminum (15c per pound) compared to that of glass bottles (1c per pound) suggests that the nation can no longer afford to be careless with such a valuable resource. The United States processes 545,000 tons of aluminum annually in beverage can production, and currently imports 85% of its aluminum and bauxite. A valuable material like aluminum should not be used in throwaway containers. The proposal would mandate the reuse and recycling of all beverage containers, including aluminum cans. Resource recovery systems for processing solid waste have been implemented in large population centers, but the proposed returnable container program would be of statewide benefit.

Popular Arguments Against

1. Soft drink and beer containers amount to only about 7% of all municipal **solid waste** in the United States. Denver area studies indicate that aluminum beverage cans, for example, represent much less than 1% of total **solid waste** generated. In Oregon, total roadside **litter** was reduced by only 10.6% in the first year after adoption of the mandatory deposit law. The litter problem was not solved. Public interest is usually at its highest the first year after adoption of a law, and it is expected that those who are prone to litter may revert to their old habits in subsequent years. Further, a mandatory deposit law could be destructive to the economic feasibility of future solid waste management programs because of lost revenue. Aluminum and steel cans, although only a tiny fraction of solid waste, are important to future resource recovery programs because of their relatively high value in relation to other wastes. It has been estimated that the effect of a mandatory deposit program could be a net loss of nearly $1 million to any resource recovery system for the Denver area. The mandatory deposit program would only postpone the development of more efficient resource recovery systems which deal with the other 93% of the **solid waste** problem.

2. The proposal would result in serious economic dislocations for the beverage

industry. There would be serious financial losses through the obsolescence of equipment designed for the one-way container system. Refillable bottles assumed approximately 90% of the market in Oregon after passage of that state's returnable container law. In Colorado, 55% of soft drink beverage containers and 80% beer containers are one-way containers, indicating substantial preference by consumers for disposable beverage containers. Industry and labor officials believe that a similar shift in the container mix would occur in Colorado if a returnable system were mandated. Such a law could be a disaster for the beverage canning industry. The Oregon law forced canners to shut down, with an estimated net loss of about 200 jobs. National studies also reveal that changes in the job market associated with the transition to a returnable container system involved more labor but less skilled and lower-paying employment. Capital investment would have to be made at a much earlier date than otherwise anticipated by the beverage industry and by retailers for new production equipment, container handling, storage space, bottle washing and filling lines, and additional trucks. Increased labor and other costs would result in increased prices to the consumer. This diversion of economic resources far outweighs the very limited environmental gains which could be achieved through a returnable container system.

3. National studies reveal that, under returnable container systems, net gains in the reduction of energy consumption are limited and depend on a high rate of return of glass containers. Although there is a positive reduction in electrical energy needed to produce containers, there is also a negative effect in the increase in consumption of gasoline for transportation purposes. Bottles, which would be used in greater numbers, are bulkier and heavier than cans and require more return trips to pick up the "empties" from retail outlets. Bottle washing also consumes both energy and water resources. Environmental and energy gains in one aspect of the complex beverage industry would be minimized by increased environmental burdens in another sector of the industry. In 1974, it was estimated that 32,000 persons in the United States were treated in hospitals for injuries related to carbonated soft drink bottles. A major transition to returnable bottles is likely to increase this health and safety hazard.

4. Competition in the market place is the most efficient mechanism for ensuring conservation of material and energy resources. A decline in the availability of natural resources such as aluminum and bauxite can be expected to drive up prices. It is in the interest of the beverage industry to make the most effective use of these materials. The proposal is an attempt to dictate the functioning of the highly competitive beverage industry and to eliminate the concept of consumer choice. The returnable container system is labor intensive — labor intensive industries tend to pay lower wages. The end result of the proposal would be less convenience to the consumer and less competition in the container industry. Present voluntary recycling programs in Colorado are achieving the same environmental objectives as a mandatory deposit program without the costs, operating problems, and economic displacement associated with the proposal. Litter and solid waste are being reduced, and energy and natural resources are being conserved, by these volunteer recycling programs. Money paid out in these programs is not deposit refunds but payment based on the scrap value of the containers.

