

University of Denver

Digital Commons @ DU

All Publications (Colorado Legislative Council)

Colorado Legislative Council Research
Publications

1992

0369 Analysis of 1992 Ballot Proposals

Colorado Legislative Council

Follow this and additional works at: https://digitalcommons.du.edu/colc_all

Recommended Citation

Colorado Legislative Council, "0369 Analysis of 1992 Ballot Proposals" (1992). *All Publications (Colorado Legislative Council)*. 377.

https://digitalcommons.du.edu/colc_all/377

This Article is brought to you for free and open access by the Colorado Legislative Council Research Publications at Digital Commons @ DU. It has been accepted for inclusion in All Publications (Colorado Legislative Council) by an authorized administrator of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

0369 Analysis of 1992 Ballot Proposals

FILE COPY

**DO NOT REMOVE
FROM OFFICE**

**LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY**



**AN ANALYSIS OF
1992 BALLOT PROPOSALS**

**Research Publication No. 369
1992**

COLORADO GENERAL ASSEMBLY

OFFICERS
Sen. Ted L. Strickland
Chairman
Rep. Chuck Berry
Vice Chairman

STAFF
Charles S. Brown
Director
David Hite
Deputy Director
Stanley D. Eloffson
Assistant Director



LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
(303) 866-3521

MEMBERS
Sen. Bob Martinez
Sen. Harold McCormick
Sen. Ray Powers
Sen. Bill Schroeder
Sen. Larry Trujillo
Sen. Jeffrey Wells
Rep. Jeanne Faatz
Rep. John Irwin
Rep. Scott McInnis
Rep. Paul Schauer
Rep. Samuel Williams
Rep. Ruth Wright

September 3, 1992

This analysis of statewide measures to be decided at the 1992 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and the general public pursuant to section 2-3-303, Colorado Revised Statutes. Eleven proposed constitutional amendments and two proposed statutes are analyzed in this publication.

Referendums A, B, and C are referred by the General Assembly. Amendments 1 through 10 are measures initiated by the people. If approved by the voters, the constitutional amendments could only be revised by a vote of the electors at a subsequent general election.

Initiated measures are placed on the ballot by petition of the registered electors. Initiated measures require the signature of registered electors in an amount equal to five percent of votes cast for all candidates for the Office of Secretary of State at the previous general election, currently totaling 49,279 signatures. Signatures may be collected by volunteers or paid petition circulators.

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 various proposals may not have been included, major arguments have been set forth so that each citizen may decide the relative merits of each proposal.

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

Respectfully submitted,

/s/ Senator Ted Strickland
Chairman
Colorado Legislative Council

TABLE OF CONTENTS

Referendum A	Rights of Crime Victims	1
Referendum B	Obsolete Provisions	3
Referendum C	Local Vote on Gaming After Statewide Vote	4
Amendment 1	Tax Limitations - Voting	5
Amendment 2	No Protected Status	9
Introductory Comments – Limited Gaming (Applicable to Amendments 3, 4, 5, and 9)		12
Amendment 3	Limited Gaming – Selected Western and Southern Cities and Counties	14
Amendment 4	Limited Gaming – Selected Eastern and Southern Cities and Counties	16
Amendment 5	Limited Gaming – Parachute	17
Amendment 6	Education Reform – Sales Tax	19
Amendment 7	Vouchers for Education	23
Amendment 8	Lottery Revenues for Parks, Recreation, Wildlife	26
Amendment 9	Limited Gaming – Selected Area in Lower Downtown Denver	28
Amendment 10	Black Bear Hunting	30

* * * * *

REFERENDUM A – CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Rights of Crime Victims

Ballot Title: *An amendment to Article II of the Constitution of the State of Colorado, concerning the rights of crime victims.*

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- provide that a person who is the victim of a crime – or the person’s designee, legal guardian, or surviving immediate family members, if the victim is deceased – shall have the right to be heard when relevant and to be informed of and present at all critical stages in the criminal justice process; and
- direct the General Assembly to define all terms used in the proposal, including the term “critical stages.”

Background

In the early 1980s, a President’s Task Force on Victims of Crime was created to review and make recommendations regarding the treatment of crime victims in the United States. Through multiple public hearings, the task force learned that crime victims were often ignored, blamed, and mistreated. One resulting recommendation was that the Sixth Amendment of the United States Constitution be amended to include that “the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.” In response to this recommendation, eight states – Arizona, California, Florida, Michigan, New Jersey, Rhode Island, Texas, and Washington – adopted constitutional amendments which afford rights to crime victims. Five states – Colorado, Illinois, Kansas, Missouri, and New Mexico – will be voting on proposed victim’s rights amendments in the 1992 general election.

Current Law

The Colorado General Assembly responded to the President’s task force recommendations by enacting various statutory provisions pertaining to victim compensation and victim services. No constitutional provisions relating to victim’s rights were adopted.

Specifically, the General Assembly responded to the task force recommendations by strengthening its crime victim compensation system, which enables a crime victim to apply for compensation of certain losses resulting from specific crimes. The General Assembly also established the Victims and Witnesses Assistance and Law Enforcement Fund (VALE Fund) to provide moneys for the payment of victim and witness services, such as early crisis intervention programs, referral services, translation services, counseling programs, and criminal justice educational programs. VALE Fund moneys are obtained from surcharges collected on criminal actions and traffic offenses.

In addition, the General Assembly established a set of statutory guidelines to encourage law enforcement agencies, prosecutors, and judges to help assure recommended rights to victims of and witnesses to crime. The guidelines recommend that crime victims and witnesses be informed of the status of their case, the availability of financial assistance and victim services, and the opportunity to be present at the sentencing hearing and to sub-

mit a victim impact statement to the court. It is important to note that these are guidelines for the appropriate officials and enforcement of them is not required.

Comments on the Proposed Constitutional Amendment

By adding a section to the Bill of Rights of the Colorado Constitution, the proposed amendment would provide mandatory constitutional rights to crime victims. Adoption of this amendment would result in the modification of current statutory provisions which recommend, but do not require, the enforcement of rights to crime victims.

Enabling legislation. The process of defining and implementing constitutional amendments is accomplished through enabling legislation. The General Assembly has already adopted enabling legislation, described below, for the proposed amendment. This legislation would become effective upon voter approval of the proposed amendment and proclamation of the Governor.

The legislation which will implement the proposed constitutional amendment provides a detailed list of definitions, including a definition of the crimes for which victim's rights are assured. These crimes include all crimes against the person such as murder, manslaughter, homicide, assault, and kidnapping. Most misdemeanors and crimes against property are not included.

Also provided in the definition section is a definition of "critical stages," which are the following stages in the criminal justice process:

Prior to trial:

the filing of charges, the preliminary hearing, any bond reduction or modification hearing, the arraignment, any hearing on motions, and any disposition of the complaint or charges;

Trial, sentencing, appeals:

the trial, any sentencing hearing, any appellate review, and any subsequent modification of the sentence; and

Probation, parole, discharge:

any probation revocation hearing, any attack of a judgment, any parole application or revocation hearing, the parole or discharge from prison of the convicted person, the transfer or placement of the convicted person in a non-secured facility, and the transfer, release, or escape of the convicted person from any state hospital.

The enabling legislation also enumerates the rights afforded to crime victims. Some of these rights include:

- the right to be treated with fairness, respect, and dignity;
- the right to be informed of and present at all critical stages of the criminal justice process; and
- the right to be heard at any court proceeding which involves a bond reduction or modification, the acceptance of a negotiated plea agreement, or the sentencing of the defendant.

In addition, the enabling legislation requires law enforcement, prosecutorial, judicial, and correctional agencies to enforce and assure the rights of crime victims.

It is important to note that none of the enumerated rights in the enabling legislation diminish the rights of the defendant. If granting a particular right to a victim infringes on the defendant's right to a fair trial, the court has the discretion to deny granting the victim's right.

Arguments For

1) By establishing constitutional rights to crime victims, this amendment would help ensure that crime victims do not feel mistreated and ignored by the criminal justice system. While crime victims' cooperation is crucial in prosecuting cases, they are often treated as mere witnesses of the state, without consideration of their feelings or need for relevant information at critical stages of the criminal justice process. Such treatment increases victims' feelings of mistrust and frustration with the criminal justice system. As a result, victims may leave the system feeling revictimized.

2) With the accompanying enabling legislation, this proposal will help provide crime victims with the basic education and information they need to understand the criminal justice system. The criminal justice system is complex. Crime victims often have limited knowledge regarding the various components of the system. They often do not know what questions to ask or to whom questions should be addressed. Upon adoption of this proposal, criminal justice agencies will be responsible for ensuring that crime victims are educated regarding such information as the facts of their case, any hearings pertaining to their case, and the opportunity to be present and heard at different stages throughout the court process.

3) Current statutory provisions are inadequate. While a number of recommended rights are provided in current law, criminal justice agencies and the courts are only encouraged, not required, to enforce these rights. The result is disparity in the respect shown and participation granted to victims of crime. The proposed constitutional amendment would eliminate this disparity by requiring the enforcement of victims' rights.

Arguments Against

1) Statutory provisions are currently in place which afford sufficient rights to victims of and witnesses to crime. Criminal justice agencies make an effort to assure these rights whenever possible.

Obsolete Provisions

2) Since the district attorney, Attorney General, Department of Public Safety, Department of Institutions, and Department of Corrections play important roles in the criminal justice system, no one agency would be responsible for administering and enforcing the proposed amendment and enabling legislation. As coordination between these agencies is often difficult and time consuming, crime victims may be left feeling more alienated and confused by the system than they currently are.

3) The amendment is trying to fix what may be primarily administrative problems through a constitutional amendment. It addresses the perceived inability of the criminal justice system to do an adequate job of working with victims. A constitutional amendment is not needed to address these problems, which could be adequately resolved through statutory and administrative changes.

REFERENDUM B – CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Obsolete Provisions

Ballot Title: *An amendment to Articles VII, IX, XI, and XII of the Constitution of the State of Colorado, concerning the repeal of obsolete constitutional provisions.*

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- delete the requirement that general elections be held at specified times during the years of 1876, 1877, and 1878;
- delete the requirement that the office of Superintendent of Public Instruction be known as the office of Commissioner of Education;
- delete provisions pertaining to the expiration of terms for the state board of land commissioners during 1913, 1915, and 1917;
- delete provisions pertaining to the retired public debt; and
- amend a reference in the veterans' preference provisions by striking the term "unremarried widow" and substituting "surviving spouse."

Comments on the Proposed Amendment

This referred constitutional amendment is part of a continuing effort on the part of the General Assembly to refer "housekeeping" amendments to the voters with the intent of eliminating from the state constitution provisions that are overly specific, obsolete, or no longer serve the purpose for which they were adopted. As an example of previous amendments submitted for these purposes, in 1990 the voters approved an amendment to delete reference to service in the Spanish-American War in relation to receiving veterans' preference under the state personnel system.

The effort to delete obsolete provisions from the constitution is accomplished as a series of amendments offered every two years. The General Assembly is prohibited under the constitution from proposing amendments to more than six articles of the constitution at any general election. The amendments in this proposal are made to four articles of the constitution and are technical in nature.

The first change would remove obsolete language which set annual elections immediately following Colorado statehood, namely in the years of 1876, 1877, and 1878. As amended, the section of the constitution would read, "The general election shall be held on such day as may be prescribed by law." Currently, general elections are set by law to be held the first Tuesday in November in even numbered years.

The second proposed change would strike language adopted by constitutional amendment in 1946 at which time the office of Superintendent of Public Instruction became the office of the Commissioner of Education. This amendment would strike a reference to the Superintendent of Public Instruction and would remove from the constitution the effective date when the office of Commissioner of Education was established.

Language to be deleted in another section of the constitution concerns the original terms of members of the office of the state land board. A constitutional amendment adopted in 1910 set the expiration dates for the terms of office of three members of the board to be in 1913, 1915, and 1917. Deletion of this language would not affect the duties of the board, which provide for the direction, control, and disposition of public lands, nor would it change the staggered terms of board members which are set by statute.

Another change would delete language under which bonds were issued by the state for payment of outstanding warrants dated from 1887 to 1897 and for state highway purposes in the 1920s. The bonds issued under these provisions have long since been redeemed in full, rendering these provisions obsolete.

The final change would strike the term "unremarried widow" and substitute "surviving spouse" in the veterans' preference provision of the state personnel system. This change reflects the fact that many women have served in the armed services and assures that female veterans have the same legal status as male veterans. In addition, the proposed change in language conforms with the provision in the Colorado Constitution that guarantees that equality of rights shall not be denied or abridged by the state or any of its political subdivisions on account of sex.

Local Vote on Gaming After Statewide Vote

Argument For

1) Approval of this measure will continue the effort to reform the Colorado Constitution by deleting obsolete provisions. For example, the specific dates contained in several of these provisions no longer have a useful purpose in the constitution. The constitution should not be cluttered with archaic and obsolete provisions.

Argument Against

1) While the constitutional provisions that would be deleted under this proposal are obsolete and no longer have application, it does no harm to leave them in the constitution as a matter of historical significance.

REFERENDUM C – CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Local Vote on Gaming After Statewide Vote

Ballot Title:	<i>An amendment to section 9 of Article XVIII of the Constitution of the State of Colorado, stating that in any city, town, or county which has been granted constitutional authority on or after November 3, 1992, for limited gaming within its boundaries, such limited gaming shall not be lawful unless first approved by an affirmative vote of the electorate of such city, town, or unincorporated portion of a county, and adding a new section 10 to Article XVIII to provide for the severability of constitutional provisions.</i>
---------------	--

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- require the approval of the voters of a city, town, or unincorporated portion of a county before limited gambling, as approved by a statewide vote on a constitutional amendment, shall be lawful in that locality;
- provide that, if voters do not approve limited gambling in a local election, a period of four years shall elapse before the question may be submitted again; and
- provide that the effective date for this proposal shall be on or after the November 3, 1992 general election, thus including gambling proposals on the 1992 ballot.

Comments on the Proposed Amendment

Adoption of this amendment would require local approval of gambling in addition to statewide approval. This requirement would begin with any gambling proposals that may be adopted in the 1992 election. Approval for extending limited gambling is now accomplished by statewide vote on the ballot question of amending the Colorado Constitution which lists the areas in which gambling is permitted. No local vote is currently required.

The cities in which gambling is now permitted – Black Hawk, Central City, and Cripple Creek – would not be affected by this proposal, nor would this provision apply to Indian Reservations where gambling is permitted under federal law.

Arguments For

1) The impact of gambling on a community is of such importance, with far-reaching implications, that the question of expansion into a new area should be determined by local vote, which would follow an affirmative statewide vote. The people who will be directly affected by a proposed gambling site are best able to weigh the advantages and disadvantages of gambling in their community.

2) Passage of this constitutional amendment would assure that gambling would not be conducted in communities that did not want it. Persons who are in support of the extension of gambling for a community are not necessarily speaking for the majority of people in that locality. Simply having the question on the ballot for a statewide vote does not necessarily mean that local concerns have been heard. Elections have been conducted in some of the cities proposed as new gambling communities, and the results have been negative in some towns and positive in others.

