

1999 DRAFTING REQUEST

Assembly Joint Resolution

Received: 11/19/1999

Received By: dykmapj

Wanted: Soon

Identical to LRB:

For: Frank Lasee (608) 266-9870

By/Representing: RAC

This file may be shown to any legislator: NO

Drafter: dykmapj

May Contact: Don Dyke

Alt. Drafters: champra

Subject: Constitutional Amendments
Tax - miscellaneous
State Finance - miscellaneous
State Government - miscellaneous

Extra Copies: RAC
MES
JTK
PG

Pre Topic:

No specific pre topic given

Topic:

Elector approval for state and local taxing and spending decisions

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	dykmapj 02/10/2000	gilfokm 02/10/2000	haugeca 02/14/2000	_____	lrb_docadmin 02/14/2000		
/2	dykmapj 02/17/2000	gilfokm 02/17/2000	martykr 02/17/2000	_____	lrb_docadmin 02/17/2000	lrb_docadmin 03/03/2000	

FE Sent For:

<END>

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/1	dykmapj 02/10/2000	gilfokm 02/10/2000	haugca 02/14/2000		lrb_docadmin 02/14/2000		

FE Sent For:

*12-2-17-2000
Kmg*

*km 2
km 17*

<END>

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/1	dykmapj 02/10/2000	gilfokm 02/10/2000 <i>mg</i>	lrp_wpo <i>ch 2-11</i>	<i>ch 2-11</i> <i>h</i>			

FE Sent For:

<END>

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Assembly Joint Resolution

Received: 11/19/1999

Received By: dykmapj

Wanted: **Soon**

Identical to LRB:

For: **Frank Lasee (608) 266-9870**

By/Representing: **RAC**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact: **Don Dyke**

Alt. Drafters: **champra
shoveme
kuesejt**

Subject: **Constitutional Amendments
Tax - miscellaneous
State Finance - miscellaneous
State Government - miscellaneous**

Extra Copies: **RAC
MES
JTK**

Pre Topic:

No specific pre topic given

Topic:

Elector approval for state and local taxing, spending and bonding increases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	dykmapj	<i>1-2-10-2000 KMG</i>		_____			

FE Sent For:

<END>

Be it Enacted by the People of the State of Colorado:

Article X, Section 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.

pol. subd w. tax authority

11th dist

*emergency tax
levies
expenditures*

Received by Secretary of State, May 8, 1991.

Retyped from the original by Legislative Council staff, June 23, 1992.

TO: Verna Romero 303-623-1504 FAX #: 303-623-1508	FROM: Senate Services DATE: 11/21/98 PAGES INCLUDING THIS PAGE: 5 PHONE #: 303 866-3025 FAX #:
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(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for ~~Denver-Boulder~~ ^{Milwaukee-Racine} 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.

*pp-
unrec
should
enroll*

(3) Election provisions. (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.

*Expung
& Recd
Expung
Recd*

(b) 15-25 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. 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.

Received by Secretary of State. May 8, 1991.

Retyped from the original by Legislative Council staff, June 23, 1992.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 30 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.

(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. | 1#

(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

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Retyed from the original by Legislative Council staff, June 23, 1992.

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. *tax year*

(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. *population change in 1 year for what district*

(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

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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 shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Received by Secretary of State, May 8, 1991.

Retyped from the original by Legislative Council staff, June 23, 1992.

Memo

To: PJD
From: JTK
Subject: LRB-3986/P3
Date: 12/7/99

1. Page 3 – lines 2-3 – this language is too unintelligible to interpret.

– lines 4-6 – I think the reference is to approval under this proposal, but I think too much may be swept in here. I don't think it's possible for the legislature to enact limitations upon the state by simple law. On the other hand, state constitutional limits such as those in art. VIII, secs. 4 and 7 and art. XI, sec. 3 (2) would not be repealable by referendum unless those specific sections were amended in this joint resolution to so permit. Also, it would need to be clear which electors would be qualified to vote in which referendum.

JTK
A
– lines 16-18 – I would say these provisions do not apply to the imposition of taxes required to pay for these items. However, this doesn't make sense because governments would also need money for operating purposes, and this would leave them nothing for those purposes.

– lines 21-24 – A more natural definition would simply be “a question presented to the electors for approval at an election”.

2. Page 4 – lines 1-2 – This definition is so broad that it will exclude most emergencies. If we can easily afford to pay for the costs of an emergency from current revenues and reserves, we just do it. If not, we have a revenue shortfall, in which case under this language we have no emergency.

– lines 6-7 – I would define “reserve” so we know what we're increasing.

– lines 11-13 – The definition of “governmental unit” is problematic. See DM sec. 14.02 (4). All these districts are special purpose districts. In this state, we don't generally refer to special purpose districts as being “municipal corporations”. See s. 16.97 (7), stats. for a better definition of “local governmental unit”.

– line 17 – Does “local growth” apply to the state?

– lines 23-25 – A ballot issue may only be *submitted* at an election...

3. Page 5 – lines 1-4 – I don't know what the reference to “petitions” means. I would strike it. There are also other things that don't make sense here. I don't understand the effect of “consolidations” (does this mean maintaining a running total of overages?). What is the effect of a “delay”? Does this mean that the electors may vote not to require their approval to exceed a limit temporarily? If so, why not just vote to permit the limit to be exceeded temporarily?

– lines 9-10 – Wisconsin does not presently have universal voter registration. I would substitute a reference to “qualified electors”.

– lines 13–14 – This language seems to fit except that it’s pretty detailed for the constitution.

– line 19 – Is the percentage and dollar change for the proposed increase or for past years?

4. Page 6 – lines 7–9 – Who are “petition representatives”? I would have a petitioner sign the petition and then deal with him or her. What are the other “relevant written comments”? Are the summaries of these comments to be included in the notice? If so, I would list them in the notice contents. If not, why submit and summarize them?

– line 10 – This refers to under this proposal, I think.

– line 21 – Repayment costs would have to be estimated.

5. Page 7 – lines 12–13 – If property taxes may not be increased to fund emergency costs, how are local governments to pay for these costs?

– line 14 – The reference is to approval under this proposal, I think.

6. Page 9 – lines 8–11 – Does this mean that any change in the income tax laws after 7/1/02, no matter how minor, will automatically enact a flat tax? I thought that the amendment to art. VIII, sec. 1 already made a flat tax the only permitted form of income tax. I think what might be intended is to delay the effective date of the treatment of art. VIII, sec. 1 until 7/2/02 in order to give the legislature time to rewrite the income tax laws.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

for DATE select Create -> Date

MEMORANDUM

To: PJD

From: RAC and Don Dyke

Subject:

Art. X, Sec. 20

(1) No changes; reorganize in proper place in Constitution.

(2) (a) No change

(2) (b) state or any ~~political subdivision~~ ^{or district} with authority to levy property tax.

(2) (c) No change

(2) (d) delete

(2) (e) insert "emergency" before reserve in both places and insert "expenditures from emergency tax revenue as part of the moneys excluded from "fiscal year spending"

(2) (f) change "Denver-Boulder" to "Milwaukee-Racine"

(2) (g) delete

(3) (a) only Spring and Fall general elections for each year

(3) (b) Give notice for exceeding spending limits

(3) (c) Give notice for exceeding spending limits

(4) (a) add in election for exceeding spending limits on a temporary and permanent basis and delete "valuation for assessment ration increase for a property class,"

(4) (b) HOLD OFF ON DRAFTING THIS PARAGRAPH UNTIL LANGUAGE IS CLARIFIED

(5) Fix dates; if emergency reserve is depleted then the reserve has to be built up annually by 1 percent until the reserve is at 3 percent

(6) Delete "Emergency property taxes are prohibited." and "even if later ratified by voters"

(6) (c) have the tax end at the end of the taxable year, not the election month

(7) (b) Have except as provided in (bm) and change local growth to population growth

(7) (bm) If the local district is a school district, the max. percentage change is inflation plus any in school enrollment

(7) (c) HOLD OFF ON DRAFTING THIS PARAGRAPH UNTIL LANGUAGE IS CLARIFIED

(8) delete whole thing

Dykman, Peter

From: Dykman, Peter
Sent: Friday, November 19, 1999 4:32 PM
To: Wadium, Mark
Cc: Champagne, Rick; Shovers, Marc; Dyke, Don
Subject: This is Article X, Section 20 of the Colorado Constitution, not the May 8, 1991, submission to the Colorado Secretary of State, and does not yet include the changes requested by Rep. Lasee.

This is Article X, Section 20 of the Colorado Constitution, not the May 8, 1991, submission to the Colorado Secretary of State, and does not yet include the changes requested by Rep. Lasee. WHY DID REP. LASEE SUBMIT THE INITIAL VERSION WITHOUT THE SEVERAL AMENDMENTS THAT COLORADO HAS ENACTED SINCE? It was enacted by the People November 3, 1992 -- Section 1 of article V of this constitution provides that initiated measures shall take effect upon the Governor's proclamation. Subsection (1) of this section provides that this section shall take effect December 31, 1992, or as stated. (See subsection (4).) The Governor's proclamation was signed January 14, 1993. (For the text of this initiated measure, see L. 93. p. 2165.); section 20 (3)(b)(v) amended November 8, 1994 -- Effective upon proclamation of the Governor, January 19, 1995. (See L. 94, p. 2851.); the introductory portion to section 20 (3)(b) and (3)(b)(v) amended November 5, 1996 -- Effective upon proclamation of the Governor, December 26, 1996. (For the text of the amendment and the votes cast thereon, see Laws 1995, p. 1425, and Laws 1997, p. 2393.)