AMENDMENT NO. 9 — STATUTE - INITIATED BY PETITION

Ballot Title: An act to protect and represent consumers of public utilities services by creating a department of public counselor, and concerning financial disclosures by public utilities commissioners and the public counselor, approval of the issuance of telephone and telegraph company securities, the burden of proof for utility companies seeking rate increases, criminal and civil remedies for violations of this act, judicial review of public utilities commission decisions, and purposes and procedures of the public utilities commission.

Provisions of the Proposed Statute

Many provisions of existing law would be rewritten by the proposed statute. The major new statutory provisions in the proposal are detailed below.

1. The Department of Public Counselor would be created as a new principal department within the executive branch of state government. The department would be headed by the public counselor, an attorney appointed by the Governor with the consent of the Senate and paid $33,000 annually (the same salary received by members of the Public Utilities Commission). The public counselor and his employees, as representatives of residential utility consumers, would be empowered to: (a) appear at hearings of the Colorado Public Utilities Commission (PUC); (b) institute proceedings before the commission, in court, or before other administrative agencies on behalf of such consumers; and (c) exercise investigatory powers. The department would be funded through a fee imposed on the gross intrastate operating revenue of Colorado's public utilities (the method currently used to fund the PUC). If, during any three consecutive calendar years, the total revenue from rate increases requested by public utilities in the state were less than $10,000,000, the department would cease to exist, unless reestablished by the General Assembly.

2. In order to justify a proposed rate increase before the PUC, a public utility would be required to show that: (a) it practices "operational and management efficiency in its construction programs, future planning, and financing programs" and "sound natural resource management and environmental safety"; and (b) **each** current rate the utility proposes to increase is "confiscatory" — i.e., it does not afford a reasonable return on the value of the utility company's property at the time it is used in public service.

3. Public utilities would be required to give 30 days' written notice of proposed rate increases to affected active consumers, in a form approved by the PUC and the public counselor.

4. Public utilities would be required to make appropriate refunds, with interest and within 30 days, if a district court modified or set aside a PUC decision which granted a rate increase.

5. Specified inappropriate or corrupt acts on the part of members and employees of the PUC, the public counselor, and his employees would be prohibited, and authority would be included in the law for consumer suits in civil court against persons involved in the forbidden activities.

6. The three members of the PUC, and the public counselor, would be subjected to the financial disclosure requirements of the "Colorado Sunshine Act of 1972", including

annual public disclosure of: (a) sources of income; (b) business, insurance, and trust interests; (c) property interests; (d) debts; and (e) relationships with businesses regulated by the state.

Additional provisions of the proposed statute include: (a) a requirement for open public inspection of "every file, official document, record, and paper in the office of the commission", with the exception of personnel records; (b) a requirement that transcripts of commission proceedings be made available to the public counselor and to indigent persons without charge; (c) authority for the award of litigation costs and attorneys' fees to parties "representing the interests of the general ratepaying public" in actions before the commission and to indigent persons or persons representing 25 or more utility consumers in court proceedings which are based on decisions of the commission; (d) elimination of the existing provision of law which guarantees that proposed rate increases will automatically go into effect within a time period of between 120 and 210 days if the PUC fails to act on the proposal within that period; (e) a requirement that the issuance of stocks, bonds, and notes by telephone and telegraph utilities be approved by the PUC (as is presently the case for electric and gas utility stocks); (f) authority for a district court to review new evidence in appeals of commission decisions if there are allegations of errors, omissions, or irregularities in the commission's record; and (g) statutory specification of the grounds for judicial modification or invalidation of a commission decision.

