SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203 ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2), Appeal from the Title Board	FILED IN THE SUPREME COURT AUG - 6 2007 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2007-2008 #17 (CONCERNING DEPARTMENT OF ENVIRONMENTAL CONSERVATION) **Petitioners:** DOUGLAS KEMPER AND STUART A. SANDERSON, Registered Electors of the State of Colorado v. **Respondents:** RICHARD G. HAMILTON and PHIL DOE, Proponents. and **Title Board:** WILLIAM A. HOBBS, DANIEL CARTIN, and DANIEL DOMENICO.	▲ **COURT USE ONLY** ▲
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PETITIONERS' ANSWER BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

SUMMARY OF ARGUMENT

Contrary to the proponents' and the Title Board's arguments, Initiative #17 contains multiple subjects. In analyzing this issue, the Court must first look to the plain language of the Initiative, which imposes trust responsibilities now foreign to State law. None of the separate subjects addressed in Petitioners' Opening Brief are enforcement or implementation details that are necessarily connected to the creation of the Department.

Even if Initiative #17 contains a single subject, the Titles set by the Board do not fairly express the true intent and meaning of Initiative #17 because they do not disclose that Initiative #17 makes substantive changes to Colorado law with respect to private property rights, limits the Governor's and General Assembly's powers of appointment and confirmation, and exempts part of the State's general fund from all TABOR requirements.

ARGUMENT

I. Initiative #17 Violates the Single Subject Requirement.

The single subject requirement dictates that "[n]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in

its title." Colo. Const. Art. V, Sec. 1(5.5); *see also* C.R.S. § 1-40-106.5(1)(a). "If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, *no title shall be set* and the measure shall not be submitted to the people for adoption or rejection at the polls." Colo. Const. Art. V, Sec. 1(5.5) (emphasis added). Contrary to arguments advanced by the proponents and the Ballot Title Board ("Board"): (1) in analyzing whether Initiative 2007-2008 #17 ("Initiative #17") creates public trust obligations that comprise a separate subject, the Court must first review the plain language of the initiative; (2) exemption of all Department of Environmental Conservation ("Department") funds from TABOR and removal of the Governor's authority to appoint officers subject to the consent of the Senate are not implementation details necessarily connected to the creation of the Department; and (3) exemption of a department of State government from TABOR in the same initiative creating that department constitutes a separate subject.

A. In reviewing Initiative #17 for the purpose of determining whether it contains a single subject, the Court must look to Initiative #17's plain language as best expressing the intent of the measure.

In determining whether an initiative complies with the single-subject requirement, the Court should employ the usual rules of statutory construction,

including reading all words and phrases in context and construing them according to the rules of grammar and common usage. *In re Title, Ballot Title, and Submission Clause and Summary for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006). Thus, this Court should ascertain the initiative's intent and meaning from its plain language. *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996). "[A]ny intent of the proponents that is not adequately expressed in the language of the measure will not govern the court's construction of the amendment." *In re Interrogatories Relating to the Great Outdoors Colorado Trust Fund*, 913 P.2d 533, 540 (Colo. 1996).

While the proponents have stated that they do not intend this measure to create a public trust doctrine in Colorado, that statement of intent does not negate the measure's plain language. Section 7 of Initiative #17 states that the new Department of Environmental Conservation would have "the responsibilities to steward and protect the public ownership and public conservation values in lands [and] waters." (Section 7(1))[1] Indeed, the "sponsor's [sic] of the initiative propose the public to legislate authorities to protect and steward their natural resources . . . " (Opening Brief of Respondents at 11), thus acknowledging that

[1] As in Petitioners' Opening Brief, citations to the text of Initiative #17 state the relevant section of the Initiative within parentheses.

such stewardship and trust responsibilities would alter Colorado law. Furthermore, the measure mandates that any conflict between these conservation values and economic interests, such as the value of private property (including mineral or water rights), "shall be resolved in favor of public ownerships." (Section 7(1)) This direction to protect public ownership of lands and water would control over other constitutional provisions when in conflict (Section 2), including Article XVI, Section 5 of the Colorado Constitution, which protects the people's right to appropriate the State's waters for private use. Regardless of the proponents' professed intent, these provisions operate to create public trust obligations contrary to current law and property rights. These public trust obligations should be considered a separate subject from the creation of the Department.