Section 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.

(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.

(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 shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3986/P4
PJD/RAC/MES/JTK:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
1999 ASSEMBLY JOINT RESOLUTION

1 **To amend** sections 1 and 5 of article VIII, section 4 of article X and section 3 (4) of
2 article XI; and **to create** section 11 of article VIII of the constitution; **relating**
3 **to:** elector approval for certain taxing, spending and bonding decisions by the
4 state and local governmental units, refunds of amounts in excess of the
5 approved amounts, emergency reserves and emergency taxes (first
6 consideration).

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
This proposed constitutional amendment, proposed to the 1999 legislature on
first consideration, ??

A proposed constitutional amendment requires adoption by 2 successive
legislatures, and ratification by the people, before it can become effective.

7 ***Resolved by the assembly, the senate concurring, That:***

8 **SECTION 1.** Section 1 of article VIII of the constitution is amended to read:

1 [Article VIII] Section 1. The rule of taxation shall be uniform but the legislature
2 may empower cities, villages or towns to collect and return taxes on real estate
3 located therein by optional methods. Taxes shall be levied upon such property with
4 such classifications as to forests and minerals including or separate or severed from
5 the land, as the legislature shall prescribe. Taxation of agricultural land and
6 undeveloped land, both as defined by law, need not be uniform with the taxation of
7 each other nor with the taxation of other real property. Taxation of merchants'
8 stock-in-trade, manufacturers' materials and finished products, and livestock need
9 not be uniform with the taxation of real property and other personal property, but
10 the taxation of all such merchants' stock-in-trade, manufacturers' materials and
11 finished products and livestock shall be uniform, except that the legislature may
12 provide that the value thereof shall be determined on an average basis. Taxes may
13 also be imposed on incomes, privileges and occupations, which taxes may be
14 graduated and progressive, and reasonable exemptions may be provided.

 ****NOTE: This section may need to be amended because of the refund provision of
the new section created by this draft.

15 **SECTION 2.** Section 5 of article VIII of the constitution is amended to read:

16 [Article VIII] Section 5. The legislature shall provide for an annual tax
17 sufficient to defray the estimated expenses of the state for each year; and whenever
18 the expenses of any year shall exceed the income, the legislature shall provide for
19 levying a tax for the ensuing year, sufficient, with other sources of income, to pay the
20 deficiency as well as the estimated expenses of such ensuing year.

 ****NOTE: This section may need to be amended because there would be a conflict
if the deficiency is higher than the authorized level.

21 **SECTION 3.** Section 11 of article VIII of the constitution is created to read:

22 [Article VIII] Section 11 (1) In this section:

1 (a) "Ballot issue" means a question presented pursuant to this section to the
2 electors for approval at an election.

3 (b) "Emergency" *[means a sudden unexpected happening; an unforeseen*
4 *occurrence or condition; perplexing contingency or complication of*
5 *circumstances; a sudden or unexpected occasion for action; exigency; or*
6 *pressing necessity. The term]* excludes economic conditions, revenue shortfalls,
7 and salary and fringe benefit increases of a governmental unit.

delete Ballot files

****NOTE: The addition to the definition is straight out of Black's Law Dictionary. It will most likely be read into your definition by the courts. With the exclusion in the Colorado provision, what is covered other than natural disasters? Is there any type of emergency that you want to permit that the current language doesn't permit?

8 (c) "Fiscal year spending" means all expenditures and emergency reserve
9 increases [under subsection (5)?] of a governmental unit except, as to both, those for
10 refunds made in the current or next fiscal year or those from gifts, federal funds,
11 collections for another governmental unit, pension fund earnings, net proceeds of the
12 state lottery authorized pursuant to article IV, section 26 (6), emergency reserve
13 transfers or expenditures, expenditures from emergency tax revenues, damage
14 awards, or property sales.

****NOTE: The Colorado statutes implementing their constitutional initiative raise the issue of whether generally accepted accounting principals are being superceded by their constitutional initiative: "(c) The provisions of this article should not be construed to substitute for generally accepted accounting principles which are applicable to financial documents and reports of state government; (d) The purpose of preparing figures in accordance with this article, to ensure compliance with the state fiscal year spending limit, may differ from the purpose of preparing financial statements of the state, to determine the financial condition of the state; (e) The financial statements of the state prepared by the state controller shall be prepared, insofar as possible, in conformity with generally accepted accounting principles; and (f) The financial report required by this article shall be prepared in conformity with generally accepted accounting principles unless otherwise provided by law or unless an irreconcilable conflict exists between generally accepted accounting

no problem

principles and the provisions of section 20 of article X in which case the provisions of said constitutional provision shall control.”

1 (d) “Governmental unit” means the state; any city, village, town or county; or
2 any school district or special purpose district authorized by law to levy taxes on
3 general property.

4 (e) “Inflation” means the percentage change in the United States Bureau of
5 Labor Statistics Consumer Price Index for Milwaukee–Racine, all items, all urban
6 consumers, or its successor index.

***NOTE: The Colorado statutes define additional terms. You may wish to substitute some of the definitions in the statutes for the definitions in the constitution if they are clearer or better carry out your intent. In addition, while it is usually best to keep the constitution shorter and less detailed, it may be necessary to add a definition from the statute to make the constitution work more smoothly or to work correctly. It is not desirable to add definitions of terms if the definition has the same effect as the dictionary meaning. The terms defined in the statutes are:

(1) “Collections for another government” means any tax revenues which are collected by the state for the benefit and use of any government other than the state pursuant to the taxing authority of such other government and which are passed through to the government for whose use such revenues were collected.

(2) “Damage award” means any pecuniary compensation received by the state as a result of any judgment or allowance in favor of the state.

(4) “Expenditure” means the appropriation or disbursement of any state general fund or cash fund moneys for any expense incurred by the state.

(5) “Federal funds” means any pecuniary resources received by the state from the national government of the United States.

(6) “Gift” means something of value which is given to the state voluntarily by any person or entity, regardless of whether such person or entity specifies the purpose or purposes for which such thing of value is to be used. “Gift” includes, but is not limited to, voluntary contributions received by the state as a result of any state voluntary contribution program established pursuant to article 22 of title 39, C.R.S. “Gift” does not include federal funds or any pecuniary compensation received by the state from any other governmental entity.

(7) (a) “Grant” means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid.

(b) “Grant” does not include:

(I) Any indirect benefit conferred upon an enterprise from the state or any local government in Colorado;

(II) Any revenues resulting from rates, fees, assessments, or other charges imposed by an enterprise for the provision of goods or services by such enterprise;

(III) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by an enterprise.

(8) “Inflation” means the percentage change in the consumer price index for the Denver–Boulder consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States department of labor, bureau of labor statistics, or its successor index.

(9) “Pension contributions by employees” means the amount contributed by state employees to the retirement plans of such employees.

(10) “Pension fund earnings” means the amount which is earned from the investment of moneys set apart for the payment of retirement income for state employees.

(11) “Property sale” means:

(a) Any transfer of the ownership of an estate in tangible assets or intangible rights, excluding leasehold interests, in which or to which the state has rights protected by law from the state to any party for consideration; or

(b) Any contract resulting in the payment of pecuniary compensation to the state for permitting another to exploit, use, or market nonrenewable natural resources which are located on real property owned by the state and which are subject to depletion with use.

(12) “Reserve” means any unrestricted general fund or cash fund year–end balance which is held by the state to meet any needs or demands.

(13) “Reserve increase” means any action which has the effect of increasing a reserve.

(14) “Reserve transfers or expenditures” means moneys which are passed from one fund of cash or assets held by the state as a reserve to another such fund or moneys which are disbursed from such fund.

(17) (a) “State fiscal year spending” means all state expenditures and reserve increases occurring during any given fiscal year as established by section 24–30–204, including, but not limited to, state expenditures or reserve increases from:

(I) Moneys received by the state from enterprises;

(II) Cash funds of state institutions of higher education, as defined in section 23-1-103.5, C.R.S.;

(III) Net lottery proceeds distributed to the capital construction fund for payment of debt service on the obligations described in section 3 (1) (c) of article XXVII of the state constitution for the period through the fourth quarter of the state's fiscal year 1997-1998; and

(IV) Net lottery proceeds allocated to the general fund pursuant to section 3 (1) (b) (III) of article XXVII of the state constitution for the period beginning with the first quarter of the state's fiscal year 1998-1999.

(b) "State fiscal year spending" does not include reserve transfers or expenditures or any state expenditures or reserve increases:

(I) For refunds of excess state revenues made in the current fiscal year or in the subsequent fiscal year;

(II) From gifts, including any interest earned thereon;

(III) From federal funds, including any interest earned thereon;

(IV) From collections for another government;

(V) From pension contributions by employees;

(VI) From pension fund earnings;

(VII) From damage awards, including any interest earned thereon;

(VIII) From property sales, including any interest earned on proceeds therefrom; and

(IX) From net proceeds from state-supervised lottery games, as defined in section 3 (1) of article XXVII of the state constitution; except that those portions of such proceeds which are specified in subparagraphs (III) and (IV) of paragraph (a) of this subsection (17) are included in state fiscal year spending.