Comments

The Colorado Public Utilities Commission. The state Public Utilities Commission (PUC) currently has authority for the economic regulation of public utility companies (electric, gas, telephone, telegraph, water, pipeline, common carrier, and trash-hauling utilities), including municipally owned utilities to the extent of their services outside their own boundaries. The latter is particularly important to municipalities that have expanded water treatment plants and other facilities designed to meet service requests of neighboring unincorporated areas or communities. The proposal could have substantial impact on these municipal services. The commission is an independent body within the state Department of Regulatory Agencies. Its functions include: (a) the fixing of rates to be charged for utility services; (b) the regulation of levels of services and provision of utility commodities; (c) the supervision of extension, repair, and replacement of utility services; (d) the approval or disapproval of construction of new utility facilities, plants, or systems; and (e) the determination of routes and schedules of common carriers.

The three members of the PUC are appointed by the Governor, with the consent of the Senate, for six-year terms. A permanent full-time staff of engineers, statisticians, accountants, and investigative personnel aids the PUC in carrying out its duties. The commission employs attorneys as examiners in its hearings, and legal services are provided to the commission through the Office of the Attorney General.

The role of the commission is generally that of maximizing the public interest in the provision of public utility services through the balancing of levels and costs of services. It must, by law, set rates which are just, reasonable, sufficient, nondiscriminatory, and nonpreferential. The PUC presently allows special interest groups (e.g., consumer advocacy groups or associations representing governmental bodies) to "intervene" in its rate-setting proceedings — this type of "intervention" is allowed on an individual basis for particular hearings. An intervenor not represented by an attorney is limited by regulation of the PUC to making a statement of position and cannot examine or cross-examine witnesses.

Proposed Department of Public Counselor. The proposed statute would create a government agency to act as a permanent "intervenor" in commission proceedings as a representative of residential utility consumers. The agency would be publicly funded and would have official governmental investigatory powers.

Status as a principal department. The Colorado Constitution prohibits the creation of more than twenty principal departments within the executive branch of state government. There are currently nineteen such departments. The proposed Department of Public Counselor would be the twentieth principal department, and the constitutional maximum would be reached.

The burden of proof for rate increases. The criteria to be used by the PUC in examining requests for utility rate increases are not currently specified by law, beyond the requirements for "just, reasonable, and sufficient" rates. The proposed statute would include in the law two broad criteria for this type of examination: (a) operational and management efficiency; and (b) sound natural resource management and environmental safety. At present, the commission examines operational and management efficiency in its rate hearings, but defers to the actions of other state, federal, and local agencies in matters of the environment and natural resources. The proposal does not necessarily preclude continuation of this procedure. It does, as a minimum, provide statutory grounds for challenges of utility company natural resource and environmental policies by intervenors before the commission.

In addition, the proposal would require the PUC to set utility rates at "nonconfiscatory" rather than at "sufficient" levels — a utility company seeking a rate increase would be required to show that **each** current rate it proposes to increase is "confiscatory", i.e., it does not afford a reasonable return on the value of the company's property at the time it is used in public service. The distinction between the terms "sufficient" and "nonconfiscatory" is not entirely clear, and some utility economists use them interchangeably. However, it is possible that "sufficient" rates allow greater returns to utility company stockholders than do "nonconfiscatory" rates — proponents believe that the proposal would narrow the margin within which utility company profits are set.

Prohibited acts. Current Colorado law prohibits specific corrupt acts by all government officials and employees (bribery, solicitation of unlawful compensation, unlawful influence of a public servant, failure to disclose a conflict of interest, misuse of official information, and official misconduct). In addition, present law prohibits members and employees of the PUC from owning financial interests in utility companies regulated by the commission.