B. Exemption of the Department from TABOR and modifying the appointment process for certain governmental officials are not implementation details that are necessarily connected to the subject of creating a new Department.

To constitute a single subject, any implementation features contained in a proposed initiative must have a "necessary and proper relationship to the substance of the initiative." *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #255*, 4 P.3d 485, 495 (Colo. 2000). In considering an initiative whose central focus was the process by which initiative and referendum petitions are

placed on the ballot, this Court determined that "'a battery of procedures which govern the exercise' of the right to petition" were considered part of a single subject, as were provisions authorizing aggrieved citizens to sue for a violation of the proposed initiative's provisions. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 444 (Colo. 2002) (internal quotations omitted). However, provisions seeking to modify the content of initiatives and referenda were distinct, substantive provisions, unrelated to the *process* of placing initiatives and referenda on the ballot. *Id.* at 444-45. Such provisions were not implementation or enforcement details and were deemed separate and unconnected subjects. *Id.* at 445.

Here, Initiative #17 takes existing boards and commissions and transfers their authority to the Department. (Section 3(1)) Mechanisms establishing the Department's governance and structure, such as providing the method of election of Commissioners and specifying the boards which will be transferred to the Department, are implementation details that are necessary to create the Department. Changes to substantive outcomes, such as modifying the way TABOR is applied to the State's general fund by exempting all Department funds from its limitations, removing the Governor's authority to appoint and Senate's power to confirm certain officers, and changing substantive provisions of Colorado

law regarding private property rights and environmental compliance, are separate subjects that are not necessarily connected to the creation of the Department.

Contrary to the Board's argument, *Board of Education v. Spurlin*, 349 P.2d 357 (Colo. 1960), sheds no light on whether these provisions are part of a single subject. *Spurlin* was decided over 30 years before the single subject requirement for initiatives was adopted in 1994. It addresses whether voters may pass a constitutional amendment to modify the appointment process, and not whether doing so constitutes a single subject. *See id.* at 363. Here, the question is not whether the proponents have the authority to change the mechanism of appointment of certain officers, but whether changes of appointment authority are necessarily and properly connected to creating the Department such that Initiative #17 complies with the current single subject requirement of Article V, Section 1(5.5) of the Colorado Constitution, which was not in effect when *Spurlin* was decided. Initiative #17 removes powers currently vested in the Governor and the Senate for appointment and confirmation of certain appointed State officers. (Section 7(2)(d)) This delegation of confirmation authority to the Commissioners, superseding and removing current powers of the Governor and General Assembly, has no logical connection with Initiative #17's purpose of creating the Department and thus must be considered a separate subject.

C. Exemption of an entire department of the State government from TABOR's requirements is different from allowing a newly imposed local tax to be exempt from TABOR, and thus constitutes a separate subject.

TABOR places limits on the ability of the State (and local) government to tax and spend. *Bolt v. Arapahoe County School District #6*, 898 P.2d 525, 527 (Colo. 1995). This is accomplished by limiting "the amount the State can spend in a fiscal year and mandates refunds in the next fiscal year if total revenue exceeds the TABOR limits." *Thorpe v. State*, 107 P.3d 1064, 1067 (Colo. App. 2004). In addition to requiring voter approval for certain State (and local) tax increases, TABOR "also limits the growth of state revenues . . . by restricting the increase of fiscal year spending to the rate of inflation plus population increases, unless voter approval for an increase in spending is obtained." *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1, 4 (Colo. 1993) (citing Colo. Const. Art. X, Sec. 20(7)(a)). TABOR further limits State revenues that are held in reserve. *Id.* at 12. TABOR was enacted to exercise "greater direct control over government growth by, among other things, setting various spending and revenue limits and requiring voter approval of measures that would increase debt, spending, or taxes." *Zaner*, 917 P.2d at 284.