1

2 (2) (a) This section takes effect on December 31, 2002, or as otherwise stated in
3 this section.

4 (b) *[What is this sentence designed to do? Is it an accurate*
5 *characterization of the section, or does this, as the Colorado supreme court*
6 *says "We have observed that Amendment 1 operates to impose" a limitation*
7 *on the power of the people's elected representatives." Bickel v. City of Boulder,*

1 **885 P.2d 215, 226 (Colo. 1994) (Bickel). While Amendment 1 “circumscribes**
 2 **the revenue, spending, and debt powers of state and local governments,”**
 3 **creating a series of procedural requirements, “it does not create any**
 4 **fundamental rights.” Wheatridge v. Cerveny, 913 P.2d 1110, 1115 (Colo.**
 5 **1996).”? Is it an accurate characterization of your intent given your changes**
 6 **to the Colorado version??**The preferred interpretation of this section shall
 7 reasonably restrain most the growth of government.??] All provisions of this section
 8 are self-executing and severable.

9 (c) A statutory limit on revenue, spending or debt of a governmental unit other
 10 than the state may be weakened only by elector approval under this section [? **this**
 11 **may work in a state with initiative and referendum, but how in Wis? The**
 12 **Colorado language included the state and included constitutional limits,**
 13 **but in Wisconsin the only way to limit the state is by the constitution and the**
 14 **only way to amend the constitution includes elector approval. Does this give**
 15 **proponents of exceeding statutory cost controls or expenditure limits or**
 16 **avoiding connotational or statutory debt limits a new (or only) way to**
 17 **accomplish their purpose? Is this needed in Wis.? Does it make sense here?].**

18 (d) Any individual or class of individuals have standing to bring a suit to enforce
 19 this section. A court of record may allow a successful plaintiff to recover costs and
 20 reasonable attorney fees in the suit, but may not allow a governmental unit to
 21 recover costs and reasonable attorney fees unless a suit against it is ruled frivolous.

22 (e) A governmental unit shall refund revenue collected, kept or spent in
 23 violation of this section since four full fiscal years before a suit is filed with 10%
 24 annual simple interest from the date of the initial violation. Subject to judicial
 25 review (**what do these 4 words do?**), a governmental unit may use any reasonable

*for the
 2000
 2/11/01
 sec 1*

1 method for a refund under this section, including a temporary tax credit or rate
2 reduction. A refund need not be proportional when prior payments are impractical
3 to identify or return.

4 (f) When annual revenue of a governmental unit is less than annual payments
5 on general obligation bonds, pensions, and final court judgments, subsections (4) (a)
6 and (7) ~~[shall be suspended]~~ [do not apply to the extent necessary?] to [permit the
7 governmental unit to?] provide for the deficiency(*is the deficiency “annual*
8 *payments on general obligation bonds, pensions, and final court*
9 *judgments”, or does it also include salaries and other operating expenses*
10 *and aids to individuals and localities?*).

11 (3) (a) A ballot issue may be submitted only at an election, other than a primary
12 election, at which either members of the legislature or members of the judiciary are
13 regularly elected, or on the first Tuesday in November of odd-numbered years.
14 Except for bonded debt, a governmental unit may consolidate ballot issues (*??Does*
15 *this grant the governmental unit the authority to sum the amounts of the*
16 *various ballot issues to exceed the limits under this section? and to*
17 *consolidate ballot issues exceeding spending limits with those exceeding tax*
18 *limits?]* and electors may approve a delay of up to four years in voting on ballot
19 issues (*?? is this a fourth action to go with spending, taxing and bonding,*
20 *which would necessitate adding it to paragraph (b) in the all caps sentence*
21 *and elsewhere to authorize a referendum just permitting a delay up to 4*
22 *years on voting on a issue that requires a referendum on the issue; or is this*
23 *an authorization for a ballot issue on one of those three to have a delayed*
24 *effective date? or is this meant to authorize a referendum at which the*
25 *electors exempt a governmental unit from this section of the constitution for*

1 *up to 4 years? Does subsection (4) (a), which permits the ballot issue on*
2 *“Exceeding on a temporary or permanent basis a spending limit under this*
3 *section.”, cover what is intended by this sentence?; is this needed in Wis.; does*
4 *it make sense here?). An action taken by a governmental unit during such a delay*
5 *shall not extend beyond that period.*

6 (b) At least 30 days before a ballot issue election, the governmental unit shall
7 mail at the least cost, and as a package where governmental units with ballot issues
8 overlap, a titled notice or set of notices addressed to “All Qualified Electors” at each
9 address of one or more active qualified electors. A title shall have this order of
10 preference: “NOTICE OF ELECTION TO EXCEED SPENDING
11 LIMITS/INCREASE TAXES/TO INCREASE DEBT.” Except for an addition
12 approved by the electors under this section (*is this needed in Wis.? does it make*
13 *sense here? Does it refer to initiative and referendum in general, which Wis.*
14 *does not have?*) of the governmental unit, a notice shall include only:

15 1. The election date, hours, ballot title, text, and address and telephone number
16 of the election office of the governmental unit.

17 2. For a proposed increase in spending, taxation or bonded debt, the total or
18 estimated total of fiscal year spending by the governmental unit for the current year
19 and each of the past four years, and the overall percentage and dollar change [of the
20 proposed increase?][of the past four years?].

21 3. For the first full fiscal year of each proposed tax increase, an estimate of the
22 maximum dollar amount of each increase by the governmental unit and of fiscal year
23 spending by the governmental unit without the increase.

24 4. For proposed bonded debt, the principal amount and maximum annual and
25 total repayment cost of the governmental unit, and the principal balance of total

1 current bonded debt and its maximum annual and remaining total repayment cost
2 of the governmental unit.

3 5. Two summaries, up to 500 words each, one for and one against the ballot
4 issue.

5 (c) [The summaries under paragraph (b) 5. must be filed with the election officer
6 of the governmental unit no later than 45 days before the election ?? ***This is not the***
7 ***same as a referendum under the initiative and referendum, which requires***
8 ***a person to circulate and file petitions. Under this procedure, there are no***
9 ***petitions and no representatives. Should it be deleted?***] A summary may not
10 mention the name of a person or group or an endorsement of, or a statement or
11 position against, the ballot issue. [?? Ballot issue representatives shall file the
12 summary for their petition. ?? ***This is not the same as a referendum under the***
13 ***initiative and referendum, which requires a person to circulate petitions.***
14 ***Under this procedure, there are no petitions and no representatives. Should***
15 ***it be deleted or should another procedure be substituted or should the***
16 ***constitution provide for the legislature to provide the details?*] [The election
17 officer shall maintain and accurately summarize all other relevant written
18 comments ??***what are these? where do they come from? are they submitted to***
19 ***the official, and if so, under what authority? is the official supposed to solicit***
20 ***the comments or to perform the research to find them? if kept in, are the***
21 ***summaries to be included in the notice? If so, should they be listed in the***
22 ***notice contents? If not, why submit and summarize them??]*** .**

23 (d) Except by later elector approval under this section (***is this needed in Wis.?***
24 ***does it make sense here? Does it refer to initiative and referendum in***
25 ***general?***), if a tax increase or fiscal year spending exceeds an estimate in paragraph

1 (b) 3. for the same fiscal year, the tax increase is thereafter reduced ~~up to 100%??~~
 2 ~~in~~ ~~by the?~~ proportion ~~[that the increase is of?]~~ ~~to~~ the combined dollar excess, but
 3 not by more than 100%?, and the combined excess revenue shall be? refunded in
 4 the next fiscal year. Bonded debt of a governmental unit shall not issue on terms that
 5 could exceed its share of its maximum repayment costs in paragraph (b) 4. A ballot
 6 title for an increase in spending, taxation or bonded debt shall begin "SHALL
 7 (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED (full fiscal year
 8 dollar amount in excess of the limit); "SHALL (GOVERNMENTAL UNIT) TAXES
 9 BE INCREASED (first, or if phased in, final, full fiscal year dollar increase)
 10 ANNUALLY...?"; or "SHALL DEBT OF (GOVERNMENTAL UNIT) BE
 11 INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total
 12 cost of the governmental unit), ...?"

****NOTE: Is it possible to determine at this time the maximum total cost of the governmental unit, or would it be necessary to estimate it?

****NOTE: Subsection (6) provided, but I moved it to (3) (d) and (7): "Emergency tax revenue is excluded for purposes of subsections (3) (d) and (7)." See the ****NOTE: after that subsection. Even if the sentence is to be retained, I don't understand how it is to apply to this paragraph.

13 (4) Beginning November 6, 2002, a governmental unit must have elector
 14 approval under this section in advance for:

15 (a) Exceeding on a temporary or permanent basis a spending limit under this
 16 section.

17 (b) Unless subsection (2) (f) or (6) applies, a new tax, tax rate increase, mill levy
 18 above that for the prior year, extension of an expiring tax, or ~~??~~ a tax policy change
 19 directly causing a net tax revenue gain to the governmental unit. *?? It is unclear*
 20 *to me what a tax "policy" change is and what is intended by "direct". How*
 21 *would this sentence be administered given my limited knowledge that "net*

1 ***tax revenue gain”, especially to a local governmental unit, is much more an***
2 ***estimate applying “art” than a determination applying “science”??]***

****NOTE: As to the cross reference to what is the second sentence of subsection (6):
The only authorization for an emergency tax that I can find in the constitution or statutes
is included in the note under subsection (6). If no emergency tax is authorized in the
constitution and the first sentence of that subsection states that this section does not
grant new taxing power, do you still want the emergency tax conditions included in this
draft? If not, the cross reference here to subsection (6) needs to be deleted .