The proposed statute would apply more detailed prohibitions of corrupt acts specifically to government officials and employees involved in the regulation of public utilities. It would be a felony for a member or employee of the PUC to use his position to influence a decision of the commission in which he had a personal financial interest. It would be a misdemeanor for a member or employee of the PUC, for the public counselor, or for an employee of the counselor to accept a gift or other thing of value from a public utility, and it would also be a misdemeanor to offer such gifts. Civil suits for damages of up to three times the amount of any unlawful gain resulting from these offenses would be allowed (with a limit of one judgment for damages for each offense). It would be a misdemeanor for a member or employee of the PUC to communicate concerning an action before the commission with any party to that action, except pursuant to the "investigatory, inspection, subpoena, or discovery powers" of the PUC and unless all parties to the action have notice of the communication. Any unlawfully influenced decision of the commission could be invalidated by judicial action.

Termination of department. Under the terms of the proposal, the Department of Public Counselor would cease to exist after three consecutive years had elapsed during which less than $10,000,000 in the aggregate had been requested in rate increases by Colorado public utilities. The General Assembly would, of course, retain the option of reestablishing the department. Under foreseeable economic conditions, however, and in view of the fact that the rates of more than 4,000 utility companies are subject to review by the PUC, it is unlikely that the automatic termination of the department would occur.

Procedural requirements. The proposed statute would include in Colorado law several procedural requirements for regulation of utility companies by the PUC. On the whole, the proposed statutory procedural requirements parallel current practices of the commission and the courts. Perhaps the most significant procedural change in the proposal would be the elimination of the section of current law which guarantees that rate increases proposed by utility companies will go into effect within 210 days after they are filed with the PUC in the absence of affirmative action on the filing by the commission.

Technical considerations. It is important to note two technical factors in the proposed statute. First, the Department of Public Counselor would be created effective January 1, 1977. However, no specific appropriation of funds for the operation of the department is included in the proposal. Although the agency would be funded from the revenue received from a fee on the operating revenue of public utilities, the use of this revenue for that purpose is contingent on action by the General Assembly. Second, the proposal inadvertently omits key language from a section of existing law which sets forth the process for commission review of utility rate increase proposals.

Popular Arguments For

1. The proposed statute would provide continuous professional representation in the utility regulation process for the interests of residential utility consumers. Residential consumers are affected directly by a majority of the decisions of the Public Utilities Commission, but they are currently underrepresented in the making of those decisions. Although rate-making is in many respects a legislative procedure, the proponents of the proposed statute compare the utility regulation process to a courtroom situation. In this analogy, the PUC acts as judge and jury and utility companies act as plaintiffs or prosecutors. Only one element is missing — representation of the defendant, the residential utility consumer. The proposed statute would provide this defense, at an insignificant per capita cost. In addition, the public counselor would present issues to the commission which are of special concern to residential utility consumers — issues such as natural resource and environmental policy and rate schedules which discourage energy conservation through reduced costs to bulk users of utility services.

2. The setting of utility rates by the PUC has a pervasive effect on the financial well-being of all Colorado citizens. The proposed statute would open up the process through which those rates are set and would make the regulation of utility companies more intelligible to the consumer. Many present consumer-oriented practices would be mandated by law rather than be carried out at the discretion of the commission. The proposal would guarantee financial disclosure by members of the commission, subject the issuance of telephone utility stocks to commission approval, require easily understood notice of proposed rate increases, make financial assistance available to public interest intervenors before the commission and in court proceedings relating to utility rates, provide specific safeguards against corrupt and collusive acts by officials involved in utility

regulation would be particularly harmful to Colorado's many small non-fixed utilities, such as trash haulers, since the expense of seeking a rate increase could be greatly increased. In addition, it is inappropriate to create an entire principal executive department (on the level of the state Departments of Education, Social Services, Health, and Institutions) for a function as limited as consumer advocacy before the Public Utilities Commission.