3) A community should not have to face pressures involving gambling proposals more than once every four years. By limiting a vote on a gambling question to every four years, the issue will be less of a source of controversy for a community. For example, a gambling initiative can result in speculative activities that affect property values and may affect the development of businesses and neighborhoods near the proposed gambling locations. These pressures can be divisive and should not be a constant source of community conflict.

Arguments Against

1) Restricting a vote on a gambling proposal to not more than once every four years establishes a precedent in limiting the initiative process. The right of the initiative is a powerful tool of the people of the state in making changes that might otherwise not be possible. Further, the proposal will give a locality veto power over what the voters of the state have thought to be a good idea. Questions of whether it is appropriate to limit the right of initiative, and whether it is appropriate for an area to be able to overturn the statewide vote of the people, should be considered seriously.

2) With this proposal in place, proponents of gambling may argue that new gambling proposals should be adopted, saying "Let this city decide whether it wants limited gambling." The argument then is shifted from the state level to the local level. It becomes an argument based not on the merits of the proposal – "Is this proposal

beneficial to the state of Colorado?” – but on a procedural detail of merely asking the state voters to allow a local vote on the question.

AMENDMENT 1 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Tax Limitations – Voting

Ballot Title: *An amendment to the Colorado Constitution to require voter approval for certain state and local government tax revenue increases and debt; to restrict property, income, and other taxes; to limit the rate of increase in state and local government spending; to allow additional initiative and referendum elections; and to provide for the mailing of information to registered voters. **

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

Voter Approval of Tax Increases, Debt.

- require voter approval for any new tax, any tax rate increase, any mill levy increase over the prior year, any increase in the assessment ratio for a class of property, any extension of an expiring tax, or any tax policy change that causes a net tax revenue increase;
- require voter approval for the creation of most financial obligations that extend beyond the current fiscal year unless government sets aside enough money to fund the obligation in all years that payments are due;
- require voter approval to weaken other limits on government revenue, spending, and debt;
- temporarily suspend the requirement for voter approval of tax increases in declared emergencies and when revenue is insufficient to meet payments for general obligation debt, pensions, and final court judgments;

Government Spending Limits.

- limit the annual growth in most state government spending to the rate of inflation plus the percentage change in state population;
- limit the annual growth in most spending by each local government to the rate of inflation plus the net change in the actual value of local real property due to additions to and deletions from the tax rolls and construction and destruction of improvements;
- limit the annual growth in most school district spending to the rate of inflation plus the percentage change in student enrollment;
- require that increases in annual debt service payments be added to total fiscal year spending and that decreases in annual debt service payments be deleted from total fiscal year spending;
- exclude certain funds from the base figure used for calculation of the spending limits, such as the principal and interest payments on government bonds, voter approved revenue increases, emergency taxes, taxpayer refunds, and federal funds;
- temporarily suspend these limits when revenue is insufficient to meet payments for general obligation debt, pensions, and final court judgments;
- provide a temporary exception from these provisions by voter approval or during declared emergencies;

Local Revenue Limits.

- limit the annual rate of growth in property tax revenue for: a) local governments to the rate of inflation plus the net change in the actual value of local real property due to additions to and deletions from the tax rolls and construction and destruction of improvements to real property; and b) school districts to the rate of inflation plus the percentage change in student enrollment;
- exclude certain funds from the base figure used for calculating the annual property tax revenue limit such as principal and interest payments on government bonds, voter approved revenue increases, emergency taxes, taxpayer refunds, and federal funds;
- provide an exception from this revenue limit through voter approval;

Prohibited Taxes.

- prohibit any new or increased real estate transfer taxes, any local income tax, and any new state real property tax;
- require that any future state income tax law change have a single tax rate with no added surcharge;
- require that any income tax law change may not take effect until the following tax year;

* One * indicates that signatures for the measure were gathered by volunteers.
Two ** indicate that signatures were gathered in part by paid petition circulators.

Tax Limitations – Voting

Taxpayer Refunds.

- require refunds of revenue collected in excess of the various revenue and spending limits;
- require that, in the case of a successful lawsuit, illegal revenue for up to four full fiscal years prior to the filing of the suit, plus 10 percent simple interest, be returned to taxpayers;
- permit government to use any reasonable method to make such refunds;
- permit judicial review of the refund method;
- require that refunds need not be proportional when prior payments are impractical to identify or return;
- allow voters to authorize that government retain excess collections;

Emergency Taxes. Emergency Reserves.

- require a two-thirds vote of the state legislature for the declaration of a state emergency and the same vote for local governing boards;
- prohibit a government from citing economic conditions, revenue shortfalls, or salary or fringe benefit increases as reasons for declaring an emergency;
- prohibit increased property taxes to fund an emergency;
- specify that emergency taxes expire unless such taxes receive subsequent voter approval;
- require that, by 1995, each government have emergency reserves equal to or greater than 3 percent of fiscal year spending (excluding debt service);
- provide that revenue from emergency taxes may be spent only after emergency reserves are spent;

Election Procedures. Ballot Information.

- authorize voters to approve delays of up to four years in voting on ballot issues, except in cases of ballot issues involving bonded debt, citizen petitions, and amendments to local charters and the state constitution;
- require that one notice of election be mailed to each household with active, registered voters, and that such notices be mailed bulk rate and combined with election notices from other governments holding ballot elections;
- require that election notices include ballot issue summaries that incorporate public comments and figures representing projected revenue or debt levels with and without the proposed tax or debt increase;
- limit ballot issue elections to the state general election, the first Tuesday in November of odd-numbered years, or biennial local government election dates;

State Mandates.

- allow local governments to reduce or end, over a three-year period, their subsidy to any program that has been delegated to them by the state legislature for administration;
- exclude from this provision public education and programs required of local governments by the federal government;

Assessment of Property.

- allow governments to enact uniform exemptions and credits to reduce or end the property taxation of business personal property;
- require that annual assessment notices be mailed to property owners regardless of the frequency of reassessment;
- continue the current annual property tax appeals process;
- require that all property tax bills and assessment notices state the property's actual (market) value;
- require that the actual value of residential property be based solely on the market approach to appraisal;
- require that sales by lenders and government agencies be used in the appraisal of property; and
- prohibit a legal presumption in favor of the pending valuation of real property as established by the assessor.

Background

Current law. At the state level, current law limits the annual growth in state General Fund appropriations to 6 percent over prior year General Fund appropriations or, in total, no more than 5 percent of state personal income. The General Fund is the state's main account from which many programs are financed. Except in specific circumstances, the state constitution also prohibits state general obligation debt (i.e., borrowing based on a government's overall revenue-raising ability rather than a specific revenue source). However, the state does issue revenue bonds (i.e., bonds repaid from specifically designated revenue sources, most often those raised directly from the project itself) and participates in multi-year lease-purchase agreements in which annual payments are used to retire principal and interest provided up front by an entity other than the government.

At the local level, state law limits the annual increase in local government and special district property tax revenue to 5.5 percent over the prior year. This law also contains various exceptions that accommodate conditions such as rapid local growth, and does not apply to cities and counties with home rule charters. Many such charters do, however, contain restrictions on property tax revenue or limits on the number of mills that may be levied. Concerning school district finances, the state legislature largely controls annual increases in district general fund revenue raised from local property taxes through the Public School Finance Act of 1988. In many instances, increases beyond these various local government, special district, and school district limits are subject to voter approval, as are most proposals for new taxes, tax increases, and general obligation debt. However, local government revenue bonds and multi-year contracts do not require voter approval in most instances. Currently, there are no limitations on local government expenditures that apply generally to all local governments throughout the state. However, locally initiated tax and spending limits do exist. For instance, in April, 1991, Colorado Springs voters approved a local measure that is similar to this statewide proposal.

Impact of the proposal. The proposed amendment would supersede any provisions in current state or local law that are in conflict. In instances where there is no conflict, the existing limits and restrictions would continue to apply. For example, where a local provision limits the number of mills that can be levied, that local levy limit would apparently continue in effect because the amendment does not specifically address such limits. The levy limit would be in addition to the amendment's restrictions on spending. However, if the local mill levy limit resulted in more property tax revenue than allowed under the amendment, the amendment would supersede the mill levy limit. State and local government would be restricted to making changes in tax policy and the tax code that decrease taxes. All other changes would require voter approval. State and local governments would not be able to issue new revenue bonds or other multi-year financial obligations without voter approval. The amendment also states that "other limits on [government] revenue, spending, and debt may be weakened only by future voter approval." This apparently means that, whether such limits were created by local ordinance, state law, or through an election, weakening those limits would require voter approval.

Arguments For

1) The amendment would slow the growth of government and prevent taxes from rising faster than the taxpayers' ability to pay. Existing limits on state appropriations and local property taxes have not accomplished this. The amendment imposes the discipline and accountability that is needed to require government to consider the ability of taxpayers to support new or expanded programs before it raises taxes.

2) Government has not demonstrated that it can effectively and efficiently spend the tax revenue it receives. The only answer is to control how much money the government receives. By limiting state spending to inflation plus population growth, the proposal allows spending to grow as the economy grows and as the demand for government services increases. Conversely, when the economy is in trouble, the government should share in the hard times. Only with voter approval will government be able to grow faster than the private sector. Local property taxes are a significant burden for the elderly and others on fixed incomes. Limiting local property tax revenue increases will provide a measure of protection for taxpayers.

3) The language in the proposal is tightly crafted to prevent its intent from being misinterpreted. Its placement in the state constitution, rather than in state statute, will prevent its requirements from being circumvented. Using more general language and allowing the state legislature to define the scope of various provisions would give special interests the opportunity to influence the amendment to the point where it would become meaningless.

4) Restrictions on debt are necessary to limit excessive use of borrowing to finance government activities. Though there are limits in current law regarding debt levels and some requirements for voter approval of debt, government has created many forms of multi-year obligations that are not considered debt by the courts. In this way government has avoided voter scrutiny. Debt is an all-too-convenient and an unnecessarily expensive way to finance programs and facilities. Government should live within its means and the proposal's debt provisions provide the necessary discipline.

5) The requirement of voter approval fosters greater citizen involvement in government and weakens the influence of special interest groups in the current political process. The voters should be the ultimate authority on matters of taxation and should be trusted to exercise sound judgment. Granting tax concessions to special interest groups will be more difficult if governmental units are required to seek voter approval for replacement revenue. Consolidation of the various elections at the state and local level will reduce the cost of holding such elections. Election notice and information requirements will provide voters with an understanding of the need for new revenue and will result in a more informed electorate.

6) Controlling the growth of government and limiting the tax burden are the surest means to improve the state's economic climate. Business is reluctant to invest when tax rates increase regularly. By allowing people to keep more of what they earn, productivity and investment will be rewarded and boost the economy. Creating a stronger economy in this way will increase the tax revenue needed for government to operate. Yearly opportunities to ask voters for increases in revenue and spending authority for various projects and programs will not hinder government's ability to provide adequate services.

7) Local governments must be allowed to reduce or end their subsidies to state-mandated programs. The proposal prevents state government from forcing programs onto the local level without their approval and

without proper funding. Thus, the proposal improves the ability of local governments and citizens to control their own affairs and requires greater fiscal responsibility at each level of government.

8) Requiring refunds of excess tax collections forces government to be honest. If voters approve a tax increase based on government estimates of the revenue expected from the increase and that increase is what the government stated that it needs to continue its activities, then retaining excess revenue is wrong and contrary to what the voters agreed. The cost of complying with refund requirements is not excessive since government is not required to refund moneys directly to individual taxpayers. It may use temporary rate reductions to accomplish the same end. Government may also ask voters if it may keep the excess revenue.

Arguments Against

1) Placing such a complex and detailed set of provisions in the state constitution is unwise. The several constraints in the amendment fundamentally redefine the relationships between each level of government and between government and citizens. The consequences of an amendment of this magnitude are unpredictable. Placing the amendment in the constitution does not allow the necessary flexibility should unforeseen circumstances arise.

2) The amendment weakens representative government by taking important decisions regarding spending, taxes, and tax policy out of the hands of elected officials. Offered in its place is the cumbersome alternative of voter approval. For example, unless a delay is approved at election, changes such as eliminating exemptions in the state sales tax or closing loopholes in the state income tax would require voter approval. Voters would also be required to approve mill levy increases over the prior year even though the increase may only be required to raise the same amount of money because of a decrease in local assessed value.

After a few years under this system, voters will tire of constant elections concerning many different issues and cede election results to a minority of voters who are in favor of or opposed to a given tax proposal. The result will be a small number of voters deciding issues that affect all taxpayers. Another potential consequence is an increase in the influence of special interests through their willingness to finance campaigns on either side of an issue. If taxpayers are dissatisfied with the decisions made by elected officials, a simpler remedy is selecting new representatives at the next election.

3) State officials have responded to concerns about growth in government by limiting annual increases in local government property tax revenue to 5.5 percent and limiting annual increases in state general fund appropriations to 6 percent or 5 percent of state personal income, whichever is less. These are more appropriate measures than are the limits proposed by the amendment – the rate of growth in population, inflation, or property value – which have little, if any, relationship to a taxpayer's ability to pay.

4) The proposal may be counterproductive to promoting the state's economic climate by limiting government's ability to raise revenue and expend funds at those times when demands for government services increase. State and local governments are already experiencing difficulties providing existing services. Further restricting their ability to adequately fund roads, education, and other services hinders government's ability to engage in those activities required for further economic development. Long-term uncertainty about Colorado's ability to adequately fund programs important to commerce will have a chilling effect on its business climate. Provisions that prohibit raising property taxes in declared emergencies will especially impact special districts and school districts, both of which depend to a large degree on property taxes for funding.

5) The various limits and restrictions in the proposal do not recognize the degree to which the fiscal affairs of local, state, and federal governments are intertwined. For instance, the proposal excludes federal funds from the calculation of spending limits but does not exclude expenditures required by the federal government for state participation. If such expenditures increase faster than the limits allowed under the proposal, state government would have to divert funds from other programs or request voter approval for additional revenue.

6) The language used in the proposal is vague and confusing and will require judicial interpretation. Professionals in the areas of law, accounting, and public finance have arrived at conflicting interpretations of the same provisions in the proposal. Such ambiguity will result in extensive and costly litigation in order to clarify the meaning of the proposal and will lead to an undesirable amount of court involvement in the administration of state and local governments. The uncertainty may also affect the value of outstanding government securities.

7) The absolute requirement that state and local governments refund excess tax collections will lead to compliance costs that may be greater than the amount of the excess collections. These costs will affect both business and government. For example, if sales tax collections were \$1 million over estimated amounts approved by the voters, the proposal apparently requires that an excess of this size be refunded to the state's 3.4 million citizens. The result could be checks issued to each citizen that would be worth less than 30 cents. If tax rates were decreased to accomplish the refund, businesses would be required to constantly change the rates required to collect the sales tax. Further, the proposal permits refunds to be non-proportional or to come from an unrelated tax so that excess sales tax collections could be returned to taxpayers through a property tax rebate. The possibility exists, therefore, that those who paid the excess taxes would not receive a refund equal to the amount of their overpayment.