3 (c) Except for refinancing bonded debt at a lower interest rate or adding new
4 employes to an existing pension plan of the governmental unit, creation of a
5 multiple-fiscal year direct or indirect debt or other financial obligation of the
6 governmental unit without adequate present cash reserves pledged irrevocably and
7 held for payments in all future fiscal years ***[does this require that an amount***
8 ***equal to the receipts from issuing debt be placed in a bond sinking fund or***
9 ***other reserve?]***.

10 (5) (a) Each governmental unit shall reserve for 2003 1% or more, for 2004 2%
11 or more, and for all later years, except as provided in paragraph (b), 3% or more of
12 its fiscal year [estimated?] spending, excluding bonded debt service, for use only for
13 an emergency declared by the governmental unit.

14 (b) Unused reserves [become part of?] ~~[apply to]~~ the next year’s reserve [??].

15 (c) If the use of the reserve for an emergency decreases the reserve below 3% in
16 2005 or a later year, the governmental unit, beginning in 2006, shall reserve, in
17 addition to the unused reserve from the prior year, 1% or more for the first year after
18 the reserve is decreased below 3%, 2% or more for the second year after the reserve
19 is decreased below 3% and 3% or more for the third year after the reserve is decreased
20 below 3%.

21 (6) This section does not grant new taxing power. Emergency taxes shall meet
22 all of the following conditions:

****NOTE: As to the first sentence: I can't find anything in this section that grants new taxing power or even implies that it does. I know that the Colorado Constitution provides a different state/local government division of power and responsibility than Wisconsin's. Unless there is such an implication from this section and Wisconsin's Constitution and statutes, the sentence should be deleted.

****NOTE: As to the second sentence: The only authorization for an emergency tax that I can find in the constitution or statutes is included in this note. If no emergency tax is authorized in the constitution and the first sentence of this subsection states that this section does not grant new taxing power, do you still want the emergency tax conditions included in this draft?

81.12 Town highway tax; emergency levy; limit of; anticipation and collection.

81.12(1) Whenever the highway funds provided or available therefor are insufficient to keep the highways open and in repair, the town board may levy a special or emergency highway tax and that tax shall be certified and entered in the tax roll and collected and expended as other highway taxes are. Not more than one levy may be made in any year under this section.

81.12(2) To render such tax available and in anticipation of its collection, the town board may either borrow not exceeding the amount of said tax or may issue interest bearing town orders, and the tax when collected shall constitute a special fund and shall be used so far as needed to pay the debt so incurred or the orders so issued. The total amount borrowed or the total amount of orders issued pursuant to this section shall not exceed the amount of the tax and the rate of interest shall not exceed 8 per cent.

1 (a) A two-thirds majority of the members of each house of the legislature or of
2 the governing body of any other governmental unit declares the emergency and
3 imposes the tax by separate recorded roll call votes.

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

7 (c) A tax not approved at the first election permitted under subsection (3) (a)
8 that occurs at least 60 days after the declaration shall expire at the end of the taxable
9 year in which that election is held.

10 (7) (a) The maximum annual percentage change in fiscal year spending by the
11 state equals inflation plus the percentage change in the state population in the prior
12 calendar year, adjusted for revenue changes approved by the electors under this
13 section after 2002.

****NOTE: The Colorado statutes create the following to implement for state spending the constitutional initiative. If the language is clearer than the language of the

constitution or better carries out your intent, you may wish to substitute some of this language, especially if it can be kept shorter and more general:

24-77-103. Limitation on state fiscal year spending.

(1) For fiscal year 1993-94 and each fiscal year thereafter, state fiscal year spending shall not exceed an amount equal to:

(a) State fiscal year spending for the previous fiscal year; as modified by

(b) An amount equal to a percentage calculated pursuant to subsection (2) of this section times the state fiscal year spending for the previous fiscal year, as adjusted for qualification and disqualification of enterprises and as reduced by an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) The amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991; as modified by

(c) To the extent not otherwise included in state fiscal year spending for the previous fiscal year, an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) An amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991.

(2) (a) For purposes of paragraph (b) of subsection (1) of this section, the percentage of allowable increase in state fiscal year spending shall equal the sum of inflation as modified by the percentage change in state population in the prior calendar year.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the percentage change in state population for any given calendar year shall be the percentage change between the estimate of state population due to be issued by the United States bureau of census in December of such calendar year with a reference date of July 1 of the same calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same calendar year with a reference date of July 1 of the immediately preceding calendar year.

(II) For any calendar year for which an estimate of state population is not issued due to the federal census of the United States bureau of

census, the percentage change in state population for such calendar year shall be the percentage change between the state population as reported in the federal census conducted by the United States bureau of census due in December of such calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same year with a reference date of July 1 of the immediately preceding calendar year.

(III) The department of local affairs shall notify the president of the senate, the speaker of the house of representatives, the governor, and the chairman of the joint budget committee of the general assembly of the percentage change in state population calculated pursuant to this paragraph (b) no later than January 15 following the calendar year for which such percentage is calculated. Such percentage shall not be subject to later modification based upon any subsequent revision of census counts or population estimates issued by the United States bureau of the census.

(3) The base for the calculation of state reserve increases for fiscal year 1992–93 shall be the state unrestricted year–end fund balances of the state general fund and of all state cash funds for fiscal year 1991–92. For purposes of this section, the amount of said state unrestricted year–end fund balances does not constitute and shall not be included in state fiscal year spending for fiscal year 1992–93.

1

2 (b) The maximum annual percentage change in fiscal year spending by a school
3 district equals inflation in the prior calendar year plus the percentage change in its
4 student enrollment, adjusted for revenue changes approved by the electors under
5 this section after 2002.

6 (c) The maximum annual percentage change in fiscal year spending by a
7 governmental unit, other than the state or a school district, equals inflation in the
8 prior calendar year plus population growth of the governmental unit, adjusted for
9 revenue changes approved by the electors under this section after 2002.

10 (d) Population under this subsection shall be determined by annual federal
11 census estimates and shall be adjusted to match the population under each federal
12 decennial census.

1 (e) The maximum annual percentage change in each governmental unit's
2 property tax revenue equals inflation in the prior calendar year plus annual local
3 growth, adjusted for property tax revenue changes approved by the electors under
4 this section after 2002. *[the language in this paragraph needs to be clarified.*
5 *What is intended? Is it a spending limit as the Colorado title to subsection*
6 *(7) suggests or should it have been part of Colorado subsection (8), entitled*
7 *“Revenue limits”, which you deleted from this draft? Is it needed in light of*
8 *the rest of this subsection? If it is kept, does it apply to the state, given the*
9 *reference to local growth? If it is kept, with your change of local growth to*
10 *population growth in other paragraphs, does the term need to be replaced*
11 *here?]*

12 (e) If revenue from sources not excluded from fiscal year spending exceeds
13 these(?) limits in dollars for that fiscal year, the excess shall be refunded in the next
14 fiscal year unless the electors under this section approve a revenue change. The
15 initial bases of a governmental unit are fiscal year spending in the fiscal year
16 containing November 2002 and calendar year 2001 property taxes collected in 2002.
17 Creating bonded debt of a governmental unit shall increase, and retiring or
18 refinancing bonded debt of a governmental unit shall lower, fiscal year spending and
19 property tax revenue by the annual debt service so funded. Debt service changes,
20 reductions, refunds under subsections (1) and (3) (c), and revenue changes approved
21 by the electors under this section are amounts that are exceptions to, and not part
22 of, a base of a governmental unit. A revenue change approved by the electors under
23 this section does not require a tax rate change(?).

24 [??(e) Emergency tax revenue is excluded for purposes of subsections (3) (d) and
25 (7).]

****NOTE: Subsection (6) provided, but I moved it to (3) (d) and (7): “Emergency tax revenue is excluded for purposes of subsections (3) (d) and (7).” See the ****NOTE: after that subsection.

1 **SECTION 4.** Section 4 of article X of the constitution is amended to read:

2 [Article X] Section 4. Each town and city shall be required to raise by tax,
3 annually, for the support of common schools therein, a sum not less than one-half
4 the amount received by such town or city respectively for school purposes from the
5 income of the school fund.

****NOTE: This may need to be amended because there could be a conflict if the distribution from the school fund was 200% higher than the amount of the permitted increase.

6 **SECTION 5.** Section 3 (4) of article XI of the constitution is amended to read:

7 [Article XI] (4) When indebtedness under sub. (2) is incurred in the acquisition
8 of lands by cities, or by counties or sewerage districts having a population of 150,000
9 or over, for public, municipal purposes, or for the permanent improvement thereof,
10 or to purchase, acquire, construct, extend, add to or improve a sewage collection or
11 treatment system which services all or a part of such city or county, the city, county
12 or sewerage district incurring the indebtedness shall, before or at the time of so
13 doing, provide for the collection of a direct annual tax sufficient to pay the interest
14 on such debt as it falls due, and also to pay and discharge the principal thereof within
15 a period not exceeding 50 years from the time of contracting the same.

****NOTE: This section may need to be amended because the clause “direct annual tax sufficient to pay the interest on such debt” may cause a conflict with the new section created in this draft.