4. The proposed statute would eliminate from Colorado's utility law the only guarantee that the Public Utilities Commission will act in timely fashion on requests for rate increases. Without the 210-day deadline for commission response to such requests, an unlimited suspension of all rate increases could occur. The ultimate public interest requires reasonably prompt approval of rate increases necessitated by inflationary pressures — utility companies must remain financially stable in order to serve that public interest. Seven months is adequate time for commission review of utility company proposals, and any difficulties encountered by the commission in examining rate increase requests are a function of insufficient professional staff levels rather than of the statutory deadline for commission action. The lack of a specific deadline for action by the commission could deny a utility company its right to a speedy and efficient resolution of the controversy over a rate increase proposal.

5. Telephone utility companies have traditionally been allowed to "cross-subsidize" the services which they provide to residential consumers. In effect, the rates paid by business consumers of telephone services have subsidized those paid by residential consumers, and services have been provided to residential consumers at less than actual cost. The proposal, however, would require a utility company seeking a rate increase to show that **each** current rate it proposes to increase is "confiscatory". The effect of this new requirement could to be equalize completely the basis on which residential and business rates for telephone services are set and to eliminate the "cross-subsidization" of residential charges. In this case, the proposed statute would not realize its announced purpose of furthering the interests of residential utility consumers.

Limitation to the "extent" of existing taxation. One section of the proposed amendment specifies that taxes which are legally authorized as of its adoption would continue "only to the extent and rates" at which they are imposed at that time. It is not clear whether the word "extent", as used in this context, refers to the **tax base** of the existing tax or to the **tax liability** which results from its imposition. Proponents believe that the terms "extent and rates" should be considered together and in conjunction with the proposal's intent provision relating to "governmental acts". They believe that changes in tax liability because of "private acts" would not be subject to the proposed amendment. However, if the term "extent" were eventually determined to mean "tax liability", the effect of the proposal on existing revenue sources would be significant.

For example, the relationship of the state income tax to the federal income tax is such that a decrease in federal taxes produces an increase in state income tax liability. Such an increase would result from a federal "governmental act". Would the increase in state income tax liability require approval by registered electors?

Under the existing property tax system, the total property tax liability within a given taxing jurisdiction increases from year to year as individual property valuations increase or as newly constructed or annexed property is placed on the tax rolls. This type of increase occurs even if the property tax levy, or rate, remains the same. Would the proposal require that the appropriate property tax levy be adjusted downward as the aggregate of property valuations within a taxing jurisdiction increases (unless a special election were held to maintain it at its previous level)? Property annexations and the upward adjustment of property valuations by a county assessor are "governmental acts" which result in "increased taxes".

Similar questions can be raised in connection with personal income taxes and sales taxes. Would the proposal require that the appropriate rates of taxation be adjusted downward as the aggregate tax bases against which the rates are applied (personal incomes and total sales receipts) increase? (It is possible that the proposal would not have this effect, even though the "extent" of taxation had expanded, since personal incomes and retail sales receipts do not necessarily increase because of "governmental acts".)

Further questions arise in relation to **individual** tax liabilities. Would the proposal require that no individual liabilities be increased in "extent"? If this is the case, would property tax levies vary from taxpayer to taxpayer (in contravention of present constitutional requirements), and would a flat rate of income taxation be required (rather than the present progressively designed rates)?

Annual property tax levies. In Colorado, each year is considered the year of original assessment for property tax purposes, and each taxing jurisdiction must certify the rate of its property tax levy to the appropriate board of county commissioners. The board of county commissioners then sets the total property tax, as required by law. Accordingly, the property tax levy on a given piece of property may vary from year to year. Since a new levy is made each year, would the proposal require an annual vote of the electorate in each jurisdiction levying a property tax?

Property tax professionals cite existing statutes, court decisions, and the language of the proposal as contravening the intent of the sponsors, and believe that an annual vote in each taxing jurisdiction would be required. Regardless of the objectives of the sponsors, the courts may have to construe the meaning of the proposal.