8) Several property tax provisions in the proposal will decrease local property tax collections and shift the property tax burden to other property owners. For instance, if an exemption is approved for business personal property, this will decrease the local property tax base and decrease local property tax revenue. If voters sub-

No Protected Status

sequently approve a mill levy increase to make up the lost revenue, the exemption of business personal property from taxation will shift the tax burden to those businesses that are not able to take advantage of such exemptions. Given the current structure of school finance, the resulting loss of school district property tax revenue will increase the burden on state resources.

AMENDMENT 2 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

No Protected Status

Ballot Title: *An amendment to Article II of the Colorado Constitution to prohibit the state of Colorado and any of its political subdivisions from adopting or enforcing any law or policy which provides that homosexual, lesbian, or bisexual orientation, conduct, or relationships constitutes or entitles a person to claim any minority or protected status, quota preferences, or discrimination.* •

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- prohibit the state, its branches or departments, or any of its agencies, political subdivisions, municipalities, and school districts from adopting or enforcing any law or policy that entitles any person to claim discrimination, protected status, minority status, or quota preferences based on homosexual, lesbian, or bisexual orientation, conduct, practices, or relationships; and
- make all existing anti-discrimination ordinances, laws, regulations, and policies prohibiting discrimination based on an individual's homosexual, lesbian, or bisexual orientation unenforceable and unconstitutional.

Definitions

For the purposes of this analysis, the following terms have the given meanings:

- “Civil rights laws” refers to local, state, and federal laws designed to protect classes of persons from discrimination in areas such as employment, housing, and public accommodations.
- “Constitutional rights” refers to the guarantees contained in the federal Bill of Rights (first ten amendments to the United States Constitution) and made applicable to the states through the Fourteenth Amendment.
- “Discrimination” as commonly used in civil rights law, means any act which denies, prevents, or limits any person from obtaining or maintaining employment, housing, or public accommodations based on race, age, gender, disability, nationality, or religion. Some states and localities have extended similar protections against discrimination based on factors such as marital or familial status, military status, sexual orientation, or political affiliation.
- “Equal protection” refers to the clause in the Fourteenth Amendment to the United States Constitution which prohibits any state from adopting any law which denies the equal protection of the laws guaranteed to the citizens of the United States.
- “Political subdivision” generally refers to a county, municipality, school district, local junior college district, special district, water conservation district, cooperative agency, regional commission, or an Indian tribe organized pursuant to the federal “Indian Reorganization Act of 1934,” as amended.
- “Protected status” means that a group has been identified for protection from actions which affect a protected or suspect class and which are limited or scrutinized as required by anti-discrimination statutes, ordinances, or common law.
- “Quota” refers to a remedy which imposes numerical goals to correct past discriminatory employment practices.
- “Sexual orientation” means the status of an individual as to his or her sexuality, for example, heterosexuality, homosexuality, lesbianism, or bisexuality.

Background

The proposed amendment arises in the context of three decades of increased governmental activity in the area of civil rights. The concepts of the federal Civil Rights Act of 1964 have been extended by Congress, the states, and local governments which have enacted new laws and strengthened existing laws to prohibit discrimination in employment, housing, access to public accommodations, and other areas involving civil rights. Courts at all levels are involved in interpreting and applying these laws, and administrative agencies have been created to enforce some of them. The proposed amendment identifies one area – discrimination based on homosexual, lesbian, or bisexual orientation, conduct, practices, or relationships – in which civil rights laws and policies could not be enacted or enforced by the state government or by local governments in Colorado.

Evidence of discrimination. There is disagreement concerning the extent of discrimination against homosexuals, lesbians, and bisexual persons. Discussions with public agencies which maintain records on such discrimination complaints reveal that these individuals have been found to experience discrimination in access to employment, housing, military service, commercial space, public accommodations, health care, and educational facilities on college campuses. For example, of the 50 complaints reported to the Denver Agency for Human Rights and Community Relations in 1991, twenty-three were incidents of discrimination based on sexual orientation. Approximately 61 percent of these reports dealt with employment discrimination. Since 1988, the Boulder Office of Human Rights has investigated ten incidents of discrimination based on sexual orientation. Four of the

No Protected Status

complaints lacked sufficient evidence to be considered discrimination based on sexual orientation. It is generally recognized that discrimination complaints often go unreported because individuals fear the repercussions and further victimization associated with disclosure of their sexual orientation.

Current Laws and Policies

Presently, a patchwork of federal, state, and local laws, regulations, and policies are in effect which monitor, offer limited protection against, or prohibit discrimination based on sexual orientation.

Local ordinances. Three home rule cities – Aspen, Boulder, and Denver – have ordinances protecting individuals from job, housing, and public accommodations discrimination when that discrimination is based solely on sexual orientation. None of the ordinances requires quotas, affirmative action, minority status or requires that employers or landlords seek out homosexual, lesbian, or bisexual employees or tenants. These cities have determined that discrimination based on sexual orientation was a sufficient problem to warrant protections against discrimination in the areas of employment, housing, and public accommodations.

Aspen's ordinance prohibits discrimination in the areas of employment, housing, and public accommodations because of race, creed, color, religion, ancestry, national origin, sex, age, marital or familial status, physical handicap, sexual orientation, or political affiliation. The Aspen ordinance does not exempt religious institutions. In Boulder, religious institutions cannot refuse to hire an individual or restrict access to public accommodations or housing because of that person's race, creed, color, gender, sexual orientation, marital or familial status, pregnancy, national origin, ancestry, age, or mental or physical disability. The Denver ordinance entirely exempts religious institutions, thus allowing them to refuse to hire persons or restrict access to public accommodations or housing based on a person's sexual orientation.

In Boulder, the owner of an owner-occupied, one-family dwelling or duplex is not permitted to deny housing to an individual based on his or her sexual orientation. However, the ordinance does allow owners to limit renters or lessees to persons of the same sex. In Denver, owners with rental spaces in their homes or duplexes (in which they reside) are exempted from the ordinance.

The anti-discrimination laws in these three cities do not classify homosexual, lesbian, or bisexual persons as ethnic minorities, but instead outlaw discrimination based on sexual orientation. These laws banning discrimination based on sexual orientation also prohibit discrimination against heterosexual individuals as well as against homosexual, lesbian, and bisexual persons. Attempts to pass similar anti-discrimination ordinances based on sexual orientation were defeated in Colorado Springs and Fort Collins. In addition, Denver Public Schools has adopted a nondiscrimination policy prohibiting discrimination based on sexual orientation.

State laws and policies. In 1990, the Governor issued an executive order prohibiting discrimination based on sexual orientation in the hiring, promotion, and firing of classified and exempt state employees. The order applies to executive departments and to state institutions of higher education. Metropolitan State College of Denver has a policy prohibiting college sponsored social clubs from discriminating in membership on the basis of sexual orientation. Colorado State University has a general nondiscrimination policy prohibiting discrimination based on sexual orientation. Conversely, the University of Colorado Board of Regents defeated a resolution prohibiting discriminatory practices based upon sexual orientation. The only Colorado statute offering protection based on sexual orientation prohibits health insurance companies from determining insurability based on an individual's sexual orientation. Legislation was defeated in 1991 which would have expanded Colorado's ethnic intimidation law to include the right of every person, regardless of age, handicapping condition or disability, or sexual orientation, to be protected from harassment. Recently, the Colorado Civil Rights Commission voted to recommend that the state's civil rights law be amended to prohibit discrimination based on sexual orientation.

Federal laws. There are no federal civil rights laws that protect persons from discrimination based on sexual orientation in the areas of housing, employment, or public accommodations. However, the federal Hate Crime Statistics Act of 1990 requires the United States Attorney General to monitor, in addition to other crimes, those crimes that manifest evidence of prejudice based on sexual orientation.

Laws and policies in other states, municipalities, and higher education institutions. Anti-discrimination laws and policies based on sexual orientation are not unique to Colorado. Six states (Connecticut, Hawaii, Massachusetts, New Jersey, Vermont, Wisconsin) and the District of Columbia, and approximately 110 cities and counties in 25 states have passed legislation protecting homosexual, lesbian, and bisexual persons from discrimination based on sexual orientation in employment, housing, and public accommodations. In contrast, the voters in Oregon will be considering an initiated measure, which among other provisions, would outlaw legislation aimed at protecting homosexual, lesbian, and bisexual persons from discrimination based on sexual orientation. In 1988, the voters in Oregon overturned an executive order that would have protected homosexual individuals from discrimination in state government.

Governors of eight states besides Colorado (California, Minnesota, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, and Washington) have issued executive orders prohibiting discrimination in state employment based on sexual orientation. Nationally, around 65 college and university systems have issued non-discrimination statements protecting heterosexual, homosexual, lesbian, and bisexual persons.

Impact of the Proposal

Passage of the amendment would make unenforceable and unconstitutional those ordinances which prohibit discrimination based on sexual orientation with regard to homosexual, lesbian, and bisexual persons. Therefore,

No Protected Status

the portion of those ordinances prohibiting discrimination based on sexual orientation adopted by the city council or approved by the voters in the cities of Aspen, Boulder, and Denver would be rendered invalid. In addition, the amendment would nullify existing anti-discrimination policies based on sexual orientation which have been adopted by any state branch of government, department, agency, or school district in Colorado and would prevent adoption of any state statute, local ordinance, or policy for public entities which prohibits discrimination based on sexual orientation. The amendment would not affect the anti-discrimination policies based on sexual orientation that have been adopted by numerous private employers. However, the amendment does not address the rights of heterosexual individuals to bring claims of discrimination under existing or future ordinances, therefore the impact of the amendment on the rights of heterosexuals is not known.

Arguments For

1) There is no evidence that homosexual, lesbian, and bisexual individuals are sufficiently disadvantaged to warrant designation as a protected class. Protected class status is not a basic right guaranteed to all citizens by the United States Constitution. In general, protected class status has been afforded to groups which have historically been subjected to purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process, or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities. Some groups which have been given protection are those identified because of national origin, culture, age, disability, gender, religion, and marital or familial status. Similarly, there are no organized, state-sanctioned legal barriers which deny their ability to participate in the political process as has been the situation faced by racial minorities, in particular. For these reasons, it appears that this amendment may pass constitutional muster.

2) Homosexual, lesbian, and bisexual persons do not require protected status because they are entitled to recourse under the tort laws for libelous or slanderous abuse, wrongful discharge, emotional distress, or similar theories. Since homosexual, lesbian, and bisexual persons cross all cultural lines they may already receive protections with regard to race, gender, age, ethnicity, disability, religion, or marital or familial status. Insufficient evidence exists for creating a legal cause of action by homosexual, lesbian, and bisexual individuals in employment, housing, and public accommodations to warrant adding sexual orientation as a protected class.

3) Granting protected status to homosexual, lesbian, and bisexual persons may compel some individuals to violate their private consciences or to face legal sanctions for failure to comply. For some individuals, homosexuality, or bisexuality conflicts with their religious values and teachings or their private moral values. If a landlord is required to rent an apartment, for example, to homosexual, lesbian, or bisexual persons, he or she may be asked to either condone a lifestyle of which they do not approve or to be in violation of a local ordinance. People and institutions should have the right to express and act upon their moral convictions without being accused of discrimination.

4) The amendment does not have a negative impact on home rule autonomy of Colorado cities nor does it intrude into traditional powers of local government. The Colorado Constitution guarantees local municipalities the ability to function legislatively only in municipal affairs. Civil rights issues are not normally considered by local governments. Because of the importance of these issues, a wider spectrum of individuals than just municipalities should consider these matters. Consideration of individual and group civil rights on the municipal level sets an improper precedent and only serves to dilute the original purpose of legislation enacting civil rights protections.

5) A proliferation of local ordinances or the possibility of a state statute that would provide protected status for homosexual, lesbian, and bisexual persons may divert resources for current enforcement activities. Additional discrimination cases may produce a demand for more staff and other state and local resources to investigate complaints, resolve disputes, or litigate cases.

Arguments Against

1) All individuals should be accorded the same basic dignity, right to privacy, privileges, and protections guaranteed to every citizen. Discrimination against any class of individuals is wrong and, if tolerated, can easily spread to any and all groups in our society. In a pluralistic society, a threat to the rights of any one group should be viewed as a threat to the rights of all citizens. The amendment deprives homosexual, lesbian, and bisexual persons of legal protection against discrimination based on sexual orientation by isolating them as a class which could not be protected by such civil rights laws. Civil rights laws are constantly evolving to meet the demands of society, and no group of people should be precluded from seeking civil rights protection or protection from discrimination. Civil rights laws prohibiting discrimination against homosexual, lesbian, and bisexual persons do not condone or encourage homosexuality or bisexuality; rather, they only condemn discrimination of any nature and ensure equal opportunity for every citizen. By eliminating legal protections, the amendment sanctions prejudicial acts against homosexual, lesbian, and bisexual persons.

2) Because homosexual, lesbian, and bisexual persons face discrimination in employment, housing, and public accommodations and are victims of hate crimes, civil rights laws are needed that prohibit discrimination based on sexual orientation. Without the ordinances, existing laws inadequately protect these individuals and fail to address discrimination in employment, housing, and public accommodations. Homosexual, lesbian, and bisexual individuals belong to all economic classes and are members of all racial, ethnic, disability, age, and religious communities. Because the kind of discrimination that these individuals experience is solely connected

INTRODUCTORY COMMENTS – LIMITED GAMING

to a person's sexual orientation, the added protection in the ordinances gives homosexual, lesbian, and bisexual individuals legal recourse should they be discriminated against on the basis of their sexual orientation.

3) The amendment attacks home rule autonomy and intrudes into the traditional powers of local governments and political subdivisions with respect to civil rights. Two-thirds of all Coloradans live in home rule cities. Under the Colorado Constitution home rule cities are empowered to address the needs of their residents as they see fit. This amendment also undermines county powers and the ability of the executive branch of government, school districts, and political subdivisions to enact their own anti-discrimination policies on this issue. The amendment implies that governmental entities, including the state, counties, cities, school districts, and other political subdivisions, should not be trusted to decide whether or not to protect persons from discrimination based on sexual orientation.

4) Ensuring the civil rights of any person, whether for age, gender, race, disability, religion, sexual orientation, marital or familial status, does no more than protect persons from discrimination and guarantee their basic human rights. The amendment is misleading and prejudicial by implying that homosexual, lesbian, and bisexual persons are seeking "minority status" or "quota preferences." Instead, the current local ordinances protect the right to get a job, buy a house, or have the same access to public accommodations as every other citizen. Each of these local ordinances also bans discrimination on the basis of age, gender, disability, religion, and marital or familial status, which are factors that are unrelated to whether a person is a member of a racial or ethnic group.