In *Havens v. County of Archuleta*, 924 P.2d 517 (Colo. 1996), this Court allowed voters to approve an offset of Archuleta County's obligation under TABOR to refund excess revenue in the next fiscal year. *Id.* at 523-24. That referendum pertained only to local taxes imposed by the County and allowed the County to retain revenue collected that was above TABOR's limits. *Id.* at 519. The Court concluded that voters may "authorize retention and expenditure of the excess collection without forcing a corresponding revenue reduction." *Id.* at 524. In essence, waiver of the corresponding expenditure limits was necessary to avoid defeating the purpose of the excess revenue approval.

Here, Initiative #17 states that the Department will be exempt from all TABOR requirements. This means that: (1) the Department may retain revenue collected from fees and grants that exceeds TABOR's limitations; (2) the Department may generate revenue from taxes or other new sources without voter approval; (3) moneys allocated to the Department from the State's general fund are considered to be outside the TABOR cap for the State; and (4) revenue allocated to or raised by the Department would not be subject to TABOR's spending requirements. While relief from the State's TABOR limitations may be an appropriate issue for voters to consider, here, it is "coiled in the folds" of Initiative #17, whose primary purpose is to create a new department within State

government. A blanket TABOR exemption is no more necessary to this new Department than to any other department of State government (none of which have such an exemption). Accordingly, Initiative #17 contains multiple subjects.

II. The Titles Set by the Board Do Not Clearly Express the True Intent and Meaning of Initiative #17.

In fixing the title for an initiative, the Board must prepare a title that includes sufficient information to "correctly and fairly express the true intent and meaning" of the initiative. C.R.S. § 1-40-106(3)(b). While deference should be accorded to the Board, the Title, ballot title and submission clause (collectively the "Titles") must be fair, sufficient, and clear. *In re Ballot Title for 2005-2006 #75*, 138 P.3d at 270-71.

A. The Titles should notify voters of the curtailment of the Governor's and General Assembly's appointment powers and the preemption of previously enacted constitutional provisions.

In setting a title, the Board should attempt to capture the proposal in "plain, understandable, accurate language enabling informed voter choice." *In re Title, Ballot Title and Submission Clause and Summary for 1997-1998 #62*, 961 P.2d 1077, 1083 (Colo. 1998). The title must include those details pertaining to the material or key features of an initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(a)*, 4 P.3d 1094, 1099 (Colo. 2000). If

the omission of a specific detail would "cause confusion and mislead the voters about what the initiative actually proposes," then that detail must be included. *Id.* (citing *In re 1997-1998 #62*, 961 P.2d at 1082).

Contrary to the Board's argument, the title issues in this case are not similar to those discussed in *In re Title, Ballot Title and Submission Clause and Summary Concerning "Fair Fishing"*, 877 P.2d 1355, 1362 (Colo. 1994). The Court held that the title and summary provided notice to "the electorate that the amendment would create an exception to the law of trespass for individuals who are occupying a flowing, freshwater, nonnavigable stream." *Id.* at 1361. Here, the Titles provide no notice of the curtailment of the Governor's and General Assembly's appointment and confirmation authority, or the preemption of previously enacted constitutional provisions.

The substantive changes contained in Initiative #17 should be clearly disclosed to avoid confusion of the voters. This Court has held that definitions that "adopt a new or controversial legal standard" should be included in the title, *In re Ballot Title for 1999-2000 #255*, 4 P.3d at 497 (citation omitted), while definitions for terms "within the common understanding of most voters" are not necessary in the title. *In re Proposed Initiative on Taxation III*, 832 P.2d 937, 941 (Colo. 1992);

In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a), 3 P.3d 1219, 1225 (Colo. 2000). Here, the substantive changes in Initiative #17, including the curtailment of appointment authority and the preemption of other constitutional provisions, should be disclosed in the title.

Now that the Board is no longer required to summarize the measure in a separate summary (due to amendment of C.R.S. § 1-40-106(3)(a) in 2000), the clarity of the Titles is even more important. *Cf. In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000) (refusing to require the Board to disclose the future appointment process for commissioners in title because such matters were adequately discussed in the summary of the measure). The Titles set for Initiative #17 fail to inform voters that Initiative #17 would change the substantive law of Colorado with respect to environmental statutes and private property rights, and that the measure will preempt existing Constitutional provisions unrelated to the formation of a new Department. The Titles mislead voters by stating that the purpose of Initiative #17 is to create a Department of Environmental Conservation, without mentioning the substantive changes to current law.

