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STATEWIDE ELECTION DAY IS
TUESDAY, NOVEMBER 7, 1995
Polling places open from 7 a.m. to 7 p.m.

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AN ANALYSIS OF THE 1995 BALLOT PROPOSAL

Legislative Council
of the
Colorado General Assembly

Research Publication No. 401
1995

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September 1, 1995

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This publication provides information relating to a ballot measure to be decided at the 1995 statewide election. It has been prepared by the Colorado Legislative Council pursuant to provisions of the Colorado Constitution and the Colorado statutes. The single proposal on the ballot for the November 7, 1995 election is a statutory proposal referred by the General Assembly.

A constitutional amendment adopted by the voters in the 1994 general election requires that the nonpartisan research staff of the General Assembly prepare and distribute to active registered voters a ballot information booklet. The booklet is to include the text, title, and a fair and impartial analysis of each statewide measure. This publication is the first one prepared for distribution to all registered voter households under provisions of the 1994 constitutional amendment.

The analysis of the ballot proposal sets forth the provisions of the proposal, with general comments on its application and effect. Careful consideration has been given to the arguments for and against the proposal in an effort to fairly represent both sides of the issue. Major arguments have been summarized so that each citizen may decide the relative merits of each proposal.

The Legislative Council takes no position with respect to the merits of the proposal. In listing the "arguments for" and "arguments against", the Council is merely describing the arguments relating to the proposal. The quantity or quality of the "for" or "against" paragraphs listed for the proposal should not be interpreted as an indication of Legislative Council position.

Respectfully submitted,

Tom Norton

Senator Tom Norton
Chairman
Colorado Legislative Council

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Referendum A MULTIPLE-YEAR FINANCIAL OBLIGATIONS — NONSTATE PRISONS

BALLOT TITLE

Ballot Title: SHALL THE STATE BE AUTHORIZED TO ENTER INTO FINANCIAL OBLIGATIONS THAT ARE PART OF CONTRACTS OR AGREEMENTS FOR THE CONFINEMENT AND MAINTENANCE OF JUVENILE OR ADULT STATE PRISONERS IN NONSTATE FACILITIES FOR UP TO TEN YEARS?

TEXT OF THE PROPOSAL

CONCERNING THE AUTHORITY OF THE STATE TO ENTER INTO MULTIPLE-YEAR FINANCIAL OBLIGATIONS AS PART OF AGREEMENTS FOR THE HOUSING OF STATE PRISONERS IN NONSTATE FACILITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 1 of title 17, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-106.5. Term of financial obligations in contracts for housing juvenile or adult state prisoners in nonstate facilities - legislative declaration. (1) THE TERM OF FINANCIAL OBLIGATIONS THAT ARE PART OF CONTRACTS OR AGREEMENTS ENTERED INTO BY THE STATE FOR THE CONFINEMENT AND MAINTENANCE OF JUVENILE OR ADULT STATE PRISONERS IN NONSTATE FACILITIES, OTHER THAN CONTRACTS OR AGREEMENTS ENTERED INTO PURSUANT TO SECTION 16-11-308.5, C.R.S., MAY BE FOR UP TO BUT NOT IN EXCESS OF TEN YEARS.

(2) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THIS SECTION SHALL BE SUBMITTED TO THE VOTERS UNDER THE PROVISIONS OF THE REFERENDUM AS PROVIDED FOR IN SECTION 1 OF ARTICLE V AND SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AND IN ARTICLE 40 OF TITLE 1, C.R.S.; AND

(b) IF A MAJORITY OF THE REGISTERED ELECTORS OF THE STATE OF COLORADO VOTING ON THE QUESTION VOTE IN SUPPORT OF THE ADOPTION OF THIS SECTION, SUCH VOTE IS SUFFICIENT TO COMPLY WITH THE PROVISIONS OF SECTION 20 (4) (b) OF ARTICLE X OF THE STATE CONSTITUTION REQUIRING VOTER APPROVAL IN ADVANCE FOR THE CREATION OF ANY MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATIONS WHATSOEVER.

(3) THIS SECTION SHALL NOT TAKE EFFECT UNTIL APPROVED BY THE VOTERS AS PROVIDED IN SUBSECTION (2) OF THIS SECTION.