5) By singling out homosexual, lesbian, and bisexual persons in the state constitution and effectively denying them potential remedies for discrimination, the amendment denies them the same equal protections under the United States Constitution as other citizens. The proposed amendment may violate the equal protection clause of the United States Constitution, which prohibits any state from adopting a law which singles out a group for unfavorable or discriminatory treatment without a sufficient basis, or due to prejudice or irrational fears. For example, those city ordinances barring discrimination on the basis of sexual orientation could still be applicable to heterosexual individuals bringing claims of discrimination based on sexual orientation in housing, employment, and public accommodations, but not to homosexual, lesbian, and bisexual persons. Arbitrarily discriminating against any class of individuals in employment decisions based on sexual orientation is a violation of equal protection laws. Further, it is also a violation for a state to adopt a constitutional amendment which arbitrarily discriminates against homosexuals.

INTRODUCTORY COMMENTS – LIMITED GAMING (Applicable to Amendments 3, 4, 5, and 9)

General Background

The Colorado Constitution, as adopted in 1876, prohibited gambling. Over the years, certain forms of gambling have been legalized by the General Assembly and the voters. These forms include pari-mutuel betting, games of chance (bingo and raffles), and lottery.

Limited Stakes Gambling in Colorado

Legalization of limited stakes gambling. In 1990, Colorado voters approved a constitutional amendment permitting limited stakes gaming in the commercial districts of Central City, Black Hawk, and Cripple Creek. "Limited gaming" is defined as the use of slot machines and the card games of blackjack and poker, each game having a single maximum bet of \$5.00. In the 1990 amendment, limited gaming (hereinafter termed limited gambling) is restricted to buildings which conform to the architectural styles and designs common to the areas between 1875 and World War I. Limited gambling is further restricted in that no more than 35 percent of the square footage of any building and no more than 50 percent of any floor may be used for limited gambling purposes.

Most recently, the Ute Mountain Ute and the Southern Ute tribes of Colorado have obtained approval under federal law to operate casinos on reservation lands. The Ute Mountain Ute tribe has built a casino which may operate 24 hours a day. The casino will offer keno in addition to poker, blackjack, and slot machines, each with a maximum single bet of \$5.00. The Ute Mountain Utes will pay no state gambling taxes because tribal sovereignty supersedes state law. The Southern Utes are currently in the process of establishing a casino.

Limited Gaming Control Commission. Limited stakes gambling is administered by the Limited Gaming Control Commission (Commission), which consists of five members appointed by the Governor and approved by a two-thirds majority of the Colorado Senate. Pursuant to the 1990 amendment, the Commission is responsible for administering gambling, creating rules and regulations, issuing licenses for gambling establishments, and determining the tax rate on gambling revenues.

Tax rate on gambling revenues. The constitutional amendment which legalizes limited gambling requires that a state tax of up to 40 percent of the adjusted gross proceeds of limited gambling (wagers minus payouts to players) be paid by each licensed gambling establishment for the privilege of conducting limited gambling. The constitution then authorizes the Commission to establish the tax percentage.

In August of 1991, the Commission established a graduated tax rate on adjusted gross proceeds (AGP) of limited gambling. The first \$440,000 in AGP is taxed at 4 percent; the AGP between \$440,000 and \$1.2 million is taxed at 8 percent; and any amount over \$1.2 million is taxed at 15 percent.

INTRODUCTORY COMMENTS – LIMITED GAMING

Current distribution of gambling revenues. Moneys collected from the above taxes on limited gambling revenues are deposited in the Limited Gaming Fund, administered by the state treasurer. Moneys from the fund are used to pay all ongoing expenses of the Commission and any additional administrative costs. The balance of the moneys in the fund are then distributed as follows:

- 49.8 percent to the state General Fund (including an annually determined percentage to the Contiguous County Limited Gaming Impact Fund);
- 28 percent to the Historical Preservation Society;
- 12 percent to the governing bodies of Gilpin and Teller counties, in proportion to the gambling revenues generated in the respective counties;
- 10 percent to the governing bodies of Central City, Black Hawk, and Cripple Creek, in proportion to the gambling revenues generated in the respective cities; and
- 0.2 percent to the Colorado Tourism Promotion Fund.

State revenue from gambling. From October 1, 1991 through July 1992, the state received a total of \$12.9 million in gross tax revenues, before payment of administrative expenses.

Comments on the Proposed Gambling Amendments

The provision sections of the gambling analyses that follow this introduction reveal how each proposal expands and/or alters existing constitutional provisions regarding gambling.

It is important to note that in reviewing the following gambling proposals, several provisions of the proposed gambling amendments conflict with one another. State statute provides and court rulings have held that in the case of the adoption of conflicting provisions, the provision which receives the greatest number of affirmative votes prevails in all particulars in which there is a conflict. Thus, those provisions in the various adopted proposals which do not conflict would not be affected.

It should also be noted that the amendment entitled "Local Vote on Gaming after Statewide Vote," described on pages 4 and 5, would affect the proposed gambling cities and towns as well as future gambling sites. If adopted, the amendment would require local voter approval before limited gambling, as approved by a statewide vote, would be lawful in a locality.

General Arguments For Expanding Gambling

1) Expansion of limited gambling to additional Colorado communities will assist in capturing more tourist revenue and will increase tourism overall. The added attraction of limited gambling will create a year-round tourist season for some of the communities where limited gambling is conducted. For other communities, gambling will provide an attraction for tourists who may stop for a few hours or an overnight stay on their way to another destination. The benefits of increased tourism, such as the proliferation of service-type businesses, will impact not only these communities but also the surrounding towns and counties, thereby benefitting Colorado as a whole.

2) The gambling proposals are crafted to enhance the economies of the affected communities. Limited gambling will provide a boost in the local economies of the communities listed in the various gambling proposals. Jobs will be created to meet increased demands from the direct and indirect increase in business activity resulting from gambling. Housing development will increase to accommodate the influx of new employees. Further, local improvement projects and community development programs will become possible through revenues generated from gambling proceeds.

3) Expansion of gambling to new communities provides increased tax revenues for localities and the state. Local governments of gambling communities will obtain additional tax revenues from two sources. First, a percentage of the gambling tax revenues will be returned to the local governments. Second, increased business activity in the gambling communities will add to the sales and property tax bases. The state government will also receive additional revenues from gambling through the tax on gambling proceeds. Both local and state governments will be able to use these increased tax revenues to provide for such needs as education, health care, and economic development. Using tax revenue from gambling proceeds to meet such needs will help prevent an increase in taxes.

General Arguments Against Expanding Gambling

1) The expansion of gambling to new areas will ultimately lead to legalized statewide gambling. A total of four proposals are on the ballot which would legalize gambling in a possible maximum of 27 towns and six counties in Colorado. As gambling is permitted in more areas, more and more communities will want to use gambling as an economic development tool. As gambling expands, any perceived benefits to the communities and the state will be diluted. Thus, any economic gains of gambling will decrease and social costs of expanded gambling will increase. By stopping the expansion of gambling, the benefits of current limited gambling in Colorado will not be diluted and the threat of legalized statewide gambling will decrease.

2) Colorado should evaluate the long-term impact of gambling before expanding this industry to more communities. Gambling is not a proven economic development tool. Once gambling is approved by a community, speculation will inflate land values, thereby increasing property taxes. As taxes increase, local businesses, such as grocery stores, laundromats, and filling stations, will be forced out of business to make room for gambling estab-

Limited Gaming - Selected Western and Southern Cities and Counties

ishments. Increased rents will cause some long time residents to be displaced. In addition, gambling will divert money from other enterprises. Those who come to gamble will spend their money in casinos and associated restaurants and bars while other retail businesses will suffer. Finally, some of the communities that approve gambling will not be financially prepared to provide for increased law enforcement, water and sewage improvements, and transportation and parking upgrades.

3) The quality of life appreciated by Colorado residents and visitors will be threatened by the continued expansion of gambling throughout the state. More gambling will lead to increased social problems, alcohol-related accidents, traffic violations, crime, and gambling addiction. Historic buildings will be threatened as they are gutted or destroyed to make room for casinos. If adequate local control is not exercised, new buildings with bright lights, large signs, and gaudy architecture will become commonplace. Increased traffic, large volumes of people, and widespread land speculation will be disruptive to small communities and will compromise those values that presently make Colorado a desirable place to live and visit.

4) The lack of uniformity between the various gambling proposals will increase the difficulty in administration of limited gambling in Colorado. The provisions of the various gambling proposals differ greatly from each other and from current constitutional provisions governing gambling in Central City, Black Hawk, and Cripple Creek. The proposals range in details regarding such things as tax and revenue provisions, types of games permitted, and degree of local as opposed to state control. As a result, different rules and procedures would be applied to each gambling area, making administration of gambling in Colorado complex.

AMENDMENT 3 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limited Gaming - Selected Western and Southern Cities and Counties

Ballot Title:	<i>An amendment to Article XVIII of the Colorado Constitution to permit limited gaming in the cities and towns of Trinidad, Walsenburg, Leadville, Naturita, Silver Cliff, Lake City, Silverton, Oak Creek, Grand Lake, Walden, and Dinosaur and in the counties of Las Animas, Huerfano, and Hinsdale, subject to an affirmative vote of the electorate in each such city, town, or county at a special election; to add to the types of games which may be conducted where limited gaming is permitted; to change the maximum allowable tax on the proceeds of limited gaming from 40% to 15%; to allocate tax and fee revenues; and to create a Colorado rural economic development board to administer a portion of such revenues. **</i>
---------------	---

[Refer to pages 12 - 14 for background information regarding limited stakes gambling in Colorado and for general arguments for and against expanding gambling.]

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

– legalize, on and after August 1, 1993, limited gambling in the cities and towns of Trinidad, Walsenburg, Leadville, Naturita, Silver Cliff, Lake City, Silverton, Oak Creek, Grand Lake, Walden, and Dinosaur, and in the counties of Las Animas, Huerfano, and Hinsdale, subject to an affirmative local vote;

– authorize the Limited Gaming Control Commission to add roulette, craps, baccarat, and the big wheel to existing limited gambling activities which may be conducted in the communities where limited gambling is permitted. Each game would have a maximum single bet of \$5.00;

– restrict limited gambling to the commercial districts of those cities, towns, and counties in which limited gambling is approved by the electorate, and to structures, or reproductions, which conform to the original architectural styles of each city, town, or county, and to all applicable ordinances and land-use regulations;

– conform to current constitutional restrictions regarding the size of the gambling area in relation to the size of the establishment, the hours of operation, and the sale of alcohol at gambling establishments;

– lower the maximum allowable state tax which may be imposed on the adjusted gross proceeds of all limited gambling from up to 40 percent to up to 15 percent;

– create the Colorado Rural Economic Development Board to administer the Colorado Rural Economic Development Fund to assist in the economic development of Colorado counties with a population of 30,000 or less; and

– provide for the following annual distribution of the state tax revenues derived from gambling activities in the historic rural communities, less administrative costs:

Limited Gaming - Selected Western and Southern Cities and Counties

Percentage	Recipient/Fund	Purpose
25%	Primary and Secondary Education Fund	Moneys for primary and secondary education in the state
20%	Rural Health Care Fund	Moneys for rural health care services and facilities
15%	Rural Economic Development Fund	Moneys for loans and investment capital for public and private entities located within rural counties
15%	Cities and Towns with Gambling	Moneys, proportionate to the gambling revenue generated, for the cities and towns in this proposal whose electorate approved limited gambling
10%	Counties with Gambling Cities or Towns	Moneys, proportionate to the gambling revenue generated, for the counties in this proposal whose electorate approved limited gambling or whose cities or towns approved limited gambling
10%	Highway Users Tax Fund	Moneys for construction and improvement projects for state highways
5%	State Historical Fund B	Moneys for preservation and restoration of historic sites throughout the state and for the cities, towns, and counties in this proposal whose electorate approved limited gambling

Arguments For

1) Gambling revenues will economically benefit the cities, towns, and counties listed in the proposal in addition to other areas of rural Colorado. Many of the communities named in this proposal are in need of the commercial development that gambling would provide. Nine of the eleven cities and two of the three counties have lost population in the last ten years. Several areas have faced the closure of mines and the loss of manufacturing enterprises. The traditional methods of attracting new businesses have not been successful. The introduction of gambling will result in increased construction and renovation, greater employment opportunities, and enhanced business activity.

2) The distribution of receipts from this proposal will benefit rural Colorado and the state. Sixty percent of the net revenues (after administrative costs have been paid) would be used specifically for rural economic development, rural health care, and for the communities listed in the proposal which approved gambling. The remaining net revenues would be distributed so as to benefit the state, with 25 percent of the revenues dedicated to public education, 10 percent reserved for highways, and 5 percent committed to historic preservation.

3) The proposal allows local voters to decide whether or not to permit gambling in their communities, thereby ensuring that gambling is conducted only in those communities that vote for it. Thus, the final decision on gambling is determined by those persons who will be most directly affected by the proposed gambling.

Arguments Against

1) The proposal provides a potential tax break for gambling establishments by reducing the maximum state tax on gambling from the present maximum of up to 40 percent to a maximum of 15 percent. This reduction limits the state's and localities' potential tax benefits from gambling. As a result, moneys generated from gambling tax revenues will not be great enough to significantly impact the state and gambling communities. In addition, by setting the maximum tax rate at 15 percent, this proposal restricts the state General Assembly's and the Limited Gaming Control Commission's ability to increase the tax rate in response to unforeseen impact costs or needs of the state and gambling localities.

2) This proposal does not provide for adequate control over the areas in which gambling may be conducted. While the proposal limits gambling to the commercial districts of the specified communities and counties, it does not prohibit these localities from annexing or zoning additional land which could then be designated as part of the commercial districts. This opens the door for gambling development throughout large areas of the specified cities, towns, and counties.

3) The proposal extends beyond the original restrictions placed on limited stakes gambling, as approved in 1990 by the Colorado voters. Constitutional changes adopted in 1990 restrict gambling to three towns, set the maximum allowable bet at \$5.00, and limit the number of games permitted to blackjack, poker, and slot machines. This proposal would allow for the possibility of the extension of gambling to eleven cities and towns and three counties. In addition, the proposal would authorize the Limited Gaming Control Commission to increase the number of games permitted by allowing craps, roulette, baccarat, and the big wheel. These provisions will make it more difficult for Colorado to remain a controlled limited stakes gambling state.

4) Non-gambling cities, towns, and counties contiguous to gambling communities may experience negative economic impacts from gambling, for example, increased traffic volume, greater law enforcement costs, and increased need for road repairs. This proposal fails to provide these neighboring localities with the funds necessary to account for these impacts.