Fees, charges, grants, and fines. The proposed amendment defines the word "tax" to include: ". . . any and all devices by which wealth in any form is transferred . . . to any

level of government of the state or any political subdivision thereof". The object of the sponsors is that the proposal be as inclusive as possible. The sponsors are concerned that, as resistance to taxes increases in one area, the government searches for new sources of revenue in other areas. The language of the proposed amendment seems to apply to all types of revenue sources. The proposal would affect increases in tap fees and charges for water service, waste disposal fees, park and recreation revenue, golf green fees, student tuition charges, student activity fees, bus fares, health and sanitation inspection charges, court fines, traffic tickets, parking charges, gate admissions, equipment rental fees, occupational license fees, recording fees, application fees, and a variety of other public fees, permits, and miscellaneous charges. In addition, the proposal may apply to grants made between governmental entities and to donations made by individuals on behalf of public programs.

Many fees and charges made by governmental agencies are directly related to the costs involved in providing services. Government officials are concerned as to how this complex array of charges could be periodically adjusted if approval by a majority of registered electors were required. Proponents believe that compliance with the proposed amendment could occur through elections offering a comprehensive tax package, resulting in increased revenue, or through governmental withdrawal from a particular program or activity, resulting in a reduction in governmental expenditure. That is, if a particular governmental unit cannot generate support from a majority of the registered electors in the affected jurisdiction, the proponents believe that the governmental unit should not offer the service in question within that jurisdiction. In many urban communities, as many as a half-dozen local governmental jurisdictions serve a given area. It may be extremely difficult for voters to become informed about all the minor service charges normally considered by these governing bodies. Often only a small percentage of the electorate utilizes a given service.

Majority of registered electors. The proposal requires that new or increased revenue and taxes be approved by a majority of the registered electors **residing** within the jurisdictional boundaries of the appropriate taxing authority. At nearly all elections held in Colorado today, including school bond elections, a majority of those **voting** on an issue determine the outcome. The proposal would substantially change this procedure. Under the proposal, if 55% of the registered electors voted in a given election, as few as 6% of the registered electors could defeat the measure. Those who did not vote would automatically be ascribed a "no" vote under the proposal. If less than a majority of the registered electorate participated in an election, a revenue measure would automatically be defeated, even if the measure were unanimously approved by all those who voted.

Popular Arguments For

1. The burden of state and local government taxes has reached the point at which Colorado residents can no longer afford to support the continued growth of governmental programs. Sufficient tax dollars are collected today. Various governmental units must learn to live within their budgets in the same way that individual families in Colorado must make choices as to how family incomes should be spent — most families cannot increase their incomes at their own pleasure. The proposed amendment would ensure that governmental units would not be able to raise new revenue without the approval of the majority of the registered electors in the affected jurisdictions.

2. The tax structures of state and local governments are designed to respond to growth

in the economy. A limitation on new revenue would continue to permit substantial growth in state and local tax revenue. The state's progressive income tax, for example, permits increases in state income tax receipts when individual taxable income rises. State and local sales taxes respond directly to the increases in personal income reflected by consumer expenditure patterns. The proposal is designed to allow reasonable growth in government revenue, while avoiding further erosion of family income by additional, expanded, or new tax measures or charges.

3. National statistics reveal that governmental employment is growing faster than employment in the private sector of the economy. Consequently, a larger and larger proportion of available personal income is used to support governmental functions. Limiting new revenue sources is the most effective way to limit the growth of government. A reduction in tax dollars used for government would mean that families would be in a better position to determine and meet their own needs independently of governmental decision-making.

4. The proposed amendment would encourage government to be more responsible in providing citizens with an understanding of the need for new revenue. The requirement for an affirmative vote of a majority of registered electors would mean that a positive response would have to be made in support of a new tax. No longer would a handful of the electorate be able to approve a bond issue that would impose a tax increase on the majority. The proposal would encourage careful planning for the revenue programs of state and local government, and taxation by increments would be eliminated. Comprehensive tax programs would have to be offered which would gain the support of a majority of registered electors in the affected jurisdiction.