SECTION 2. Refer to people under referendum. This act shall be submitted to a vote of the registered electors of the state of Colorado at the next election for which it may be submitted, for their approval or rejection, under the provisions of the referendum as provided for in section 1 of article V and section 20 of article X of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "SHALL THE STATE BE AUTHORIZED TO ENTER INTO FINANCIAL OBLIGATIONS THAT ARE PART OF CONTRACTS OR AGREEMENTS FOR THE

CONFINEMENT AND MAINTENANCE OF JUVENILE OR ADULT STATE PRISONERS IN NONSTATE FACILITIES FOR UP TO TEN YEARS?" The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

AN ANALYSIS OF THE PROPOSAL

The proposed amendment to the Colorado Revised Statutes would:

- authorize the state to enter into future financial obligations for up to ten years per obligation as part of contracts or agreements for the placement of juvenile or adult state prisoners in nonstate facilities;
- provide that the multiple-year contracts or agreements shall not apply to contracts with local jails which are temporarily housing state prisoners;
- declare that, if approved by the voters, the provisions of this statute comply with the requirements of the constitution concerning the creation of multiple-fiscal year financial obligations.

Background

This proposal is submitted to the voters of the state as a referred statutory measure from the General Assembly. The proposed amendment would permit the state to enter into multiple-year financial obligations of up to ten years to provide placement of juvenile offenders and adult felons in nonstate prison facilities.

The term "nonstate facilities," as used in this proposal, could include facilities constructed and operated by private companies, by local governments, or by a combination of these entities. Present

policies of the Department of Corrections are that these facilities would be used for minimum security and minimum-restricted security inmates, although the amendment does not preclude placement of higher risk custody levels in nonstate facilities.

The state is currently permitted to enter into contracts with private firms as long as such commitments are made on an annual basis and subject to annual appropriations of the General Assembly. Legislation in the 1994 legislative session determined that the state should try to meet the projected need for minimum and minimum-restricted beds through contracts for the use of nonstate facilities and that such contracts shall be subject to annual legislative appropriations (H.B. 94-1340). This proposal seeks voter approval for multiple-year financial obligations, pursuant to the Taxpayer's Bill of Rights, but the agreements would still be subject to the annual appropriation provisions required by statute. The measure does not constitute an increase in district taxes or bonded indebtedness, and, therefore, no additional information is required pursuant to the Taxpayer's Bill of Rights.

If this measure is adopted, the nonstate prisons utilized by the state may include solely private or joint local government-private investor projects. As an example, a county could obtain financing, construct a facility, and then subcontract with a private prison firm for the operation of the facility. The state could then enter into multiple-year contracts with the county for the housing of prisoners at the privately operated facility. Expenses of the facility, including payments to investors for any construction costs and the cost of operation, would be satisfied with the state's payment for prisoners housed in the facility.

An understanding of the proposed statute requires some background about the correctional and criminal sentencing policies that Colorado has adopted in recent years. A combination of population growth, longer prison sentences, and inmates serving more of their actual sentences before being released or paroled has resulted in a larger Colorado prison population than ever before. These factors have led the state to consider several alternatives to state construction of prison facilities. Greater use of county facilities, development of

community corrections and intensive supervision programs, and use of facilities outside the state are among the alternatives that have been utilized.

Trends in Colorado's prison population indicate a continual increase in the number of inmates. The number of inmates under the jurisdiction of the Colorado Department of Corrections will increase from 10,718 (actual June 1, 1995) to an estimated 14,570 (projected January 1, 2000). These numbers represent a 36 percent increase projected over the next five years. The number of inmates admitted in 1984-85 was 1,934; the number admitted in 1993-94 was 3,541.

In addition to the increased number of inmates, the estimated average length of stay for all classes of Colorado felons has increased, a result of longer sentences and more of the sentences being served before parole. The length of sentences that can be imposed for specific crimes was increased significantly by legislation enacted in 1985. The effect of this change is that the average length of stay in prison of inmates entering the Department of Corrections in 1984-85 and in 1993-94 is estimated to have increased from 2.4 to 3.4 years. The length of stay for the three felony classes for which the majority of inmates are convicted, classes 3, 4, and 5, for the ten years between 1984-85 and 1993-94, are estimated to have increased as follows: class 3 - 3.9 to 5.5 years; class 4 - 2.1 to 2.9 years; and class 5 - 1.1 to 1.6 years.

The growth in the state's prison population has resulted in the need for additional prison bed space. The state system has an operational capacity of 8,015 beds. State inmate population on May 31, 1995, totaled 10,718. Out-of-state facilities in Minnesota (514 beds) and in Texas (500 beds) are being utilized to meet the space needs. Over 800 state prisoners are being held in temporary facilities. Other inmates are being held in the Park County detention center and in the Bent County correctional facility. Both facilities are county-owned; Park County contracted with a private operator, Bent uses county employees for its operation. The state reimburses the counties for use of this space without multiple-year financial obligations.