AMENDMENT 4 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limited Gaming - Selected Eastern and Southern Cities and Counties

Ballot Title: *An amendment to Article XVIII of the Colorado Constitution to permit limited gaming, subject to an affirmative local vote, in the cities and towns of Burlington, Evans, Lamar, Las Animas, Sterling, Antonito, Garden City, Granada, Holly, Julesburg, Milliken, Ovid, Peetz, and Sedgwick and the counties of Logan, Prowers, and Sedgwick; to add to the types of games which may be conducted where limited gaming is permitted; to allow the General Assembly to increase the maximum single bet above the present five-dollar limit; to allocate tax revenues derived from limited gaming activities; and to change the tax revenue allocation from the general fund to the public school fund if the General Assembly continues school funding at no less than the level established at the 1992 legislative session. ***

[Refer to pages 12 – 14 for background information regarding limited stakes gambling in Colorado and for general arguments for and against expanding gambling.]

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- legalize, no later than October 1, 1993, limited gambling in the cities and towns of Burlington, Evans, Lamar, Las Animas, Sterling, Antonito, Garden City, Granada, Holly, Julesburg, Ovid, Milliken, Peetz, and Sedgwick, and in the counties of Logan, Prowers, and Sedgwick, subject to an affirmative local vote;
- require that each city, town, or county call a special election by March 1, 1993 to determine whether limited gambling will be permitted within the boundaries of such city, town, or county;
- add big 6 wheels to existing limited gambling activities which may be conducted in the communities where limited gambling is permitted;
- provide that each game would have a maximum single bet of \$5.00, unless the maximum is increased by the General Assembly;
- conform to current constitutional restrictions regarding the hours of operation and the sale of alcohol at gambling establishments;
- allow the cities, towns, and counties to determine the location, types of structures, and permissible square footage in which gambling may be conducted;
- apply the current constitutional provision for the maximum allowable state tax of up to 40 percent of the adjusted gross gambling proceeds to gambling activities in the cities, towns, and counties listed in this proposal;
- provide for the following monthly distribution of state tax revenues derived from gambling activities in the cities, towns, and counties named in this proposal, less administrative costs:

Percentage	Recipient/Fund	Purpose
75%	Public School Fund	Moneys for elementary and secondary education to be used in addition to, and not a substitute for, present legislative appropriations to education
25%	Cities, towns, and counties with gambling	Moneys for the cities, towns, and counties with gambling, in proportion to the gambling revenues generated by each locality

- amend the existing formula for the distribution of tax revenues generated from limited gambling in Central City, Black Hawk, Cripple Creek, and any future gambling communities to provide that the 50 percent which currently goes to the state General Fund would go to the Public School Fund for elementary and secondary education; and
- provide that the distribution of revenues to the Public School Fund shall be in addition to, not a substitute for, present legislative appropriations to education.

Arguments For

1) Gambling revenues will economically benefit the cities, towns, and counties listed in this proposal. Ten of the fourteen cities and towns and two of the three counties identified in the proposed amendment experienced decreasing population in the last ten years. Located near main highways and access roads, many of these cities, towns, and counties need methods of attracting visitors. Gambling would help these areas attract tourists for a few hours or an overnight stay. It would provide these towns with the stimulation they need to encourage business, create jobs, and curb population decline. At one time, many of these localities supported larger populations; thus, they have the infrastructure in place to support gambling. They also have the necessary room to grow and expand.

2) The proposal's distribution formula for net gambling tax revenues would benefit the state by providing needed revenues for elementary and secondary education. The proposal alters the current distribution of gambling funds from Central City, Black Hawk, and Cripple Creek such that the 50 percent of net gambling tax revenues, which are now distributed to the state General Fund, would be deposited in the Public School Fund. Thus, half of the net gambling tax revenues from the cities currently conducting limited gambling would be diverted to help fund public schools. In addition, 75 percent of the net tax revenues generated from limited gambling in the communities listed in this proposal would be distributed to the Public School Fund. These moneys

Limited Gaming - Parachute

would be available to schools only as an addition to, and not as a substitute for, current funding from the General Assembly. Thus, these moneys would represent new funds for elementary and secondary schools and would help alleviate the need for tax increases to fund education.

3) By providing for the distribution of gambling revenues on a monthly basis, this proposal would allow local governments to pay the costs associated with the administration of gambling. Existing gambling communities receive revenues annually, making it difficult for them to pay such administrative costs. Monthly disbursements would enable local governments to develop more precise and immediate budgetary plans than is possible when disbursements are made available on an annual basis.

4) Decisions about when and where gambling is conducted should be made by the people in the affected city, town, or county. This proposal allows local voters to decide whether or not to permit gambling in their communities, thereby ensuring that gambling is conducted only in those communities that vote for it. In addition, the proposed amendment allows the cities, towns, and counties listed in the proposal to determine the floor area and the types of buildings in which gambling may be conducted. The localities can also enlarge or annex areas to be included in their gambling districts. Allowing the community to determine when, where, and in what types of structures gambling should be permitted ensures that gambling is regulated in the best interest of the community.

Arguments Against

1) Gambling revenues may not significantly impact educational funding. Such revenues will have only a small effect on the projected \$245 - \$276 million required in 1993-94 to fund education at the 1992-93 level. Further, while the proposal attempts to establish a system whereby 50 percent of all gambling revenues from existing and future gambling communities are credited to the Public School Fund, there is no guarantee that this distribution will occur. Because every one of the gambling proposals sets up its own system for distributing tax revenues, this proposal's distribution system conflicts with the other proposals. Thus, should this proposal and other gambling proposals be adopted, questions of revenue distribution would need to be decided by the courts.

2) This proposal does not provide for adequate control over gambling. It does not limit the location, floor area, and types of structures in which gambling may be conducted. Allowing the localities and counties listed in the proposal to make decisions regarding these matters opens the door for interested business persons to lobby these communities for rules most favorable to them. Without clearly stated constitutional controls, local authorities and planning agencies may find it difficult to control the gambling industry. The end result may be gambling throughout the town with little regulation of the location, the size of the establishment, and the visual aspects of the casinos. There are statewide considerations in the effective management of gambling enterprises that can only be provided through strong constitutional controls.

3) The proposal extends beyond the original restrictions placed on limited stakes gambling, as approved in 1990 by the Colorado voters. Constitutional changes adopted in 1990 restrict gambling to three towns, set the maximum allowable bet at \$5.00, and limit the number of games permitted to blackjack, poker, and slot machines. This proposal would allow for the possibility of the extension of gambling to fourteen cities and towns and three counties. The proposal also would increase the number of games permitted by allowing big 6 wheels. In addition, the proposal would allow the General Assembly to increase the maximum single bet of \$5.00. These provisions will make it more difficult for Colorado to remain a controlled limited stakes gambling state.

4) Non-gambling cities, towns, and counties contiguous to gambling communities may experience negative economic impacts from gambling, for example, increased traffic volume, greater law enforcement costs, and increased need for road repairs. This proposal fails to provide these neighboring localities with the funds necessary to account for these impacts.

AMENDMENT 5 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limited Gaming - Parachute

Ballot	<i>An amendment to Article XVIII of the Colorado Constitution to permit limited gaming in the town of Parachute under conditions which may differ from those applicable to Central City, Black Hawk and Cripple Creek; to prohibit limited gaming outside of Central City, Black Hawk, Cripple Creek and Parachute until 1 January 2000; to fix the maximum allowable state fees and taxes on limited gaming until 1 January 2000 at the levels established by the gaming commission as of 1 January 1992; and to allocate fee and tax revenues from limited gaming in Parachute, in part to fund public schools. **</i>
--------	--

[Refer to pages 12 – 14 for background information regarding limited stakes gambling in Colorado and for general arguments for and against expanding gambling.]

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

– legalize limited gambling in the commercial districts of the town of Parachute, in Garfield County, as of June 1, 1993;

Limited Gaming - Parachute

- prohibit, until January 1, 2000, any expansion of limited gambling to new areas of the state other than Central City, Black Hawk, Cripple Creek, and Parachute, and require the Limited Gaming Control Commission to study the effects of gambling and report to the General Assembly by October 31, 1999;
- comply with existing regulations of the Colorado Limited Gaming Control Commission, subject to special provisions which allow the town of Parachute to enact ordinances setting forth the conditions for the conduct of limited gambling activities in Parachute, regarding the hours of operation, floor area, and types of buildings in which gambling may be conducted;
- conform to current constitutional restrictions regarding the types of games permitted and the maximum allowable bet;
- allow gambling in Parachute at all hours, including between the hours of 2:00 a.m. and 8:00 a.m. if the gambling is conducted in establishments which do not sell alcoholic beverages;
- limit, until January 1, 2000, the license fees which the Limited Gaming Control Commission may assess on all limited gambling establishments to those fees in effect as of January 1, 1992;
- reduce the maximum allowable state tax on the adjusted gross proceeds of all limited gambling in the state from up to 40 percent to up to 15 percent until January 1, 2000, after which the maximum allowable state tax will return to up to 40 percent; and
- provide for the following annual distribution of state tax revenues derived from gambling activities in Parachute, less administrative costs:

Percentage	Recipient/Fund	Purpose
60%	State Public School Fund	Moneys to help finance public schools
20%	Parachute	Moneys for tourist promotion and public improvements in the town of Parachute (any surplus will be transferred annually to the State Tourism Promotion Fund)
10%	Parachute General Fund	Moneys for the town of Parachute
10%	Garfield County General Fund	Moneys for Garfield County

Arguments For

1) Gambling revenues will provide economic stability to the town of Parachute. The town has at times relied on oil shale companies to provide jobs and economic stimulation. As a result, the town, like the oil industry, has suffered many boom and bust cycles. Most recently, both Exxon and Union Oil of California announced large projects at Parachute. Expecting an increase in the population of Parachute, the companies provided the town with grants for the development of up-to-date water and sewer facilities, paved roads, and a new town hall. However, the large increase in population never occurred; and the oil shale companies pulled out of Parachute, leaving an extensive infrastructure in place to serve fewer than 500 people. Limited stakes gambling will enable the town of Parachute to make use of its advanced infrastructure and will insulate Parachute from present and future oil shale disruptions. The residents of Parachute are in favor of using limited gambling as an economic development tool for their town. At a special election held on December 17, 1991, the people of Parachute voted 121 to 90 in favor of bringing limited stakes gambling to Parachute.

2) Decisions about when and where gambling is conducted should be made by the people in the affected town. This proposed amendment allows the town of Parachute to determine the hours of operation, the floor area, and the types of buildings in which gambling may be conducted. The town can also enlarge or annex areas to be included in its gambling district. Allowing the town to determine when, where, and in what types of structures gambling should be permitted ensures that gambling is regulated in the best interest of the town.

3) Placing a limit on the further expansion of gambling will provide the needed time for an assessment of gambling already in operation. It will allow the state to collect data on the environmental, social, economic, and legal consequences to the communities and the state resulting from the direct and indirect impacts of gambling. Close examination of the problems facing current gambling communities will assist in circumventing these problems in the future. In addition, by limiting the further expansion of gambling, Colorado citizens will be provided a testing time during which they can determine whether or not they want to expand limited gambling to more areas across the state.

Arguments Against

1) This proposal may not stop the expansion of limited gambling in Colorado, even though the amendment states that it would prevent further gambling until the year 2000. Adoption of a citizen's initiative or a proposal referred by the General Assembly could result in an amendment to the constitution in any future general election by simply removing the moratorium and allowing gambling in additional communities.

2) The proposal provides a potential tax break for gambling establishments by reducing the maximum state tax on gambling from the present maximum of up to 40 percent to a maximum of 15 percent (until the year 2000). This reduction limits the state's and localities' potential tax benefits from gambling. Setting the license fees at their current levels until the year 2000 further limits potential tax revenues. As a result, moneys generated from gambling tax revenues will not be great enough to significantly impact the state and gambling communities. In addition, by setting the maximum tax rate and license fees at fixed levels, this proposal restricts the state

Education Reform – Sales Tax

General Assembly's and the Limited Gaming Control Commission's ability to increase the tax rate and license fees in response to unforeseen impact costs or needs of the state and gambling localities.

3) This proposal does not provide for adequate control over gambling. First, it does not limit the areas in which gambling may be conducted. While gambling is limited to the commercial districts of Parachute, the proposal does not prohibit the town from expanding or annexing land to be included in the commercial districts. Second, the proposal does not strictly limit the hours of operation, floor area, and types of structures in which gambling may be conducted in Parachute. Allowing the town to make decisions regarding these matters opens the door for interested business persons to lobby the town for rules most favorable to them. Without clearly stated constitutional controls, local authorities and planning agencies may find it difficult to control the gambling industry. The end result may be gambling throughout the town with little regulation of the hours of operation, the size of the establishment, and the visual aspects of the casinos. There are statewide considerations in the effective management of gambling enterprises that can only be provided through strong constitutional controls.

4) Non-gambling localities contiguous to the town of Parachute may experience negative economic impacts from gambling, for example, increased traffic volume, greater law enforcement costs, and increased need for road repairs. This proposal fails to provide these neighboring localities with the funds necessary to account for these impacts.

AMENDMENT 6 – STATUTORY AMENDMENT INITIATED BY PETITION

Education Reform – Sales Tax

Ballot Title: *An act to provide for the establishment of a system of educational standards and assessments for public schools; to require school districts to develop strategic action plans to enable achievement of such standards; to require certified diplomas for graduates who meet certain standards and remedial instruction for those that do not; to require shared decision making at the school building; to require that early childhood education be provided to certain children; to mandate periodic administrative audits of school districts and annual school district reports; to provide monetary grants to school districts; to increase the 3 percent rate of state sales and use tax to 4 percent to provide increased state revenues from the additional 1 percent to be applied solely to fund public schools; to specify a minimum amount as the state share of equalization program funding; to repeal and supersede any conflicting laws and to supersede any existing statutory tax limitations; and to recreate the Colorado Achievement "COACH" Commission. •*

Provisions of the Proposed Statutory Amendment

The proposed statute, known as the "Colorado Children First Act of 1992," would provide an increase in the state sales and use tax rate, from which revenues would be used to fund the state's public school system and provide for a number of education reforms.

The proposed statutory changes would:

School Funding

State Sales and Use Tax.

– increase the rate of the state sales and use tax from 3 percent to 4 percent to provide additional state revenue applied solely to fund a portion of the state's share of public school finance funding and the education reforms described below;

– require that the aggregate state share of school equalization funding include an amount equal to the state General Fund appropriation for school finance act funding for fiscal year 1992-93, revenues from the sales tax increase, and federal school land and mineral lease moneys;

– provide that the 1 percent sales tax increase will be exempt from the current 7 percent limitation on total sales taxes;

Innovation and Incentive Fund.

– create the "School Innovation and Incentive Fund" consisting of \$50 million or 2 percent of school finance act funding for schools, whichever is greater. The Colorado Commission for Achievement in Education would grant funds to schools and school districts to encourage innovation in the schools and to reward improvements in student performance and progress toward reforms.

Education Reform

Standards and Assessment.