16 **SECTION 6. Numbering of new provision.** The new section 11 of article VIII
17 of the constitution created in this joint resolution shall be designated by the next
18 higher open whole section number in that article if, before the ratification by the
19 people of the amendment proposed in this joint resolution, any other ratified
20 amendment has created a section 11 of article VIII of the constitution of this state.

1 If one or more joint resolutions create a section 11 of article VIII simultaneously with
2 the ratification by the people of the amendment proposed in this joint resolution, the
3 sections created shall be numbered and placed in a sequence so that the sections
4 created by the joint resolution having the lowest enrolled joint resolution number
5 have the numbers designated in that joint resolution and the sections created by the
6 other joint resolutions have numbers that are in the same ascending order as are the
7 numbers of the enrolled joint resolutions creating the sections.

8 ***Be it further resolved, That*** this proposed amendment be referred to the
9 legislature to be chosen at the next general election and that it be published for 3
10 months previous to the time of holding such election.

11

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3986/P4dn
PJD.....

December 9, 1999

This draft is based on Article X, Section 20 of the Colorado Constitution, not the May 8, 1991, submission to the Colorado Secretary of State that was submitted to us as part of this request.

In Colorado, Article X, Section 20 was enacted by the People November 3, 1992 — Section 1 of article V of that constitution provides that initiated measures shall take effect upon the Governor's proclamation. Subsection (1) of that section provides that the Colorado section shall take effect December 31, 1992, or as stated. (See subsection (4).) The Governor's proclamation was signed January 14, 1993. (For the text of this initiated measure, see L. 93. p. 2165.); section 20 (3)(b)(v) amended November 8, 1994 — Effective upon proclamation of the Governor, January 19, 1995. (See L. 94, p. 2851.); the introductory portion to section 20 (3)(b) and (3)(b)(v) amended November 5, 1996 — Effective upon proclamation of the Governor, December 26, 1996. (For the text of the amendment and the votes cast thereon, see Laws 1995, p. 1425, and Laws 1997, p. 2393.)

The only changes from /P1 to /P2 are to make some changes necessary to reflect Wisconsin (not Colorado) style, format and governmental structure. The changes from /P2 to /P3 make additional changes necessary to reflect Wisconsin (not Colorado) style, format and governmental structure, and changes to respond to Colorado interpretations of their constitutional amendment.

The /P4 draft makes some changes necessary to reflect Wisconsin (not Colorado) style, format and governmental structure, and includes the policy changes requested by the requester—to delete provisions on state mandates, revenue limits, exceptions for enterprises, prohibition on emergency taxes, valuation for assessment ratio increase for a property class, and pension contributions by employees from the fiscal year spending definition; to exclude lottery proceeds from the definition of fiscal year spending; and to make the other changes requested at the meeting in your office.

This very preliminary draft marks up the new section of the constitution created in this draft by use of striking and scoring, and imbedded bracketed comments, and ****Notes: after the provision, rather than setting them forth in this drafter's note.

A major source of the confusion and litigation in Colorado and elsewhere regarding initiatives creating constitutional provisions is that they are not integrated into the constitution to avoid conflicts.

Do any of the following provisions in the Wisconsin constitution conflict with this draft and therefore need to be amended in this joint resolution?

Unlike the 4 provisions of the constitution included in your draft to avoid conflicts with your new section, the following provisions of the Wisconsin constitution are not included in the draft. However, even though they may not directly conflict with your new section, they may very well have their current impact altered by the effects of your new section:

Article IV, §22 Powers of county boards. Section 22. The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe.

Article IV, §24 ¶(6) (a) The legislature may authorize the creation of a lottery to be operated by the state as provided by law. The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited. Any advertising of the state lottery shall indicate the odds of a specific lottery ticket to be selected as the winning ticket for each prize amount offered. The net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief as provided by law.

Article VIII, §4 Contracting state debts. Section 4. The state shall never contract any public debt except in the cases and manner herein provided.

Article VIII, §6 Public debt for extraordinary expense; taxation. Section 6. For the purpose of defraying extraordinary expenditures the state may contract public debts (but such debts shall never in the aggregate exceed one hundred thousand dollars). Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority

of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of such debt shall have been wholly paid.

Article VIII, §7 Public debt for public defense; bonding for public purposes.

Article VIII, §7 ¶(1) The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created.

Article VIII, §7 (2) Any other provision of this constitution to the contrary notwithstanding:

Article VIII, §7 ¶(2) (a) The state may contract public debt and pledges to the payment thereof its full faith, credit and taxing power:

Article VIII, §7 ¶(2) (a) 1. To acquire, construct, develop, extend, enlarge or improve land, waters, property, highways, railways, buildings, equipment or facilities for public purposes.

Article VIII, §7 ¶(2) (a) 2. To make funds available for veterans' housing loans.

Article VIII, §7 ¶(2) (b) The aggregate public debt contracted by the state in any calendar year pursuant to paragraph (a) shall not exceed an amount equal to the lesser of:

Article VIII, §7 ¶(2) (b) 1. Three-fourths of one per centum of the aggregate value of all taxable property in the state; or

Article VIII, §7 ¶(2) (b) 2. Five per centum of the aggregate value of all taxable property in the state less the sum of: a. the aggregate public debt of the state contracted pursuant to this section outstanding as of January 1 of such calendar year after subtracting therefrom the amount of sinking funds on hand on January 1 of such calendar year which are applicable exclusively to repayment of such outstanding public debt and, b. the outstanding indebtedness as of January 1 of such calendar year of any entity of the type described in paragraph (d) to the extent that such indebtedness is supported by or payable from payments out of the treasury of the state.

Article VIII, §7 ¶(2) (c) The state may contract public debt, without limit, to fund or refund the whole or any part of any public debt contracted pursuant to paragraph (a), including any premium payable with respect thereto and any interest to accrue thereon, or to fund or refund the whole or any part of any indebtedness incurred prior to January 1, 1972, by any entity of the type described in paragraph (d), including any premium payable with respect thereto and any interest to accrue thereon.

Article VIII, §7 ¶(2) (d) No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1971, to the Wisconsin State Agencies Building Corporation, Wisconsin State

Colleges Building Corporation, Wisconsin State Public Building Corporation, Wisconsin University Building Corporation or any similar entity existing or operating for similar purposes pursuant to which such nonprofit corporation or such other entity undertakes to finance or provide a facility for use or occupancy by the state or an agency, department or instrumentality thereof.

Article VIII, §7 ¶(2) (e) The legislature shall prescribe all matters relating to the contracting of public debt pursuant to paragraph (a), including: the public purposes for which public debt may be contracted; by vote of a majority of the members elected to each of the 2 houses of the legislature, the amount of public debt which may be contracted for any class of such purposes; the public debt or other indebtedness which may be funded or refunded; the kinds of notes, bonds or other evidence of public debt which may be issued by the state; and the manner in which the aggregate value of all taxable property in the state shall be determined.

Article VIII, §7 ¶(2) (f) The full faith, credit and taxing power of the state are pledged to the payment of all public debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and instalments of principal of all such public debt as the same falls due, but, in any event, suit may be brought against the state to compel such payment.

Article VIII, §7 ¶(2) (g) At any time after January 1, 1972, by vote of a majority of the members elected to each of the 2 houses of the legislature, the legislature may declare that an emergency exists and submit to the people a proposal to authorize the state to contract a specific amount of public debt for a

purpose specified in such proposal, without regard to the limit provided in paragraph (b). Any such authorization shall be effective if approved by a majority of the electors voting thereon. Public debt contracted pursuant to such authorization shall thereafter be deemed to have been contracted pursuant to paragraph (a), but neither such public debt nor any public debt contracted to fund or refund such public debt shall be considered in computing the debt limit provided in paragraph (b). Not more than one such authorization shall be thus made in any 2-year period.

Article VIII, §8 Vote on fiscal bills; quorum. Section 8. On the passage in either house of the legislature of any law which imposes, continues or renews a tax, or creates a debt or charge, or makes, continues or renews an appropriation of public or trust money, or releases, discharges or commutes a claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house shall in all such cases be required to constitute a quorum therein.

Article VIII, §10 Internal improvements. Section 10. Except as further provided in this section, the state may never contract any debt for works of internal improvement, or be a party in carrying on such works.

Article VIII, §10 (1) Whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

Article VIII, §10 (2) The state may appropriate money in the treasury or to be thereafter raised by taxation for:

Article VIII, §10 ¶(2) (a) The construction or improvement of public highways.

Article VIII, §10 ¶(2) (b) The development, improvement and construction of airports or other aeronautical projects.

Article VIII, §10 ¶(2) (c) The acquisition, improvement or construction of veterans' housing.

Article VIII, §10 ¶(2) (d) The improvement of port facilities.

Article VIII, §10 ¶(2) (e) The acquisition, development, improvement or construction of railways and other railroad facilities.

Article VIII, §10 (3) The state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state. Of the moneys appropriated under the authority of this subsection in any one year an amount not to exceed two-tenths of one mill of the taxable property of the state as determined by the last preceding state assessment may be raised by a tax on property.

Article X, §2 School fund created; income applied. Section 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university) and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are

not specified, and the 500,000 acres of land to which the state is entitled by the provisions of an act of congress, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841; and also the 5 percent of the net proceeds of the public lands to which the state shall become entitled on admission into the union (if congress shall consent to such appropriation of the 2 grants last mentioned) shall be set apart as a separate fund to be called "the school fund," the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit:

Article X, 2 (1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor.