Arguments For

- 1) This proposal addresses an obstacle which prevents nonstate entities from operating private prisons in Colorado. Present contractual arrangements are required to be on a year-to-year basis, on a multiple-year basis subject to termination in any year, or on a multiple-year basis with the full contract amount held in reserve for payment. However, based on the experience in other states, investors may be unwilling to commit funds to finance nonstate prisons unless the state is willing to agree to multiple-year contracts. The financial burden of fully funding multiple year contracts in advance would be great and could interfere with the provision of other governmental services. The longer term contracts could facilitate loans for the construction and operation of nonstate prisons at interest rates that will make the projects more economically feasible. The lower interest rates for the nonstate facilities may save the state money in its contracts with the private companies. Approval of this measure would authorize multiple-year contracts but eliminate the need of placing the full contract amount in reserve in advance and would allow the state to take advantage of the lower financing costs.
- 2) The amendment may reduce the potential for costly and uncertain litigation in the state's attempts to alleviate prison overcrowding. The proposal will remove any remaining uncertainty as to whether or not the voters want the state to enter into contracts for up to ten years each for nonstate prison beds, even if such contracts are subject to annual legislative appropriation, require no new taxes, and do not legally create any long term debt. The Colorado Court of Appeals has held that the voters did not intend in the Taxpayer's Bill of Rights to prohibit such contracts because they do not create long term debt that the state is obligated to pay (*Boulder County Commissioners v. Dougherty Dawkins*). The Supreme Court has not yet directly addressed this issue under TABOR.
- 3) The statistics recited above reflect the need for increased prison space in Colorado. As noted, there are Colorado prisoners being housed in facilities in Minnesota and Texas, a policy that results

from the shortage of prison space in Colorado. The facilities in Minnesota and Texas that are being used do not hire Colorado employees and do not purchase goods from Colorado suppliers and merchants. These facilities and their employees do not pay taxes in Colorado. Families of prisoners are hindered in visitation and participation in rehabilitation of the inmates. This proposal will encourage private groups to look at investing in facilities in Colorado so that use of out-of-state facilities will not be necessary.

- 4) Private entrepreneurs, counties, and possibly other nonstate entities are willing to accept the cost of construction, maintenance, and staffing of facilities, saving the state money that would be tied up in front-end construction costs and an expansion in the number of state employees. Some estimates have been made that the privatization of prisons could result in savings of between 5 and 15 percent over the costs of state-operated facilities.¹ Further, the decision to permit a nonstate prison will be made by people who are accountable at the local level. Some areas may be interested in having a prison; other areas may not want this type of facility. The decision, however, will be made locally, not by the state.

- 5) Public safety concerns should be minimal since policies have already been adopted in Colorado dealing with standards for nonstate prisons. The state has enacted legislation to ensure that the appropriate standards for the operation of prisons will be met by the nonstate facilities. In the past, nonstate prisons have been used to house minimum security risks, with the higher risk prisoners being held at state facilities.

1. Taken from an unpublished paper by Professors Charles W. Thomas, University of Florida, and Charles H. Logan, University of Connecticut, "The Development, Present Status, and Future Potential of Correctional Privatization in America", May, 1991. This paper is available at the office of Legislative Council, Room 029, State Capitol Building, Denver, CO 80203.

Arguments Against

- 1) The amendment represents a “blank check” approach to long term financial obligations, an approach not consistent with the Taxpayer’s Bill of Rights. The intent of the Taxpayer’s Bill of Rights is to allow voters to approve particular contracts, not to ask for voter approval for future contracts about which voters have no knowledge. The proposal does not specify the amount of money that may be spent, the number of contracts that may be entered into, the total number of years over which such obligations may be incurred, or the number of times the contracts may be renewed. There is no specific contract for voters to approve. Among the principal provisions of the Taxpayer’s Bill of Rights is the concept of providing full disclosure of financial arrangements that create governmental financial obligations. The proposal creates a precedent for other governmental units to ask for voter approval of proposals that are equally vague, such as: “Shall the Government of _____ be allowed to go into debt?”, in effect asking for open-ended governmental debt.