– direct the Colorado Commission for Achievement in Education (the Commission) to create a plan for the development of model state standards and new forms of assessments. The plan must also include provisions for local school districts to develop standards and assessments for use within their district;

– require the Commission's plan to provide for the development of standards in math, science, reading, and writing by July 1, 1994, in geography and history by July 1, 1995, and in additional subject areas by July 1, 1996;

Education Reform – Sales Tax

- require the State Board of Education to adopt all state standards within six months after receiving the plan from the Commission;
- require school districts to adopt and implement standards that meet or exceed state standards, or be subject to loss of accreditation;
- require the Colorado Department of Education to administer to students in grades four, seven, and ten a statewide writing performance assessment in fiscal year 1992-93 and a math performance assessment in fiscal year 1993-94;
- require the Colorado Department of Education to establish an “assessment bank” containing descriptions and samples of the best standards and assessment methods and models being developed and used throughout Colorado and in other states;

Curriculum Frameworks.

- require the State Board of Education, working with the Colorado Department of Education and school districts, to develop model curriculum frameworks linked to the new standards;

Certified Diploma.

- require each school district, beginning in 1996, to provide a certified diploma which will signify that the graduate has met local school district standards that meet or exceed standards set at the state level;
- require districts to provide remedial instruction, until the age of 21, to students who do not achieve the standards necessary to receive a certified diploma;

Early Childhood Education.

- require each school district, by July 1, 1994, to provide early childhood education to all “at-risk” four- and five-year-olds through a combination of private programs, Head Start Programs, and school district pre-school programs;
- require each school district, as resources become available, to expand its preschool program to include all four- and five-year-olds;

Strategic Plans for Reform.

- require each school district to develop a strategic action plan describing how the district will provide learning environments that allow all students to have a fair opportunity to learn and that enable students to achieve the district’s standards. The plan shall include provisions for:
 - shared decision-making, including decision-making teams with representation from parents, teachers, and community members;
 - a combination of private, Head Start, and local district preschool programs to serve all “at-risk” four- and five-year-olds;
 - a plan for compensating school employees which recognizes performance, differentiated responsibilities, and educational attainment and longevity;
 - teacher training including skills needed to teach the new standards;
 - reduced class sizes in grades K-3;
 - acquisition of classroom technology;
 - extension of the school year and/or school day at least for students who need additional time to achieve district standards; and
 - cooperation with other public and private entities to provide family and child services at the school district or school building level;

District Accountability.

- require each school district to be subject to an administrative audit of its practices and expenses by an entity outside the control of the district;
- require each school district to make an annual report to the public which will include a financial statement, an update on the implementation of the strategic action plan, and the percentage of students who meet, exceed, or do not meet district standards;

Teacher Education.

- direct the Colorado Commission on Higher Education to promote the restructuring of teacher education programs in accordance with new standards set by school districts;

Supersede and Repeal of Laws in Conflict.

- supersede and repeal all laws in conflict with the proposal;
- supersede any statutory tax limitation amendment or legislation enacted on or before the effective date of the proposed law;

Other Provisions.

- move the Colorado Commission for Achievement in Education from the legislative branch of government to the executive branch of government;

Education Reform -- Sales Tax

- require the Colorado Commission for Achievement in Education to conduct a review of the school district setting categories which are used to determine school district funding;
- require the Colorado Commission for Achievement in Education to make recommendations to the General Assembly and Governor on a system of consequences for districts which do not make adequate progress toward achieving the new standards or implementing their strategic action plan;
- direct the State Board of Education and local school district boards to review all current policies and regulations and repeal or revise any that are not consistent with the provisions of the proposed law; and
- require the State Board of Education to recommend the repeal of state laws found in conflict with the proposed law.

Comments on the Statutory Amendment

The proposed amendment addresses two general issues. First, it proposes an increase in the state sales tax earmarked for K-12 education; and second, it requires schools and school districts to undertake a number of education reforms. Several of the reform concepts are similar to provisions already in current law or in rules and regulations, while others are new. Further discussion of the sales tax, school funding, and the reforms may be helpful in understanding the possible impact of the proposed amendment.

Sales tax. Colorado currently imposes a state sales tax of 3 percent. Local governments may impose, with voter approval, additional sales taxes as long as the combined city, county, and state rate does not exceed 7 percent. The proposed 1 percentage point increase in state sales tax would be exempt from the 7 percent limitation. Colorado is one of three states that imposes a 3 percent sales tax which is the lowest rate among the 44 states with such a tax. However, when state and local sales tax revenues are combined, Colorado ranks 15th in per capita state and local sales tax collections.

School finance. Public schools in Colorado are primarily funded from state and local tax sources. Each school district receives funding according to a formula based on the size of its enrollment and its "setting category" assignment (a grouping which determines how much funding per pupil it receives). Most school districts are required to levy the same property tax rate. While the proportion of state aid and property taxes varies among districts, current law requires that state aid be approximately 55 percent of total funding and revenue raised by property tax be about 45 percent of the amount of school finance funding statewide.

Legislative Council staff (LCS) currently estimates that the sales tax increase will raise \$333 million in the first full year of collections. Because of the use of one-time revenue sources in the past, a major portion of this new revenue will be required to maintain school funding at the current level of per pupil funding. It is also estimated that as much as \$15 to \$28 million may be needed to fund the at-risk preschool program in the proposal. Any money remaining after replacing the one-time revenue sources and funding the preschool program would be available to fund other educational needs.

Innovation and Incentive Fund. The proposed amendment creates the Innovation and Incentive Fund that would contain the greater of \$50 million or 2 percent of school finance act funding. The money would be used to reward schools and school districts for progress toward reform, improved student performance, teacher compensation plans, progress toward strategic plans, and innovative practices.

Standards and assessment. One working definition of standards is that they are statements of what students should know and should be able to do, while assessments are defined as a measure of whether or not students have reached the standards. Nationwide, assessments are changing so that they are based on outcomes, rather than the current multiple choice tests that compare students with one another instead of against a standard.

Currently, every school district in Colorado is required to test students in one grade within each school building using a nationally standardized test. In addition, as part of a new accreditation process developed by the State Board of Education, districts must develop standards and assessments for student achievement.

While current practice is set forth in rules and regulations, the proposed amendment requires, by law, the development of performance standards and assessments in math, science, reading, writing, and other areas. The proposed amendment also makes implementation of those standards a requirement for accreditation.

The State Board of Education and the Colorado Department of Education are currently working in the area of standards and assessment. Colorado is participating in The New Standards Project, where teams of Colorado teachers are developing standards and assessments for use in our schools. The Colorado Department of Education has administered a writing assessment to selected students statewide and will administer the same assessment during the 1992-93 school year.

The proposed law incorporates the currently scheduled administration of the writing performance assessment in 1992-93, and requires that the assessment be given to all students in grades four, seven, and ten. Standards for writing must be developed by July 1, 1994.

School district planning. State law now provides for accountability committees at the school building, school district, and state level, while the proposed amendment calls for school building shared decision-making teams and strategic planning. In both cases, broad representation from the community is required.

A school building accountability committee, under current law, must adopt high but achievable goals for the improvement of education in its building. The goals must be consistent with goals set by the State Board of Education.

Education Reform – Sales Tax

According to the proposed amendment, each school district, and presumably the shared-decision making team, must develop a strategic action plan to demonstrate how the district will provide students with a fair opportunity to learn and achieve district standards.

School district accountability. By September 1 of each year current law requires each school building accountability committee to report to staff, students, parents, and the community about the school's plan for educational achievement and the results of standardized tests. No later than December 31 of each year, each district must provide the public with an annual written summary including district goals, long-range plans, and progress toward improving educational achievement.

The proposed amendment requires that, beginning in July of 1993, and every four years thereafter, each school district make a report to the public that includes a financial statement, an update on the progress of implementation of the strategic action plan, progress toward achieving local goals, and results of student assessment. The report must be in an understandable format and widely distributed to citizens of the district.

Certified diploma. Rules recently adopted by the State Board of Education require school districts, by July 1, 1995, to issue a certified diploma that assures attainment of knowledge, skills, attitudes, and behaviors deemed necessary by a local school board.

The proposed law provides for a certified diploma signifying that a graduate has met particular standards of the district. The proposed law also provides for remedial instruction, until age 21, for a student not achieving the content and performance standards.

Arguments For

1) Without additional funding provided by the proposed sales tax increase, overall school funding will be reduced. Of the estimated \$333 million earmarked for education under the proposed amendment, approximately \$245-\$276 million is needed just to maintain 1993-94 per pupil funding at the same level as 1992-93. Districts will not be able to absorb a reduction in funding without significant cuts in programs and staff, which could lead to larger class sizes, fewer elective classes, and the elimination of teaching positions.

2) The amendment unifies existing reform efforts underway in Colorado to create standards, new assessments, and a certified diploma. The proposed amendment presents a comprehensive framework, in statute, to direct educational reform efforts in each of Colorado's schools. Changes include shared decision-making, early childhood education, possible extension of the school day and year, and teacher pay for performance.

3) The proposed amendment gives specific decision-making authority to parents, teachers, and community members. Since every school building in the state will be required to plan for the implementation of shared decision-making, school personnel will be making decisions based on input from the school's community. Parents and community members will have an active role in making key decisions in the schools including the development of performance standards and assessments.

4) The School Innovation and Incentive Fund will encourage districts to undertake bold new reforms by providing funding to districts to institute reforms and improve education. An amount equal to the greater of 2 percent of the total state appropriation for education or \$50 million will be available for awards and grants to districts making the most progress toward achieving new standards or reforms and to compensate teachers, administrators, and other staff members for excellent or innovative performance.

5) The proposed law would move the Colorado Commission for Achievement in Education from the legislative branch to the executive branch of government, where it more appropriately belongs. The Commission's responsibility to establish guidelines and distribute funds based on criteria is most often associated with executive agencies.

Arguments Against

1) The proposed amendment is unnecessary because many of the provisions duplicate current law. School districts are currently required to develop standards and assessments and will soon have to offer certified diplomas. In addition, every school building must have an accountability committee where shared decision-making can occur. School districts are already successfully undertaking many of the reforms suggested in the proposed amendment.

2) Spending more money on education will not improve student performance. Over the past five years expenditure per pupil in Colorado has increased 15 percent with little or no improvement in student performance. Rather than raising taxes to provide additional funds for schools, the state's entire educational system needs to be evaluated and reorganized to improve student performance.

3) Raising the sales tax will damage the state's economy and place an added burden on the taxpayers. A sales tax increase would reduce retail sales and employment and shift tourist and convention spending to other states. More state residents would place catalogue orders with out-of-state companies to avoid the tax increase. In addition, a sales tax is regressive, meaning that individuals with lower incomes would bear the greatest burden from the tax, since they spend a larger proportion of their income on goods and services that are taxed.

4) Increasing the state sales tax will make it more difficult for cities and counties to levy additional local sales tax. Sales tax is a major source of revenue for local governments. While the proposal does not preclude local governments from imposing additional sales taxes, raising the state sales tax makes it more difficult for local governments to ask voters to approve additional sales taxes for use at the city and county level.

Vouchers for Education

5) If existing law is not changed, property taxes will increase as a result of the passage of the proposed law. Property taxes fall disproportionately on businesses.

6) The proposed law would recreate the Colorado Commission for Achievement in Education in the executive branch of government while retaining a legislative majority of the membership of the Commission, placing it in conflict with the general requirements of separation of powers. With a majority of the membership of the COACH Commission made up of legislators, the Commission should be retained in the Legislative Department. Also, under the proposed law, the Commission's guidelines would not be subject to legislative review as are those of most other executive agencies.

AMENDMENT 7 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Vouchers for Education

Ballot Title: *An amendment to the Colorado Constitution requiring that all state moneys appropriated for the general support of kindergarten, elementary, and secondary education be apportioned among Colorado students in the form of vouchers; authorizing the general assembly to similarly apportion local taxes raised for educational purposes and funds appropriated for existing categorical services; providing that the object of such apportionments is to afford a choice of educational resources available in Colorado, including government (public), non-government, and home schools; and providing that, with respect to any share of school cost charged to the local property base, a student for whom a voucher is used for educational services shall be counted for attendance purposes only to the extent that said services are provided by the school district of the child's residence. ***

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- direct the General Assembly to apportion all state moneys for the general support of kindergarten, elementary, and secondary education among Colorado students between the ages of five and twenty-one, and provide that the value of each individual share of the apportionment is to be in the form of a “voucher” to be controlled by each student’s parent or guardian. Emancipated minors would control their own voucher;
- allow parents, guardians, and emancipated minors to use the voucher to choose from the various kindergarten, elementary, and secondary educational services available in Colorado, including public, private, and home schools;
- require the General Assembly to set the value of each voucher at no less than 50 percent of the average per pupil expenditure in the district of the student’s residence and provide for the implementation of the voucher system in law beginning with the 1993-94 school year;
- allow the General Assembly to increase the value of each voucher by providing for the similar division of local property taxes, other local taxes raised for educational purposes, and moneys appropriated for categorical services such as transportation and special education;
- require public schools to accept vouchers as payment for services rendered and redeem their value from the state;
 - allow private schools to accept vouchers and redeem their value from the state;
 - allow home schools to exchange the value of the voucher for educational services and materials in-kind, but prohibit any monetary profit to the student’s parents;
 - provide that no school district shall be required to accept students from outside the district in excess of reasonable capacity as determined by the directors of the school district;
 - provide that for any portion of a voucher charged to the local property tax, a student using a voucher shall be counted only to the extent that educational services are actually provided;
 - provide that no voucher shall be redeemed or exchanged for services or materials from any institution operated, controlled, or funded by an organization formed for political purposes or from any institution that discriminates in contravention of federal or state law;
 - allow the General Assembly to permit the school district of residence to charge an administrative fee of no more than 2 percent of the value of the voucher;
 - prevent the General Assembly or any state agency from creating any authority over non-public schools, not existing prior to January 1, 1991, except for provisions in law which set minimum student achievement or proficiency standards which may be no more stringent than for public schools; and
 - supersede the provisions of the state constitution prohibiting state moneys from being used for private, religious, and sectarian schools.

Comments on the Proposed Amendment

School finance in Colorado. The Colorado Constitution directs the General Assembly to maintain a thorough and uniform system of free public schools throughout the state. The majority of revenue for schools comes from state and local sources. State aid is provided through an annual appropriation from the General Assembly. Local revenue is provided through the property tax. The amount of property tax that a school district

Vouchers for Education

raises is directly related to the assessed value of the property in the district. Because of variations in assessed value between districts, the General Assembly uses state aid to equalize the property tax wealth of districts and to provide greater equity in educational opportunity. Under the state's school finance act, a district with high property tax revenues may receive no state aid, while a district with low property tax revenues may rely almost solely on state aid.

Issues raised by the proposal. The effect of this proposal on the complex process of combining state and local funding for public schools is not clear, although these issues may be addressed by enabling legislation. For example, the proposal provides that the minimum value of the voucher shall be "50 percent of the average per pupil expenditure in the district of the student's residence." Per pupil expenditures vary widely among the state's 176 school districts. The proposal does not state whether this per pupil amount would be calculated using only expenditures under the state's equalization program, or whether other federal, state, and local revenues would be included in the calculation. In addition, the proposal does not indicate which year would be used as a base year for purposes of calculating the per pupil amount.