B. Exemption of all Department funds from TABOR is a key feature of Initiative #17 that should be fully disclosed in the Titles.

The Titles must disclose all key features of the initiative. In evaluating an initiative on bilingual education, this Court determined that omitting the provision that a school district was not required to offer a bilingual education program was a material omission because "parents of non-English speaking children may have no meaningful choice, despite the initiative's seeming provision of such a choice." *In re Title for 1999-2000 #258(a)*, 4 P.3d at 1099. Here, the Titles fail to disclose the fact that the exemption of the Department from TABOR would extend to any funds appropriated to the Department, allowing the General Assembly to skirt TABOR's restrictions on the State's general fund. This necessary result of the Initiative should be clearly expressed to minimize voter confusion, so that voters will understand the full impact of a "yes" or "no" vote. *See* C.R.S. § 1-40-106(3)(b). The last phrase of the Titles should be revised to read, "and exempting the Department **and all its funds** from the fiscal limits contained in Section 20 of Article X of the Colorado Constitution."

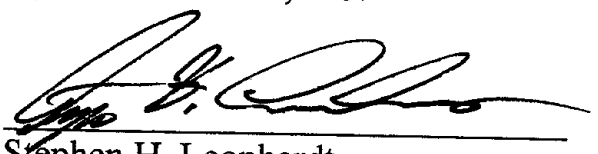
CONCLUSION

The Initiative violates the single subject requirement. Accordingly, the Board erred by setting Titles and its action should be reversed. In the alternative,

the Titles should be modified so that they express the true intent and meaning of Initiative #17.

Respectfully submitted this 6th day of August, 2007.

BURNS, FIGA & WILL, P.C.

By: 

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITIONERS' ANSWER BRIEF** was served on this 6th day of August, 2007, as follows:

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C.R.S.A. Const. Art. 5, § 1

C

West's Colorado Revised Statutes Annotated Currentness
Constitution of the State of Colorado [1876]
Article V. Legislative Department (Refs & Annos)
In General (Refs & Annos)

→§ 1. General assembly--initiative and referendum

(1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

C.R.S.A. **Const.** Art. **5**, § **1**

(5.5) No measure shall be proposed by petition containing more than **one** subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than **one** subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls. In such circumstance, however, the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (**5**) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. The revision and resubmission of a measure in accordance with this subsection (**5**.5) shall not operate to alter or extend any filing deadline applicable to the measure.

(6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of **one** or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. In submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.

(7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least **one** time in at least **one** legal publication of general circulation in each county of the state and shall be made at least fifteen days prior to the final date of voter registration for the election. The form and manner of publication shall be as prescribed by law and shall ensure a reasonable opportunity for the voters statewide to become informed about the text and title of each measure.

(7.5)(a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:

(I) The text and title of each measure to be voted on;

(II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.

(b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.

(c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20(3)(b) of article X, and the mailing of such information pursuant to section 20(3)(b) of article X is not required.

(d) The general assembly shall provide sufficient appropriations for the preparation and distribution of the ballot information booklet pursuant to this subsection (7.5) at no charge to recipients.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

CREDIT(S)

Amended by Laws 1910, Ex.Sess., Ch. 3, § 2; 1979, S.C.R.79-007, § 1, eff. Dec. 19, 1980; 1993, S.C.R.93-004, § 1, eff. Jan. 19, 1995; 1994, S.C.R.94-005, § 1, eff. Jan. 19, 1995.

HISTORICAL NOTES

2001 Main Volume

Senate Concurrent Resolution 93-4 added subsec. (5.5).

Section 1, in part, and §§ 2 and 3 of S.C.R.93-4, provide:

"Section 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:"

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'An amendment to articles V and XIX of the constitution of the state of Colorado, requiring that any measure proposed by initiative or referendum be confined to a single subject.'

"Section 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted 'Yes', the said amendment shall become a part of the state constitution."

The amendment of this section proposed by 1993, S.C.R.93-4, § 1, was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor, Jan. 19, 1995.