- 2) Informed consent of the voters is lacking in other respects. Information is not provided as to the number of nonstate prison spaces, where the nonstate prisons will be located, and whether the people of the communities want to have a prison located in their community. Information on the number of inmates and on facility locations will not be known until bids have been accepted, well after the vote on this proposal. No contracts or bids are available for public inspection. The voters are being asked to agree to a purchase where the price is not known, the contract is blank. Since no prisons have been built, the taxpayers cannot know what they will receive for their money.

- 3) The state could still be liable for actions taken in privately operated prisons by contractors that it cannot control. The use of private prisons does not result in the transfer of public responsibility to private entities. For example, if a prison uprising results in the injury or death of a correctional officer employed by a private firm, the state could still have a legal obligation to the family of the officer. Insurance is required by

statute for nonstate prisons. The liability of the state, however, may not be avoided for actions taken by private organizations even though, with private prisons, the state is transferring its authority for day-to-day decisions to non-public organizations.

- 4) This manner of financing is not the most advantageous method that the state could use. Under this proposal, the state, in effect, may rent the space for prisoners but receive no ownership of the facility at the end of the contract period. In contrast, a lease-purchase arrangement, for example, would give the same benefits of privatizing — deferral of construction costs and privatized personnel and maintenance — but the buildings would transfer to the state at the end of the agreement period. The state could be locked into long-term payments or other lease arrangements that could be expensive if the extra prison spaces are not needed. If the state makes errors in the projected need, it would be overpaying for the facility, taking money away from schools, parks, roads, and other government services.

- 5) The amendment is unnecessary because the contracts will be subject to annual appropriations. Even if the contracts are for multiple years, they are still subject, under the state constitution, to annual appropriations, a concept that ensures that adequate funds are available to the state to make payments under a contract and that the state will maintain a balanced budget each year. The General Assembly already possesses the authority to permit annual contracts by statute.

LOCAL ELECTION OFFICES

Offices of the County Clerks and Recordors

Adams	450 S. 4th Ave., Brighton, CO 80601-3197	(303) 654-6025
Alamosa	P. O. Box 630, 402 Edison Ave., Alamosa, CO 81101-0630	(719) 589-6681
Arapahoe	5334 S. Prince St., Littleton, CO 80166-0001	(303) 795-4200
Archuleta	P. O. Box 2589, 449 San Juan, Pagosa Springs, CO 81147-2589	(970) 264-5633
Baca	741 Main St., Springfield, CO 81073-1548	(719) 523-4881
Bent	P. O. Box 350, 725 Carson, Las Animas, CO 81054-0350	(719) 456-2009
Boulder	P. O. Box 471, 13th & Spruce, Boulder, CO 80306-0471	(303) 441-3516
Chaffee	P. O. Box 699, 132 Crestone Ave., Salida, CO 81201-0699	(719) 539-4004
Cheyenne	P. O. Box 567, 51 S. 1st, Cheyenne Wells, CO 80810-0567	(719) 767-5685
Clear Creek	P. O. Box 2000, 405 Argentine St., Georgetown, CO 80444-2000	(303) 534-5777
Conejos	P. O. Box 127, 6683 County Road 13, Conejos, CO 81129-0127	(719) 376-5422
Costilla	P. O. Box 308, 354 Main St., San Luis, CO 81152-0308	(719) 672-3301
Crowley	110 E. 6th St., Ordway, CO 81063-1092	(719) 267-4643
Custer	P. O. Box 150, 206 S. 3rd St., Westcliffe, CO 81252-0150	(719) 783-2441
Delta	501 Palmer #211, Delta, CO 81416-1764	(970) 874-2150
Denver	Denver Election Commission 303 W. Colfax Ave., #101, Denver, CO 80204-2617	(303) 640-2351
Dolores	P. O. Box 58, 409 Main St., Dove Creek, CO 81324-0058	(970) 677-2381
Douglas	P. O. Box 1147, 301 Wilcox St., Castle Rock, CO 80104-1147	(303) 660-7444
Eagle	P. O. Box 537, 500 Broadway, Eagle, CO 81631-0537	(970) 328-8710
Elbert	P. O. Box 37, 215 Comanche, Kiowa, CO 80117-0037	(303) 621-2341 ext. 116
El Paso	P. O. Box 2007, 200 S. Cascade, Colorado Springs, CO 80901-2007	(719) 520-6225
Fremont	615 Macon Ave., #100, Canon City, CO 81212-3381	(719) 275-4203
Garfield	109 8th St., #200, Glenwood Springs, CO 81601-3303	(970) 945-2377 ext. 1820
Gilpin	P. O. Box 429, 203 Eureka St., Central City, CO 80427-0429	(303) 582-5321
Grand	P. O. Box 120, 308 Byers Ave., Hot Sulphur Springs, CO 80451-0120	(970) 725-3347 ext. 210
Gunnison	200 E. Virginia Ave., Gunnison, CO 81230-2297	(970) 641-1516
Hinsdale	P. O. Box 9, 317 N. Henson St., Lake City, CO 81235-0009	(970) 944-2228
Huerfano	40 Main St., Walsenburg, CO 81089	(719) 738-2380