The proposal requires that all state moneys for the general support of K-12 education be "apportioned among all Colorado students between the ages of five and twenty-one." Legislative Council staff estimates that in fiscal year 1993-94, vouchers may need to be provided to an additional 44,516 non-public students enrolled in private schools and home schools, and returning dropouts. The potential cost to the state of providing a voucher to these non-public students is estimated at \$83.9 million in fiscal year 1993-94.

The proposal requires that state moneys for public education shall be apportioned "notwithstanding" the provisions of the state constitution forbidding appropriations to schools controlled by any church or sectarian denomination. While this provision appears to remove any conflicts with the state constitution regarding the provision of state funds to sectarian schools, the proposed amendment may conflict with the separation of church and state provisions of the First Amendment of the United States Constitution.

1990 Public Schools of Choice Act. In 1990, the General Assembly enacted the Public Schools of Choice Act. The act requires each school district in the state to allow resident students to enroll in any school or program within the district, subject to space availability and compliance with desegregation plans. In addition, the act allows school districts to accept students from other school districts. In the fall of 1990, a total of 117 school districts reported that 4,500 students were attending schools from outside their district. In the fall of 1991, 133 school districts indicated that they would accept students from outside their districts. The act also created an interdistrict schools of choice pilot program. The program provides funding for three districts to offer unique educational programs.

Voucher programs in other states. While several states offer interdistrict and intradistrict choice programs similar to Colorado, Wisconsin has implemented a limited voucher program which allows students to attend either public or private schools. In 1990, the Wisconsin legislature enacted the Milwaukee Parental Choice Program. The program authorized up to 1,000 Milwaukee children from low-income families to each use a \$2,500 voucher provided by the state to attend private, non-sectarian schools in Milwaukee. According to *Education Week*, 562 students were enrolled in seven schools at the beginning of the 1991-92 school year, the second year of the program. A preliminary evaluation of the program conducted in the fall of 1991 by the University of Wisconsin indicated that the program attracted students who were not succeeding in public schools and that parental involvement increased among parents of students in the program. The study also found that 35 percent of the students in the program chose not to return to the voucher program after the first year.

Arguments For

1) The proposal would promote improvement in the public school system through the introduction of free market competition. The supply and demand forces of the marketplace would require that schools become more responsive to differences in students' educational needs. Schools would compete for students and create programs in response to the specific interests and demands of students and parents. Competition would raise academic achievement and increase the quality of educational services provided. Schools or programs that did not respond to the level of quality and services demanded by parents and students would not succeed. In addition, a voucher system would create an incentive for schools to provide a broad selection of educational programs in order to attract students. Parents and students would be able to select the program or school which fits their needs, such as those programs or schools emphasizing music, arts, vocational skills, math and science, basic skills, or athletics.

2) A voucher system would provide parents and students with a voice as decision-makers in the selection and delivery of educational services. Currently, parents have little control over how their children are educated. Instead, the management of public education has grown so large and become so bureaucratic that it has begun to put its own interests before those of the parents and students it serves. A voucher system would allow parents to take an active role in the direction and quality of their child's education. Greater parental involvement in public education has been cited by educational reformers as a necessary element in improving education and will result in improved educational performance. The proposal would allow parents to assume greater control over their children's education by choosing how and where their children are educated.

3) The proposal would initiate a necessary and fundamental restructuring of the state's educational system. The public has become increasingly dissatisfied with the results produced by public schools. The educational establishment, however, has often opposed attempts to change the system because the changes are often perceived

Vouchers for Education

as a threat to the status quo. Instead, past efforts to improve education have often centered on increased funding for the state's public education system. Although per pupil funding has grown faster than the rate of inflation over the past several years, additional funding has not resulted in improved student performance. Student performance on standardized achievement tests has declined over the past several years. For example, according to data provided by the Colorado Department of Education, from 1987 to 1991 the statewide ACT composite score declined from 21.7 to 21.3.

4) A voucher system would lead to greater economic and social integration in schools. Currently, students from wealthier districts have a higher quality of education and more opportunities for choice than students who live in districts with a lower level of property wealth. The proposal would provide poor and minority students with the opportunity to attend higher quality schools. Increases in the number of poor and minority students at wealthier schools would occur through the forces of the marketplace and school choice, rather than through court and legislative mandates.

Arguments Against

1) Educational services are a "public good," and the introduction of unrestricted free market competition into the state's educational system could result in a massive disruption of the educational process. Schools would need to adjust rapidly to changes in enrollment, funding, and orientation, and at the same time retain and attract students. Schools would be forced to divert funds from instructional budgets in an attempt to advertise for students and develop new programs. The need to advertise and market schools would place poorer school districts at a disadvantage. Rather than improving the educational system, the introduction of free market competition would award schools for their success at marketing, rather than for the quality of their programs. In addition, market forces would encourage schools to keep costs low and profit margins high, possibly sacrificing educational quality.

2) The proposal could result in a more socially and racially segregated school system. Parents might tend to send their children to schools with students from similar economic, social, and ethnic backgrounds. Concentration of students by subject matter or specific talents such as music, art, or athletics could result in increased social segregation and decreased tolerance of cultural, racial, and group differences. Furthermore, the proposal would not be uniformly beneficial to all parents. Lower income families would not be able to supplement their voucher with as much additional money as middle and upper income families and therefore would not have the same choice of private schools. Lower income families might also lack the money or time to provide transportation to and from the school of their choice. In addition, those parents who have the time and money to research educational opportunities and pursue admittance of their child will benefit the most from the voucher system. In contrast, lower income parents might not be able to spend the time and money to insure that their child is placed in the optimum educational setting. Children with parents who cannot or will not take the initiative to send their children to a better school may receive an inferior education due to no fault of their own.

3) The proposal would disrupt the state's program for equalizing property tax wealth and improving educational opportunity between school districts. Under the state's current school finance act, a district with high property tax revenues may receive no state aid, while a district with low property tax revenues may rely almost solely on state aid. The proposal requires the state to provide state aid in the form of a voucher equal to at least 50 percent of the average per pupil expenditure in the student's district of residence. Under the proposal, districts with relatively high property tax revenue that receive less than 50 percent of their revenue from state aid would either experience increases in per pupil funding or reductions in property taxes. Conversely, districts with relatively low property tax revenue that receive more than 50 percent of their revenue from state aid would be required to increase property taxes in order to maintain the same level of per pupil funding.

4) The proposal would allow private and home schools to receive public funds. Those schools, however, would not be required to account for the use of the funds. Public schools must answer to locally elected school boards and the Colorado Department of Education on such issues as the school's budget, results of audits, and curriculum choices. In addition, public schools must implement various state and federal regulations, such as removing asbestos from classrooms, educating special education children, and providing drug education programs. Private and home schools would not be required to meet these requirements. In addition, the cost of complying with these requirements represents a sizable portion of a school district's budget. Private and home schools would incur a financial advantage over public schools since they would be exempt from implementing the regulations and mandates which are imposed on public schools.

AMENDMENT 8 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Lottery Revenues for Parks, Recreation, Wildlife

Ballot Title: *An amendment to the Colorado Constitution to create the Great Outdoors Colorado Program; to provide for the permanent dedication of net proceeds from every state-supervised lottery game for the program after payment of certain existing obligations; to specify that the program provide for the preservation, protection, enhancement, and management of the state's wildlife, park, river, trail, and open space heritage; to establish a board as an independent political subdivision of the state to oversee the program; and to create a trust fund for the program. ***

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

- permanently dedicate a portion of the net proceeds of every state-supervised lottery game to the “Great Outdoors Colorado Program” beginning July 1, 1993. The transfer of lottery funds would be phased in over a five-year period in order to fulfill most of the state’s current outstanding obligations for capital construction;
- create the Great Outdoors Colorado Trust Fund as a new fund within the state treasury and make the fund not subject to budgetary oversight or to legislative appropriation or restrictions;
- provide funds for the preservation, protection, enhancement, and management of the state’s wildlife, park, river, trail, and open space heritage. Funds would be available for distribution to the state Division of Parks and Outdoor Recreation, the state Division of Wildlife, and to local units of government for specified purposes related to open space, parks, environmental education, and preservation of natural areas;
- continue existing lottery distributions to local governments through the Conservation Trust Fund as well as current allocations to the Division of Parks and Outdoor Recreation. Existing distributions to capital construction would decrease beginning in 1993 by \$7 million to \$11 million annually and would be reduced by up to \$35 million per year in 1998. Funds remaining would be transferred to the state general fund;
- establish a new board, the State Board of the Great Outdoors Colorado Trust Fund, to be appointed by the Governor and confirmed by the Senate. The board is not subject to any order or resolution of the General Assembly regarding its organization, powers, revenues, and expenses;
- state that lottery funds are to be used in addition to any other funds that would ordinarily be appropriated to the Department of Natural Resources or its divisions, and direct the General Assembly not to substitute lottery funds for other funds that would otherwise be appropriated for park, wildlife, or outdoor recreation purposes; and
- prohibit any interference with Colorado water law; prohibit the acquisition of land by eminent domain by state agencies for purposes of the program; and require payments in lieu of taxes to local governments for properties acquired by state agencies under the program.

Comments on the Proposed Constitutional Amendment

Current law. In 1980, Colorado voters approved an amendment to the Colorado Constitution which provided for a state-supervised lottery. The amendment specified that, unless otherwise provided by statute, net proceeds from the lottery would be allocated to the Conservation Trust Fund to be distributed to municipalities and counties for park, recreation, and open space purposes. “Net proceeds” means revenues from lottery and lotto sales which remain after prizes are awarded and administrative expenses of the State Lottery Division are paid.

The General Assembly passed legislation to implement the state lottery in 1982 which included the following distribution of net proceeds: 10 percent was dedicated to the Division of Parks and Outdoor Recreation; 40 percent was allocated to the Conservation Trust Fund for distribution to local governments; and the remaining 50 percent was allocated to the state Capital Construction Fund. The Capital Construction Fund is used to pay for the purchase of land and the construction, repair, and rehabilitation of state buildings such as prisons, state mental health facilities, office buildings, and state college and university facilities.

In 1988, the legislature acted to permit the expansion of lottery to include electronic gaming (“lotto”) which increased the amount of revenue collected. In addition, the funding formula was changed to ensure that a sufficient amount of the net proceeds would be dedicated to pay for construction of new state prison facilities. Most of the lotto proceeds were earmarked for a construction program to expand the state’s prison capacity in order to comply with a court order to remove state prison inmates from county facilities.

One result of this change in the funding formula was a reduction in the relative share of net proceeds received by the Division of Parks and Outdoor Recreation and the Conservation Trust Fund. From 1983 to 1988, roughly 50 percent of proceeds went consistently to capital construction, 10 percent went to the Division of Parks and Outdoor Recreation, and 40 percent went to the Conservation Trust Fund. Beginning in 1989, the relative shares going to the Division of Parks and Outdoor Recreation and to the Conservation Trust Fund started to decline at the same time that actual dollar disbursements began to increase. In Fiscal Year 1992, 62 percent of estimated lottery proceeds will be allocated to capital construction, 8 percent to state parks, and 30 percent to the Conservation Trust Fund. However, because the addition of lotto has increased total revenues,

Lottery Revenues for Parks, Recreation, Wildlife

Parks and Outdoor Recreation and the Conservation Trust Fund have received more money on average than they received in the years preceding the introduction of lotto.

Great Outdoors Colorado. The goals of Great Outdoors Colorado were developed by a citizen committee appointed by the Governor in 1990. The committee assessed the needs of Colorado's outdoor resources and in 1991 a concurrent resolution was introduced before the General Assembly. The resolution did not pass and, subsequently, a citizen's group developed recommendations from the resolution and crafted the current initiative for the 1992 ballot. If adopted, the initiative would require a portion of net lottery proceeds to be dedicated to the preservation, protection, enhancement, and management of the state's wildlife, park, river, trail, and open space heritage. These funds would be in addition to the proceeds currently allocated to the state Division of Parks and Outdoor Recreation and the Conservation Trust Fund. To fund the objectives of the program, a trust fund would be created in the state treasury which may be expended only for: 1) wildlife program grants to be administered by the state Division of Wildlife; 2) outdoor recreation resources through the state Division of Parks and Outdoor Recreation; 3) competitive grants open to state agencies, local governments, and non-profit land conservation organizations for the acquisition and management of open space and natural areas, and; 4) competitive matching grants to local governments and others for the acquisition, development, and management of open lands and parks.

The Great Outdoors Colorado Program is to be governed by an independent board appointed by the Governor with the consent of the Senate. The fifteen member board consists of twelve public members (two from each congressional district) and one member each from the Wildlife Commission, the Board of Parks and Outdoor Recreation, and the Executive Director of the Department of Natural Resources. The duties of the board are to oversee the program and trust fund, and to determine annual allocations which are roughly equal for the four purposes specified under the amendment. The board is not subject to the appropriation powers or supervision of the General Assembly. The amendment provides that the General Assembly cannot use lottery funds disbursed to the Great Outdoors Colorado Program to substitute for funds that would otherwise be appropriated for the Department of Natural Resources or its divisions.

The board is required to submit an annual report to the public and the General Assembly, to have an annual audit performed, and to adopt rules permitting public access to its meetings and records.

Outstanding obligations of the state. The proposed amendment attempts to pay off most of the outstanding financial obligations which the state has incurred by using lottery funds for capital construction projects. By phasing in the transfer of lottery moneys over a five-year period, most of the lease purchase agreements for state prisons and other buildings will be repaid from lottery proceeds by 1998. However, because of the wording of the amendment, one payment of \$13.7 million and two smaller payments are not covered. Unless these obligations are refunded or refinanced prior to 1998, which is permitted under the amendment, the General Assembly will be required to find an alternative source of funds to pay these obligations.

Arguments For

1) The original intent of the proponents of lottery in 1980 was to dedicate all lottery proceeds to parks, outdoor recreation, and open space. The ballot title in 1980 stated, "...authorizing the establishment of a state-supervised lottery with the net proceeds, *unless otherwise authorized by statute*, allocated to the conservation trust fund of the state for distribution to municipalities and counties for park, recreation, and open space purposes" (emphasis added). Currently, 30 percent of lottery proceeds go to the Conservation Trust Fund and 8 percent is allocated to the Division of Parks and Outdoor Recreation. The remaining 62 percent of the proceeds are allocated to capital construction, a purpose for which lottery proceeds were not originally contemplated. Establishing the lottery distribution in the state constitution will ensure that these funds will be returned to parks and outdoor recreation as the proponents originally intended.

2) In order to adequately maintain parks, trails, and open space for the citizens of Colorado, a reliable, predictable source of revenue is needed. The Colorado Division of Parks and Outdoor Recreation predicts the capital cost to adequately develop and maintain a state park system to be in excess of \$260 million over the next 20 years. The present level of state funding provides only an estimated \$107 million to fund park renovations, water for recreation, state trails, and new parks. The Great Outdoors Colorado Program would address this shortfall by creating a guaranteed stream of revenue devoted exclusively to parks and outdoor recreation needs.