Article X, 2 (2) The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor.

Article X, §5 Income of school fund. Section 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of the state for the support of common schools therein, in some just proportion to the number of children and youth resident therein between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city or town for the year in which said city or town shall fail to raise such tax; nor to any school district for the year in which a school shall not be maintained at least three months.

Article X, §6 State university; support. Section 6. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Article XI, §3 (2) No county, city, town, village, school district, sewerage district or other municipal corporation may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature. In all cases the allowable percentage shall be 5 percent except as specified in pars. (a) and (b):

Article XI, §3 ¶(2) (a) For any city authorized to issue bonds for school purposes, an additional 10 percent shall be permitted for school purposes only, and in such cases the territory attached to the city for school purposes shall be included in the total taxable property supporting the bonds issued for school purposes.

Article XI, §3 ¶(2) (b) For any school district which offers no less than grades one to 12 and which at the time of incurring such debt is eligible for the highest level of school aids, 10 percent shall be permitted.

Article XI, §3 (3) Any county, city, town, village, school district, sewerage district or other municipal corporation incurring any indebtedness under sub. (2)

shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within 20 years from the time of contracting the same.

Article XI, §3 (5) An indebtedness created for the purpose of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a town, village, city or special district, and secured solely by the property or income of such public utility, and whereby no municipal liability is created, shall not be considered an indebtedness of such town, village, city or special district, and shall not be included in arriving at the debt limitation under sub. (2).

COLORADO STATUTES IMPLEMENTING SECTION TWENTY, ARTICLE X OF THE COLORADO CONSTITUTION

These are the Colorado statutes enacted to facilitate the operation of section 20 of article X of the Colorado constitution. They need to be reviewed for at least two purposes. First, is there one of these statutes that needs to be made part of Wisconsin's constitution? While it is best to keep the constitution shorter and more general, it is possible that adding one of these statutory provisions is needed to make the constitution work smoothly or work correctly. Second, the Colorado initiative was not well drafted, to say the least. The language of a Colorado statute may express your intent more clearly than the Colorado constitution.

TITLE 24. GOVERNMENT - STATE

STATE FISCAL POLICIES RELATING TO SECTION 20 OF ARTICLE X
OF THE STATE CONSTITUTION

ARTICLE 77. STATE FISCAL POLICIES RELATING TO SECTION 20 OF
ARTICLE X OF THE STATE CONSTITUTION

C.R.S. 24-77-101 (1998)

24-77-101. Legislative declaration.

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

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state at the 1992 general election, limits fiscal year spending of the state government;

(b) It is within the legislative prerogative of the general assembly to enact legislation which will facilitate the operation of section 20 of article X;

(c) It is a legislative prerogative to facilitate compliance with the state fiscal year spending limit and legislation to implement section 20 of article X as it relates to state government is a reasonable and necessary exercise of the legislative prerogative;

(d) In interpreting the provisions of section 20 of article X, the general assembly has attempted to give the words of said constitutional provision their natural and obvious significance;

(e) Where the meaning of section 20 of article X is uncertain, the general assembly has attempted to ascertain the intent of those who adopted the measure and, when appropriate, the intent of the proponents, as well as to apply other generally accepted rules of construction;

(f) The content of this article represents the considered judgment of the general assembly as to the meaning of the provisions of section 20 of article X as it relates to state government.

(2) The general assembly further finds and declares that:

(a) The adoption of section 20 of article X imposes a limit on state fiscal year spending and the provisions of this article were enacted to facilitate compliance with the state fiscal year spending limit;

(b) This article reflects the judgment of the general assembly regarding the meaning and implementation of section 20 of article X of the state constitution as it relates to state government;

(c) The provisions of this article should not be construed to substitute for generally accepted accounting principles which are applicable to financial documents and reports of state government;

(d) The purpose of preparing figures in accordance with this article, to ensure compliance with the state fiscal year spending limit, may differ from the purpose of preparing financial statements of the state, to determine the financial condition of the state;

(e) The financial statements of the state prepared by the state controller shall be prepared, insofar as possible, in conformity with generally accepted accounting principles; and

(f) The financial report required by this article shall be prepared in conformity with generally accepted accounting principles unless otherwise provided by law or unless an irreconcilable conflict exists between generally accepted accounting principles and the provisions of section 20 of article X in which case the provisions of said constitutional provision shall control.

(3) The general assembly further finds and declares that:

(a) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7) (d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to retain the revenues;

(b) It is the duty and intent of the general assembly to comply with the constitutional requirement to refund state excess revenues;

(c) It is within the legislative prerogative to facilitate compliance with the constitutional requirement to refund state excess revenues and legislation relating to the refunding of such excess revenues is a reasonable and necessary exercise of the legislative prerogative; and

(d) State excess revenues that are carried forward from the fiscal year in which they accrued shall be refunded in the next fiscal year and shall not be available for any other governmental purpose unless voters have authorized the state to retain such revenues.

HISTORY: Source: L. 93: Entire article added, p. 1495, @ 1, effective June 6.L. 94: (2) added, p. 1089, @ 1, effective May 4.L. 98: (2) amended and (3) added, p. 847, @ 1, effective May 26.

TITLE 24 Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

ARTICLE 77 Cross references: For restriction on state appropriations, see @ 24-75-201.1.

The general assembly sought to comply with the provisions of section 20 of article X of the Colorado constitution by enacting legislation consistent with the state fiscal year spending limit of that section and to define certain terms used in that section. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT
(1998 SESSIONS) ***

TITLE 24. GOVERNMENT - STATE

STATE FISCAL POLICIES RELATING TO SECTION 20 OF ARTICLE X
OF THE STATE CONSTITUTION

ARTICLE 77. STATE FISCAL POLICIES RELATING TO SECTION 20 OF
ARTICLE X OF THE STATE CONSTITUTION

C.R.S. 24-77-102 (1998)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT
CHANGES TO THIS DOCUMENT LEXSEE 1999 Colo. SB 233 — See section 1.

24-77-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Collections for another government" means any tax revenues which are collected by the state for the benefit and use of any government other than the state pursuant to the taxing authority of such other government and which are passed through to the government for whose use such revenues were collected.

(2) "Damage award" means any pecuniary compensation received by the state as a result of any judgment or allowance in favor of the state.

(3) "Enterprise" means a government-owned business:

(a) Which has authority to issue its own revenue bonds; and

(b) Which receives less than ten percent of its annual revenues in grants from all state and local governments in Colorado combined.

(4) "Expenditure" means the appropriation or disbursement of any state general fund or cash fund moneys for any expense incurred by the state.

(5) "Federal funds" means any pecuniary resources received by the state from the national government of the United States.

(6) "Gift" means something of value which is given to the state voluntarily by any person or entity, regardless of whether such person or entity specifies the purpose or purposes for which such thing of value is to be used. "Gift" includes, but is not limited to, voluntary contributions received by the state as a result of any state voluntary contribution program established pursuant to article 22 of title 39, C.R.S. "Gift" does not include federal funds or any pecuniary compensation received by the state from any other governmental entity.

(7) (a) "Grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid.

(b) "Grant" does not include:

(I) Any indirect benefit conferred upon an enterprise from the state or any local government in Colorado;

(II) Any revenues resulting from rates, fees, assessments, or other charges imposed by an enterprise for the provision of goods or services by such enterprise;

(III) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by an enterprise.

(8) "Inflation" means the percentage change in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States department of labor, bureau of labor statistics, or its successor index.

(9) "Pension contributions by employees" means the amount contributed by state employees to the retirement plans of such employees.

(10) "Pension fund earnings" means the amount which is earned from the investment of moneys set apart for the payment of retirement income for state employees.

(11) "Property sale" means:

(a) Any transfer of the ownership of an estate in tangible assets or intangible rights, excluding leasehold interests, in which or to which the state has rights protected by law from the state to any party for consideration; or

(b) Any contract resulting in the payment of pecuniary compensation to the state for permitting another to exploit, use, or market nonrenewable natural resources which are located on real property owned by the state and which are subject to depletion with use.

(12) "Reserve" means any unrestricted general fund or cash fund year-end balance which is held by the state to meet any needs or demands.

(13) "Reserve increase" means any action which has the effect of increasing a reserve.

(14) "Reserve transfers or expenditures" means moneys which are passed from one fund of cash or assets held by the state as a reserve to another such fund or moneys which are disbursed from such fund.

(15) (a) "Special purpose authority" means any entity which is created pursuant to state law to serve a valid public purpose, which is either a political subdivision of the state or an instrumentality of the state, which is not an agency of the state, and which is not subject to administrative direction by any department, commission, bureau, or agency of the state.

(b) "Special purpose authority" includes, but is not limited to:

(I) The Colorado housing and finance authority created pursuant to section 29-4-704, C.R.S.;

(II) The University of Colorado hospital authority created pursuant to section 23-21-503 (1), C.R.S.;

(III) The Colorado water resources and power development authority created pursuant to section 37-95-104 (1), C.R.S.;

(IV) The Colorado compensation insurance authority created pursuant to section 8-45-101, C.R.S.;

(V) The Colorado educational and cultural facilities authority created pursuant to section 23-15-104 (1), C.R.S.;

(VI) The Colorado health facilities authority created pursuant to section 25-25-104 (1), C.R.S.;

(VII) The Colorado student obligation bond authority created pursuant to section 23-3.1-203, C.R.S.;

(VIII) The Colorado agricultural development authority created pursuant to section 35-75-104 (1), C.R.S.;

(IX) The public employees' retirement association created pursuant to section 24-51-201 (1);

(X) The Denver health and hospital authority created pursuant to section 25-29-103 (1), C.R.S.;

(XI) The Pueblo depot activity development authority created pursuant to section 29-23-104, C.R.S.