Senate Concurrent Resolution 94-5, § 1, rewrote the second sentence of subsec. (7), and added subsecs. (7.3) and (7.5). Prior to being rewritten, subsec. (7) read:

"The text of all measures to be submitted shall be published as constitutional amendments are published; and, in

submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.";

Section **1**, in part, and §§ 2 and 3 of S.C.R.94-5, provide:

"Section **1**. At the next general election for members of the general assembly, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit: ..."

"Section 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either 'Yes' or 'No' on the proposition: 'AN AMENDMENT TO ARTICLES V, X, AND XXIII OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING INFORMATION ABOUT STATEWIDE BALLOT ISSUES, AND, IN CONNECTION THEREWITH, REQUIRING THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY TO PREPARE AND DISTRIBUTE TO THE PUBLIC AT NO CHARGE A BALLOT INFORMATION BOOKLET THAT INCLUDES THE TEXT, THE TITLE, AND A FAIR AND IMPARTIAL ANALYSIS OF EACH STATEWIDE MEASURE, INCLUDING THE MAJOR ARGUMENTS BOTH FOR AND AGAINST THE MEASURE, AND PROVIDING FOR STATEWIDE PUBLICATION BY THE NONPARTISAN RESEARCH STAFF OF THE GENERAL ASSEMBLY OF THE TEXT AND TITLE OF STATEWIDE BALLOT ISSUES.'

"Section 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted 'Yes', the said amendment shall become a part of the state constitution."

The amendment of this section proposed by 1994, S.C.R.94-5, § **1**, was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor, Jan. 19, 1995.

An amendment of this section proposed by 1995, S.C.R.95-2, was defeated by the electorate at the general election of Nov. **5**, 1996.

C. R. S. A. **Const.** Art. **5**, § **1**, CO **CONST** Art. **5**, § **1**

Current with amendments adopted through the Nov. 7, 2006 General Election

END OF DOCUMENT

C.R.S.A. § **1-40-106.5**

C

West's Colorado Revised Statutes Annotated Currentness
Title 1. Elections (Refs & Annos)
Initiative and Referendum
Article 40. Initiative and Referendum (Refs & Annos)

→§ 1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments--legislative declaration

(1) The general assembly hereby finds, determines, and declares that:

(a) Section 1(5.5) of article V and section 2(3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1(5.5) of article V and section 2(3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1(5.5) of article V and section 2(3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1(5.5) of article V and section 2(3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1(5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

C.R.S.A. § **1-40-106.5**

CREDIT(S)

Added by Laws 1994, H.B.94-1080, § 1, eff. Jan. 19, 1995.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Section 2 of Laws 1994, H.B.94-1080, adding this section, provides:

"**Effective date.** This act shall take effect upon proclamation of the governor of the vote of the registered electors at the 1994 general election approving Senate Concurrent Resolution 93-4. This act shall not take effect if the registered electors at the 1994 general election disapprove Senate Concurrent Resolution 93-4."

Senate Concurrent Resolution 93-4 was ratified by the electorate at the general election of Nov. 8, 1994, effective upon proclamation of the governor on Jan. 19, 1995.

C. R. S. A. § **1-40-106.5**, CO ST § **1-40-106.5**

Current through laws effective July 1, 2007

END OF DOCUMENT

C

West's Colorado Revised Statutes Annotated Currentness
Constitution of the State of Colorado [1876]
Article XVI. Mining and Irrigation
Irrigation

→**§ 5.** Water of streams public property

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

C. R. S. A. **Const.** Art. **16, § 5,** CO **CONST** Art. **16, § 5**

Current with amendments adopted through the Nov. 7, 2006 General Election

END OF DOCUMENT

C.R.S.A. **Const.** Art. **10**, § **20**

C

West's Colorado Revised Statutes Annotated Currentness
Constitution of the State of Colorado [1876]
Article X. Revenue (Refs & Annos)

→§ 20. The Taxpayer's Bill of Rights

(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4)(a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions.

C.R.S.A. **Const.** Art. **10, § 20**

(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1(7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1(7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b)(iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b)(iv). Ballot titles for tax or bonded debt increases shall begin, **"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost),...?"**

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

C.R.S.A. Const. Art. 10, § 20

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3)(c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3)(c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value