Jackson	P. O. Box 33, 396 La Fever St., Walden, CO 80480-0337	(970) 723-4334
Jefferson	100 Jefferson County Parkway, Suite 2560, Golden, CO 80419-2560	(303) 271-8111
Kiowa	P. O. Box 37, 1305 Goff St., Eads, CO 81036-0037	(719) 438-5421
Kit Carson	P. O. Box 249, 251 16th St., Burlington, CO 80807-0249	(719) 346-8638
Lake	P. O. Box 917, 505 Harrison Ave., Leadville, CO 80461-0917	(719) 486-1410
La Plata	P. O. Box 519, 1060 2nd Ave., Durango, CO 81302-0519	(970) 382-6284
Larimer	P. O. Box 1280, 200 W. Oak St., Ft. Collins, CO 80522-1280	(970) 498-7820
Las Animas	P. O. Box 155, 200 Maple St., Trinidad, CO 81082-0115	(719) 846-3314
Lincoln	P. O. Box 67, 718 3rd Ave., Hugo, CO 80821-0067	(719) 743-2444
Logan	315 Main St., Sterling, CO 80751-4349	(970) 522-1544
Mesa	P. O. Box 20000, 544 Rood Ave., Grand Junction, CO 81502-5009	(970) 244-1662
Mineral	P. O. Box 70, Creed, CO 81130	(719) 658-2440
Moffat	221 W. Victory Way, Craig, CO 81625-2716	(970) 824-5484
Montezuma	109 W. Main St., Room 108, Cortez, CO 81625-3150	(970) 565-3728
Montrose	P. O. Box 1289, 320 S. 1st St., Montrose, CO 81402-1289	(970) 249-9061
Morgan	P. O. Box 1399, 231 Ensign St., Ft. Morgan, CO 80701-1399	(970) 867-5616
Otero	P. O. Box 511, 3rd & Colorado Ave., La Junta, CO 81050-0511	(719) 384-8701
Ouray	P. O. Bin C, 541 4th St., Ouray, CO 81427-0615	(970) 325-4961
Park	P. O. Box 220, 501 Main St., Fairplay, CO 80440-0220	(719) 836-2771 ext. 222
Phillips	221 S. Interocean Ave., Holyoke, CO 80734-1354	(970) 854-3131
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Prowers	P. O. Box 889, 301 S. Main St., Lamar, CO 81052-0889	(719) 336-4337
Pueblo	P. O. Box 878, 215 W. 10th St., Pueblo, CO 81002-0878	(719) 583-6520
Rio Blanco	P. O. Box 1067, 555 Main St., Meeker, CO 81641-1067	(970) 878-5068
Rio Grande	P. O. Box 160, 6th & Cherry, Del Norte, CO 81132-0160	(719) 657-3334
Routt	P. O. Box 773599, 522 Lincoln Ave., Steamboat Springs, CO 80477	(970) 879-1710
Saguache	P. O. Box 176, 501 4th St., Saguache, CO 81149-0176	(719) 655-2512
San Juan	P. O. Box 466, 1510 Greene St., Silverton, CO 81433-0466	(970) 387-5671
San Miguel	P. O. Box 548, 305 W. Colorado Ave., Telluride, CO 81435-0548	(970) 728-3954
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Summit	P. O. Box 1538, 208 E. Lincoln, Breckenridge, CO 80424-1538	(970) 453-2561 ext. 231
Teller	P. O. Box 1010, 101 W. Bennett Ave., Cripple Creek, CO 80813	(719) 689-2951
Washington	P. O. Box L. 150 Ash, Akron, CO 80720	(970) 345-6565
Weld	P. O. Box 459, 1402 N. 17th Ave., Greeley, CO 80632	(970) 353-3840 ext. 3177
Yuma	P. O. Box 426, 310 S. Ash St., Wray, CO 80758-0426	(970) 332-5809