(16) (a) "State" means the central civil government of the state of Colorado, which shall consist of the following:

(I) The legislative, executive, and judicial branches of government established by article III of the state constitution;

(II) All organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and

(III) State institutions of higher education.

(b) "State" does not include:

(I) Any enterprise;

(II) Any special purpose authority.

(17) (a) "State fiscal year spending" means all state expenditures and reserve increases occurring during any given fiscal year as established by section 24-30-204, including, but not limited to, state expenditures or reserve increases from:

(I) Moneys received by the state from enterprises;

(II) Cash funds of state institutions of higher education, as defined in section 23-1-103.5, C.R.S.;

(III) Net lottery proceeds distributed to the capital construction fund for payment of debt service on the obligations described in section 3 (1) (c) of article

XXVII of the state constitution for the period through the fourth quarter of the state's fiscal year 1997-1998; and

(IV) Net lottery proceeds allocated to the general fund pursuant to section 3 (1) (b) (III) of article XXVII of the state constitution for the period beginning with the first quarter of the state's fiscal year 1998-1999.

(b) "State fiscal year spending" does not include reserve transfers or expenditures or any state expenditures or reserve increases:

(I) For refunds of excess state revenues made in the current fiscal year or in the subsequent fiscal year;

(II) From gifts, including any interest earned thereon;

(III) From federal funds, including any interest earned thereon;

(IV) From collections for another government;

(V) From pension contributions by employees;

(VI) From pension fund earnings;

(VII) From damage awards, including any interest earned thereon;

(VIII) From property sales, including any interest earned on proceeds therefrom; and

(IX) From net proceeds from state-supervised lottery games, as defined in section 3 (1) of article XXVII of the state constitution; except that those portions of such proceeds which are specified in subparagraphs (III) and (IV) of paragraph (a) of this subsection (17) are included in state fiscal year spending.

HISTORY: Source: L. 93: Entire article added, p. 1496, @ 1, effective June 6.L. 94: (15)(b)(X) added, p. 671, @ 3, effective April 19; (15)(b)(XI) added, p. 964, @ 2, effective April 28.L. 98: (15)(b)(V) amended, p. 609, @ 17, effective May 4. The general assembly sought to comply with the provisions of section 20 of article X

of the Colorado constitution by enacting legislation consistent with the state fiscal year spending limit of that section and to define certain terms used in that section. Submission of Interrogatories on Senate Bill 93-74, 852.

Since the inclusion of all net lottery proceeds in the calculation of state fiscal year spending creates an implicit conflict between section 20 of article X and article XXVII of the Colorado constitution, legislation exempting net lottery proceeds dedicated by article XXVII to Great Outdoors Colorado purposes from section 20 of article X and subjecting such proceeds dedicated to the capital construction fund and the excess that spill over into the general fund to that section represented a reasonable resolution of that implicit conflict.

Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT
(1998 SESSIONS) ***

STATE FISCAL POLICIES RELATING TO SECTION 20 OF ARTICLE X
OF THE STATE CONSTITUTION

ARTICLE 77. STATE FISCAL POLICIES RELATING TO SECTION 20 OF
ARTICLE X OF THE STATE CONSTITUTION

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT
CHANGES TO THIS DOCUMENT LEXSEE

1999 Colo. SB 233 — See section 2.

24-77-103. Limitation on state fiscal year spending.

(1) For fiscal year 1993-94 and each fiscal year thereafter, state fiscal year spending shall not exceed an amount equal to:

(a) State fiscal year spending for the previous fiscal year; as modified by

(b) An amount equal to a percentage calculated pursuant to subsection (2) of this section times the state fiscal year spending for the previous fiscal year, as adjusted for qualification and disqualification of enterprises and as reduced by an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) The amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991; as modified by

(c) To the extent not otherwise included in state fiscal year spending for the previous fiscal year, an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) An amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991.

(2) (a) For purposes of paragraph (b) of subsection (1) of this section, the percentage of allowable increase in state fiscal year spending shall equal the sum of inflation as modified by the percentage change in state population in the prior calendar year.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the percentage change in state population for any given calendar year shall

be the percentage change between the estimate of state population due to be issued by the United States bureau of census in December of such calendar year with a reference date of July 1 of the same calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same calendar year with a reference date of July 1 of the immediately preceding calendar year.

(II) For any calendar year for which an estimate of state population is not issued due to the federal census of the United States bureau of census, the percentage change in state population for such calendar year shall be the percentage change between the state population as reported in the federal census conducted by the United States bureau of census due in December of such calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same year with a reference date of July 1 of the immediately preceding calendar year.

(III) The department of local affairs shall notify the president of the senate, the speaker of the house of representatives, the governor, and the chairman of the joint budget committee of the general assembly of the percentage change in state population calculated pursuant to this paragraph (b) no later than January 15 following the calendar year for which such percentage is calculated. Such percentage shall not be subject to later modification based upon any subsequent revision of census counts or population estimates issued by the United States bureau of the census.

(3) The base for the calculation of state reserve increases for fiscal year 1992-93 shall be the state unrestricted year-end fund balances of the state general fund and of all state cash funds for fiscal year 1991-92. For purposes of

this section, the amount of said state unrestricted year-end fund balances does not constitute and shall not be included in state fiscal year spending for fiscal year 1992-93.

(4) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, the state may refuse to accept any moneys, in whole or in part, from any enterprise in any given fiscal year, notwithstanding any law to the contrary.

(5) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, the state may refuse to accept any gift, including but not limited to real property, for which state expenditures would be required for the maintenance and operation of such gift and which does not include sufficient revenues for said purposes.

(6) (a) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, any moneys continuously appropriated by a permanent statute or constitutional provision shall be included in the general appropriation bill for informational purposes.

(b) The authority to expend such moneys shall be modified only by duly enacted amendment to the permanent statute or constitutional provision which continuously appropriates such moneys.

(c) Except as otherwise provided in this paragraph (c), any moneys continuously appropriated by a permanent statute or constitutional provision shall be subject to revenue and expenditure limits established annually by the general assembly as provided by law for the purpose of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section. The provisions of this paragraph (c) shall not apply to moneys continuously

appropriated to the limited gaming control commission pursuant to section 9 of article XVIII of the state constitution.

(7) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, each state institution of higher education shall prepare a written report for each quarter of the fiscal year which shall include the total amount of net revenues generated during such period from any facility, activity, or operation managed by such state institution of higher education which is an enterprise and the total amount of such net revenues and any other thing of value received by such state institution of higher education from such enterprises. Such report shall be filed with the president of the senate, the speaker of the house of representatives, and the chairman of the joint budget committee no later than thirty days after the close of such period.

HISTORY: Source: L. 93: Entire article added, p. 1500, @ 1, effective June 6

LEXSEE 1999 Colo. SB 233

COLORADO ADVANCE LEGISLATIVE SERVICE STATENET

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COLORADO 1ST REGULAR SESSION OF THE 62ND GENERAL
ASSEMBLY

CHAPTER 297

SENATE BILL NO. 233

1999 Colo. ALS 297; 1999 Colo. Ch. 297; 1999 Colo. SB 233

SYNOPSIS: AN ACT CONCERNING STATE FISCAL POLICIES
RELATING TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED
<A] [D> Text within these symbols is deleted <D]

To view the next section, type .np* and TRANSMIT.

To view a specific section, transmit p* and the section number. E.g. p*1

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

[*1] SECTION 1. 24-77-102 (1), Colorado Revised Statutes, is amended to
read:

24-77-102. Definitions. As used in this article, unless the context otherwise
requires:

(1) "Collections for another government" means any tax revenues [D> which
<D] [A> OR OTHER REVENUES THAT <A] are collected by the state for the
benefit and use of any government other than the state pursuant to the [D> taxing
<D] authority of such other government and [D> which <D] [A> THAT <A] are
passed through to the government for whose use such revenues were collected.