5. The proposed amendment could put a brake on the expansion of government programs and services. Government is becoming so complex that state legislators, county commissioners, and city councilmen must spend a disproportionate amount of time in public service. Fewer and fewer persons can devote the time necessary to participate in public policy-making functions. This is destructive of our traditional concept of a citizen government. A reduction in the availability of revenue would mean that government would have to concentrate its activities in a limited number of areas. Demands on policy-makers would be reduced, allowing greater citizen involvement in state and local government.

Popular Arguments Against

1. The proposed amendment weakens the tradition of representative government established under the federal and state constitutions. There are many day-to-day decisions made by the governing bodies of state, county, and municipal governments and water and sanitation districts, metropolitan districts, school districts, recreation districts, and special improvement districts which affect or slightly modify the revenue of government. Many of these decisions are made in response to federal mandates or economic changes over which state and local governments have no control. If, for example, the price of fuel consumed by a municipal power plant increases, this increase is included as part of the cost of providing electric service. Under the proposal, an adjustment in rates could not be made without approval by a majority of the registered voters in the municipality. Private utilities would not bear a similar burden. It is not reasonable to require a vote of a majority of registered electors for every variation in public fees or service charges. This responsibility can only be carried out with efficiency and minimal cost by an elected governing body.

2. The proposed amendment would preclude even those revisions in the tax structure which would not increase total revenue. Amendment No. 7, the proposal to repeal sales taxes on food, probably could not be implemented if this proposal were adopted. Amendment No. 7 would require the adoption of replacement revenue. Under this proposal, however, any new tax or additional tax would be required by the constitution to receive approval by a majority of **registered electors** in Colorado. With normal general election turnouts, the opposition of 10% or less of the voters could easily defeat any such revenue proposal. The proposal would greatly limit the opportunities for revision or modification of basic tax structures. For instance, the proposal may tend to freeze existing property tax inequities into the system, due to the complexity of issues and the elections requirements of the proposal.

3. The proposal goes far beyond the announced purpose of curtailing governmental expenditure. The complexity of attempting to hold public referenda on every type of fee, rate, tuition, admission charge, and bus fare would effectively preclude the use of direct charges as a method of support for government programs. Such charges must be adjusted periodically to meet changes in the costs of materials and labor and other inflationary pressures. The "benefit" theory of taxation would be undermined by the proposal. In essence, government services in many areas probably would have to be abolished because the range of service benefits only a limited number of persons. Although many individuals believe that government should not be in the business of providing trash collection, electric services, school lunches, or recreation programs, for example, these issues ought to be considered on their own merits rather than jeopardized under the guise of a "tax limitation" proposal.

4. The concept that an individual who does not exercise his right to vote shall be considered as voting "no", as required by the proposal, is contrary to our democratic system. It would make just as much sense to reverse the concept and consider a non-voter as voting "yes". This could be accomplished by revising the language in the proposal to provide that any tax revision shall go into effect unless a majority of the registered electors cast a "no" vote. Either concept is unfair. Decisions made at the polls should be by a majority of those actually voting on a given issue.

5. The language of the proposed amendment is broad, vague, and confusing. The proposal could require that minor revisions in regulations promulgated by tax administrators or revisions which occur as a result of court suits be submitted to a vote of the registered electors. If the proposal were determined to be this broad, the detailed aspects of tax laws would have to be given voter approval. There is no guarantee that such considerations could be handled in tax proposals submitted at general elections. Numerous special elections could be required at unnecessary public expense. If it becomes too difficult to make revenue adjustments, public officials would be unwilling to submit reasonable revisions in the tax structure to the voters or to reduce taxes in times of surplus. The proposal would result in substantial waste of public funds. Further, the election requirements in the proposal would preempt prompt governmental response in times of emergency or special need.