3) According to state parks officials, parks should be renovated every 20 years in order to meet facility, health, and safety standards. Current levels of funding allow each park to be renovated only every 44 years. Many state facilities are overused or are in disrepair, and demands on local parks and recreation facilities continue to increase. Without a consistent source of annual funding, these conditions will continue to deteriorate.

4) The Division of Wildlife receives no general fund moneys and no lottery funds for its outdoor recreation programs. It is largely funded through cash sources such as hunting and fishing license fees. Most of these funds are expended for programs related to game animals. According to Division of Wildlife officials, funding is available for only an estimated one-third of the efforts identified as necessary to protect approximately 750 species of non-game wildlife. If enacted, this proposal would provide funding needed to support existing non-game wildlife programs.

5) Colorado's parks and recreational lands are an important component of the state's economy, particularly the tourism industry which is responsible for \$6 billion in economic activity each year. An annualized investment of \$35 million in the state's outdoor attractions will have a positive impact on the state's economy and will make

Limited Gaming - Selected Area in Lower Downtown Denver

Colorado more competitive with other states which share the western tourism market. Additionally, new and relocating businesses may be drawn to Colorado by the state's appealing quality of life which is enhanced by investments in outdoor infrastructure such as Great Outdoors Colorado.

Arguments Against

1) Currently, the state capital construction budget receives most of its funding from lottery proceeds. If lottery proceeds are not allocated to capital construction, capital construction will need another funding source. State capital construction programs include state facilities such as prisons, state mental health facilities, colleges and universities, and state office buildings. In addition, there is a backlog of 660 maintenance projects at facilities across the state which will cost \$162 million. If funds from lottery are diverted from capital construction and given solely to parks and outdoor recreation, state property will fall into disrepair unless taxes are increased or the state budget is cut, or the General Assembly can find replacement funds. This would include many buildings at the state's institutions of higher education, which currently receive the largest share of construction and maintenance dollars. Current estimates of such needs at the state colleges and universities indicate \$540 million will be needed for renovation and expansion projects over the next ten years.

2) Proceeds from lotto should not be considered in the same manner as other lottery proceeds because they were created and designated for a different purpose. The 1988 expansion of the state lottery to include electronic games was a deliberate decision by the General Assembly to fund critical state needs for prison construction. Lotto gaming and lotto proceeds were expressly authorized by the General Assembly to create an enhanced and stable revenue source for the construction and upgrading of prison facilities. When funds earmarked for prisons are separated from other lottery proceeds, the shares going to the Division of Parks and Outdoor Recreation and the Conservation Trust Fund more closely approximate the original 50-40-10 percent distribution formula.

3) Lottery proceeds have enabled the state to engage in long-term financing of costly capital construction projects through the use of lease purchase agreements. The Colorado Constitution prohibits the use of general obligation debt by the state, and lottery proceeds have provided one of the few reliable sources of revenue to fund lease purchase agreements. These agreements have been used to secure such long-term projects as the Auraria North Classroom Building, the land purchase for the Colorado Convention Center, and new prison facilities in several Colorado communities. If the amendment passes, the state's ability to engage in such long-term capital construction projects may be impaired.

4) Programs such as Great Outdoors Colorado should not be incorporated into the state constitution because they "lock in" provisions, goals, objectives, and programmatic details that will be difficult to change in the future. Such programs are better administered through the statutes where ongoing revisions are more readily accommodated. In addition, by creating a provision in the constitution rather than in statute that requires all lottery proceeds to be used for parks, the legislature's ability to manage the state budget will be constrained. Since it had the discretion to use a portion of lottery proceeds, the General Assembly was able to comply with a court order to upgrade prison facilities without raising taxes. Earmarking of funds is poor public policy because it limits the discretion of elected officials at the same time that it creates new constituencies for dedicated funds.

5) The initiative creates a new and autonomous board which is largely unaccountable to either the legislature or the Governor. In addition, the board is not directly responsible to the voters for its action because the members are appointed and not elected. With the exception of the appointment process, removal of members for cause, and annual state audits, there will be few checks or balances on how the board administers and spends public funds. The board should not be constitutionally insulated from accountability to either the Governor or the legislature, or the electorate.

AMENDMENT 9 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Limited Gaming - Selected Area in Lower Downtown Denver

Ballot Title:	<i>An amendment to the Colorado Constitution to permit limited gaming in specified portions of the Central Platte Valley area of Denver, subject to existing limited gaming regulations; to impose a surtax on the proceeds of such limited gaming, payable to the City and County of Denver; to impose a transfer tax on real estate within the designated area and authorize the taxation of adjusted gross gaming proceeds, with revenues to be allocated among state and local governments according to a specified formula; and to prohibit future expansion of limited gaming in Denver or in Adams, Arapahoe, Boulder, Douglas, or Jefferson Counties. **</i>
---------------	--

[Refer to pages 12 – 14 for background information regarding limited stakes gambling in Colorado and for general arguments for and against expanding gambling.]

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

– legalize limited gambling in areas of lower downtown Denver located in the Central Platte Valley in the City and County of Denver;

Limited Gaming - Selected Area in Lower Downtown Denver

- conform to current constitutional restrictions and comply with existing regulations of the Colorado Limited Gaming Control Commission;
- apply the current constitutional provision for the maximum allowable state tax of up to 40 percent of adjusted gross gambling proceeds to gambling activities in the Central Platte Valley;
- provide for the following annual distribution of state tax revenues derived from gambling activities in the Central Platte Valley, less administrative costs:

Percentage	Recipient/Fund	Purpose
50%	State General Fund	Moneys to be used exclusively for education
25%	Six County General Funds	Moneys, distributed according to population, for the counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson
25%	Cities and Towns General Funds	Moneys, distributed according to population, for the cities and towns located in the counties listed above

- impose a 5 percent local surtax on the adjusted gross proceeds of the newly authorized gambling activities to be paid to the general fund of the City and County of Denver;
- require the collection of a 2 percent real estate transfer tax on the transfer of real property within the area in which limited gambling is authorized by this proposal; and
- prohibit future expansion of limited gambling in the City and County of Denver and in the counties of Adams, Arapahoe, Boulder, Douglas, and Jefferson.

Arguments For

1) The lower downtown Denver area provides an accessible, central location for limited stakes gambling. The proposed location is a 35 acre site, north of Union Station and adjacent to the soon to be constructed baseball stadium, Coors Field. Access to the proposed location is convenient, as it is near major city streets and Interstate 25. This location will attract tourists and residents due to its proximity to the Colorado Convention Center, hotel facilities, Coors Field, and the selected relocation site of Elitch Gardens. Further, this location has the requisite infrastructure in place to support growth.

2) Combined with Coors Field, Elitch Gardens, and the attractions of downtown Denver, limited gambling in lower downtown will help stimulate further downtown development and the downtown economy. Gambling will help increase tourist activity in the downtown area, thereby benefitting existing retail stores. New jobs will be created to support the gambling industry, and housing development will increase to accommodate the influx of new employees.

3) Gambling tax revenues from lower downtown Denver will economically benefit the state as well as local economies in the Denver area. The state will receive 50 percent of the tax revenues from gambling in lower downtown for the funding of public education. The local economies of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson counties and the cities and towns located in these counties will also benefit, as the remaining 50 percent of the tax revenues will be distributed to them. In addition, the stimulation of the downtown area will increase sales tax collections for Denver and for the state. Further, the assessed value of the property used for gambling will increase dramatically, benefitting the property tax collections for the City and County of Denver.

Arguments Against

1) Permitting limited gambling in lower downtown Denver would expand the rationale for legalizing gambling in Colorado. Justifications for most of the gambling proposals to date have included the need for historic preservation and for revitalization of local economies, especially in rural areas. These justifications cannot be applied to the downtown Denver area, which enjoys a large population base and general economic viability. Permitting gambling in the highly urban area of lower downtown would broaden the justifications for gambling, thereby widening the door to the potential of legalized statewide gambling.

2) The proposed location of limited gambling in lower downtown Denver is inappropriate. If this proposal is adopted, gambling establishments would become a part of Denver's downtown environment. For persons visiting Coors Field for a baseball game or spending a day at Elitch Gardens, these gambling establishments would be highly visible. Such visibility is undesirable, as many young people would view gambling as part of the normal course of business, presumably fully acceptable to society.

3) This proposal contains a provision prohibiting the further expansion of gambling to Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson counties. This provision may not stop the expansion of gambling to these areas. Adoption of a citizen's initiative or a proposal referred by the General Assembly could result in an amendment to the constitution in any future general election by simply removing the "prohibition" and allowing gambling in additional communities.

Black Bear Hunting
AMENDMENT 10 – STATUTORY AMENDMENT
INITIATED BY PETITION

Black Bear Hunting

Ballot Title: *An amendment to the Colorado Revised Statutes to prohibit the taking of black bears by the use of bait or dogs at any time, and to prohibit the taking of black bears by any means between March 1 and September 1 of any calendar year, and subjecting violators to misdemeanor penalties and a loss of hunting privileges. **

Provisions of the Proposed Statute

The proposed amendment to the Colorado Revised Statutes would:

- prohibit the taking of black bears from March 1 to September 1 of any year and prohibit the taking of black bears at any time with the use of bait or dogs;
- provide exemptions from the above restrictions for employees of the Division of Wildlife and the United States Department of Agriculture, when acting in their official capacities, or for anyone who takes a black bear in defense of life and property;
- provide that violation of this statute shall be a class 1 misdemeanor, and, if convicted, there shall be a five-year suspension of wildlife license privileges for a first offense and a permanent suspension of such privileges for a second offense; and
- prohibit the Wildlife Commission from adopting any regulation in conflict with provisions of this new section.

Comments on the Proposed Amendment

The Colorado black bear population is estimated to be between 8,000 and 12,000 and is considered by the Division of Wildlife to be healthy. Black bear habitat is west of Interstate 25, with the greatest concentrations found in southwestern Colorado.

Female black bears give birth to an average of two cubs every other year in late January. During a normal life span, typically 15 years, a female black bear can produce five litters of two cubs each, or a total of ten cubs. The cubs are dependent on their mother until weaned in mid-August, and the female usually stays with them through the next spring. In Colorado, female black bears and their cubs hibernate in dens from mid-October through mid-May.

Prior to spring 1992, the black bear hunting season in Colorado usually consisted of a spring season during April and May, with a limited number of licenses available, and a fall season in October and November with an unlimited number of licenses available. Bait and dogs have been permitted for bear hunting. The taking of female black bears, with cubs present, is illegal, both in the spring and fall. However, it is difficult to distinguish male and female black bears from a distance, and female black bears frequently conceal their cubs when alarmed. As a result, some females which were nursing their cubs have been taken in the spring seasons. Six nursing females were confirmed to have been taken in spring 1990, eight in spring 1991, and 22 in spring 1992. Extending the closing date of the spring season from May 15 to May 31 resulted in the taking of more female black bears in 1992 than in the two previous years because female black bears are denned or relatively inactive until mid-May. The total number of black bears, male and female, taken in these spring seasons was 161 in 1990, 151 in 1991, and 303 in 1992. These numbers compare with an average of 530 per spring season during the 1980s.

The Colorado Wildlife Commission has adopted changes in its rules and regulations regarding the black bear hunting seasons and the number of licenses to be issued for 1992, 1993, and 1994. Beginning with 1992, the spring season starts, as usual, on April 1 but now closes on May 31; the fall season will be held September 1 through 30. The number of black bear hunting licenses are being limited. Licenses will be allocated by a lottery selection from a pool of applicants. For the two seasons in 1992, a total of 2,082 licenses were available, 50 percent issued in the spring and 50 percent in the fall. The total licenses for 1993 and 1994 have not been established, but for 1993, 30 percent of the licenses will be issued in the spring and 70 percent in the fall. In 1994, 10 percent of the licenses will be for the spring and 90 percent for the fall. Hunting with dogs will be permitted in the spring, but not in the fall, and the use of bait will be allowed in both the spring and fall seasons. In 1994, the Wildlife Commission will reconsider black bear hunting regulations for the years 1995 through 1997.

Arguments For

1) Animals whose reproductive biology is slow should be managed conservatively. The black bear population is vulnerable to over-hunting and, once that happens, the population is slow to recover. This proposal prohibits the taking of black bears in the spring when the females are still with dependent cubs and when there is a risk of eliminating entire families because the cubs are not capable of fending for themselves. In the interest of managing the black bear population, the proposal does not limit the number of licenses that may be issued for the fall season and allows for the taking of black bears that become problem animals.

2) The proposal provides for the management of the black bear population in a manner consistent with that of nearly every other big game species in Colorado. The state does not allow the hunting of any other big game species, except the mountain lion, during the time of the year when females are nursing their young. The black bear and the mountain lion are the only big game animals hunted in Colorado for which bait and hounds may be

Black Bear Hunting

used. As for illegal activity, poachers take an unknown, but presumably large, number of black bears in addition to those taken legally by licensed hunters. Poachers frequently use bait and dogs. Since the proposal outlaws bait and dogs, poachers who continue to follow these practices will be more easily discovered because evidence of these practices can be found.

3) The proposal addresses several practices which many regard as unethical. First, it is considered by many to be unethical to kill female bears with dependent cubs when the result is that these cubs will be orphaned and left to die in the woods. Next, many believe that the use of dogs to chase wild animals violates the concept of "fair chase." Further, many consider it unethical to entice animals to come to a bait station for food for purposes of killing them when the natural food supply is scarce. Another problem with the use of bait is that it may contribute to nuisance bear problems by teaching bears to associate humans with food.

Arguments Against

1) The hunting of bears in the spring season is not a serious biological problem. The number of bears taken in the spring seasons of 1990, 1991, and 1992 (161, 151, and 303, respectively) represents significant reductions from the spring season average of 530 in the 1980s. The Colorado Wildlife Commission has approved a new structure for the spring and fall seasons in 1992, 1993, and 1994. The spring season runs from April 1 through May 31, and the fall season from September 1 through 30. The percentage of the total licenses issued for the spring season will be reduced for these three years from 50 percent of the total in 1992, to 30 percent in 1993, and 10 percent in 1994. Reducing the number of spring licenses issued will assure that fewer female black bears will be taken in the spring.

2) This initiative will reduce the flexibility necessary for responsive wildlife management. Questions related to the length of a hunting season, the number of animals that may be taken, and restrictions on hunting practices should involve game management experts so that a balance in the state's wildlife population is possible. The process for making these decisions is well established. The Division of Wildlife conducts extensive reviews, develops accurate data, and submits management recommendations to the eight-member Wildlife Commission. The Commission then holds public hearings regarding the status of the wildlife population and makes its decisions based on the information received from these sources. These decisions can be changed by a majority vote of the Commission at any time in response to changes in hunting and life conditions of wildlife. This initiative, however, overrides procedures and findings of the Commission and makes it more difficult to change management policies concerning black bears. Changes to this law could be accomplished only by action of the General Assembly or by voters in a general election.