[*2] SECTION 2. 24-77-103 (1) (a) and (1) (b), Colorado Revised Statutes,
are amended, and the said 24-77-103 is further amended BY THE ADDITION
OF A NEW SUBSECTION, to read:

24-77-103. Limitation on state fiscal year spending - legislative
declaration. (1) For fiscal year 1993-94 and each fiscal year thereafter, state fiscal
year spending shall not exceed an amount equal to:

(a) State fiscal year spending for the previous fiscal year [A> AS MAY BE
ADJUSTED PURSUANT TO THE PROVISIONS OF SECTION 24-77-103.5;
<A] as modified by

(b) An amount equal to a percentage calculated pursuant to subsection (2) of this section times the state fiscal year spending for the previous fiscal year, as adjusted for qualification and disqualification of enterprises, [A] AS ADJUSTED PURSUANT TO THE PROVISIONS OF SUBSECTION (2.3) OF THIS SECTION, <A] and as reduced by an amount equal to:

(2.3) (A) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION FAILS TO PROVIDE GUIDANCE AS TO HOW THE ABSORPTION OF AN EXISTING LOCAL GOVERNMENT DISTRICT BY THE STATE IS TO BE TREATED FOR PURPOSES OF COMPLIANCE WITH SAID CONSTITUTIONAL PROVISION. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS NOT REASONABLE FOR STATE FISCAL YEAR SPENDING TO REMAIN AT THE SAME LEVEL, WITH AN ACCOMPANYING REDUCTION IN REVENUES AVAILABLE TO FUND OTHER STATE SERVICES, IN ORDER THAT THE STATE MAY ABSORB LOCAL GOVERNMENT DISTRICTS THAT PROVIDE HIGHER EDUCATION SERVICES. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE METHOD OF ABSORBING LOCAL GOVERNMENT DISTRICTS THAT PROVIDE HIGHER EDUCATION SERVICES BY THE STATE FOR PURPOSES OF COMPLIANCE WITH SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION EMBODIED IN THIS SUBSECTION (2.3) REASONABLY RESTRAINS MOST THE GROWTH OF GOVERNMENT SINCE GOVERNMENT AS A WHOLE HAS NOT GROWN WHILE PRESERVING ESSENTIAL STATE SERVICES. <A]

[A] (B) FOR PURPOSES OF PARAGRAPH (B) OF SUBSECTION (1) OF THIS SECTION, WHEN ANY LOCAL GOVERNMENT DISTRICT THAT

PROVIDES HIGHER EDUCATION SERVICES JOINS THE STATE, THE AMOUNT OF STATE FISCAL YEAR SPENDING ALLOWABLE FOR THE FISCAL YEAR IN WHICH SUCH JOINDER TAKES EFFECT SHALL BE ADJUSTED BY THE AMOUNT OF FISCAL YEAR SPENDING OF SUCH LOCAL GOVERNMENT DISTRICT THAT PROVIDES HIGHER EDUCATION SERVICES IN ACCORDANCE WITH SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION IN THE CURRENT FISCAL YEAR. <A]

[*3] SECTION 3. Article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

[A> 24-77-103.5. LEGISLATIVE DECLARATION - CORRECTION OF ERRORS - AUTHORITY OF THE CONTROLLER AND AUDITOR. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT ASCERTAINING COMPLIANCE WITH THE PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION REQUIRES THAT ACCURATE CALCULATIONS BE MADE OF STATE FISCAL YEAR SPENDING. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS REASONABLE TO ACCOUNT FOR ANY ERRORS IN CALCULATING STATE FISCAL YEAR SPENDING BY AUTHORIZING THE CONTROLLER TO MAKE EQUIVALENT ADJUSTMENTS IN STATE FISCAL YEAR SPENDING FOR THE FISCAL YEAR IN WHICH SUCH ERRORS ARE DISCOVERED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION (1). <A]

[A> (2) FOR PURPOSES OF SECTION 24-77-103, FOR ANY GIVEN FISCAL YEAR, IF THE CONTROLLER DISCOVERS AN ERROR INVOLVING A PRIOR FISCAL YEAR BY WHATEVER MEANS AVAILABLE AFFECTING THE CALCULATION OF STATE FISCAL YEAR SPENDING, THE

CONTROLLER MAY CORRECT SUCH ERROR BY INCREASING OR DECREASING IN AN APPROPRIATE AMOUNT THE ALLOWABLE STATE FISCAL YEAR SPENDING FOR THE FISCAL YEAR IN WHICH SUCH ERROR IS DISCOVERED, SUBJECT TO A REVIEW OF SUCH ADJUSTMENT BY THE STATE AUDITOR. <A]

[*4] SECTION 4. 24-77-106, Colorado Revised Statutes, is amended to read:

24-77-106. Establishment of annual allowable uncommitted reserves – legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution limits state fiscal year spending;

(b) Subject to certain exclusions specified in section 20 of article X of the state constitution, all state general fund [D> expenditures <D] [A> REVENUES <A] and all state cash fund [D> expenditures <D] [A> REVENUES <A] are included in the limitation on state fiscal year spending;

(c) The legislative powers of the general assembly, including but not limited to its plenary power of appropriation, authorize and require the general assembly to assure compliance with the limitation on state fiscal year spending and to make fundamental fiscal policy decisions establishing the level of activity of all departments and agencies of state government, [D> except for the limited gaming control commission created pursuant to section 9 (2) of article XVIII of the state constitution <D] [A> INCLUDING THOSE FUNDED BY REVENUES GENERATED FROM FEES; <A] and

(d) Consonant with the exercise of such legislative powers, the general assembly must establish limits on the [D> revenues collected and expenditures

made by all <D] [A> AMOUNT OF UNCOMMITTED RESERVES THAT MAY BE MAINTAINED BY THE <A] departments and agencies of state government [D> except for the limited gaming control commission created pursuant to section 9 (2) of article XVIII of the state constitution <D] [A> FOR CASH FUNDS UNDER THEIR CONTROL AND MUST EXERCISE ANY OTHER NECESSARY CONTROLS ON CASH FUND REVENUES, INCLUDING BUT NOT LIMITED TO THE POWER OF APPROPRIATION. <A]

(2) [D> Except as otherwise provided in this subsection (2), for the 1993-94 fiscal year and fiscal years thereafter, the general assembly, in the general appropriation bill or by separate bill, shall prescribe the total amount of revenues that may be collected by each department and agency of state government for the fiscal year. The amount prescribed by the general assembly pursuant to this subsection (2) shall be based upon the determination of the limitation on state fiscal year spending under section of article X of the state constitution and upon decisions establishing the level of activity of all departments and agencies of state government. The provisions of this subsection (2) shall not apply to the limited gaming control commission created in section 9 (2) of article XVIII of the state constitution. <D]

[A> (3) FOR THE 1999-2000 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, EACH DEPARTMENT OR AGENCY OF STATE GOVERNMENT SHALL MAINTAIN THE UNCOMMITTED RESERVES OF ANY CASH FUND UNDER ITS CONTROL IN ACCORDANCE WITH SECTION 24-75-402. <A]

[*5] SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment

of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

HISTORY:

Approved June 2, 1999

SPONSOR: BY SENATORS Lacy, Owen, and Tanner; also
REPRESENTATIVES Tool, Berry, Saliman and George.

Atty. Peter J. Dykman
General Counsel
Phone: (608) 266-7098
E-mail: Peter.Dykman@legis.state.wi.us

Dykman, Peter

From: Dykman, Peter
Sent: Friday, December 24, 1999 1:43 PM
To: Rep.Lasee; Wadium, Mark
Subject: Colo. Const. Art. X, Section 20 (9) on state mandates

You discussed including Colo. Const. Art. X, Section 20 (9) on state mandates in your request LRB-3986. If something like that provision is included, it would need to be included in the relating clause and would be a separate ballot question submitted to the voters. It reads: **Colo. Const. Art. X, Section 20 (9)** State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

The annotations for that provision are:

V. STATE MANDATES.

"Subsidy" of state by county is legally impossible. Attempted turnback by county of its responsibilities under human services code pursuant to subsection (9) was invalid because when a county (itself a political subdivision of the state) attempts to subsidize the state, the state, through the county, contributes to itself. Therefore, county's contribution to cost of social services program is not a "subsidy" and subsection (9) does not apply. Romer v. Board of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

This section did not change the mixed state and local character of social services. Romer v. Board of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

A county's duties to the state court system, including security, may not be reduced or ended pursuant to subsection (9). State v. Board of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

The case is discussed in the following law review article:

27 Rutgers L. J. 1243

C. Miscellaneous

1. Mandates

The interpretation of a taxpayers' rights amendment to the Colorado Constitution, n45 and its effect on state mandates, was the subject of two [*1249] recent decisions of the Supreme Court of Colorado. In *Romer v. Board of County Commissioners*, n46 the Supreme Court of Colorado refused to characterize a county's mandatory twenty percent contribution to the overall costs of social services as a 'subsidy' within the meaning of Amendment 1, section 20(9) of the Colorado Constitution. n47 Thus, the state mandate remained intact despite a constitutional provision purporting to give greater control to local governments. In the companion case of *State ex rel. Norton* [*1250] v. Board of County Commissioners, n48 the court invoked the reasoning of *Romer* and held that "a county's duties to the state court system, including security, may not be reduced or ended pursuant to section 20(9) of Amendment 1." n49

n45 The voters of Colorado adopted a state constitutional amendment, commonly known as the Taxpayer's Bill of Rights (Amendment 1), which took effect December 31, 1992. Colo. Rev. Stat. Ann. Const. art. 10, <sect> 20 (West 1992). The amendment requires voter approval for most state and local tax or debt increases. *Id.* Individual and/or class action suits to enforce this provision are granted the highest priority of resolution. *Id.* <sect> 20(1). Moreover, local districts are granted the option to reduce or end most subsidies to any program delegated to them by the general assembly for administration. *Id.* <sect> 20(9). The point of this constitutional amendment is clearly articulated in its preferred interpretation: to "reasonably restrain most the growth of government." *Id.* <sect> 20(1).

The confusion surrounding Amendment 1's effect on local governments and governmental agencies has generated considerable litigation. For example, in Nicholl v. E-470 Public Highway Auth., 896 P.2d 859, 865 (Colo. 1995), the Supreme Court of Colorado considered the application of Amendment 1 to a local highway authority and its financing activities. Because of the Authority's power to impose taxes, the Court first found that it was not a business but a "district subject to the voter approval provisions of Amendment 1." *Id.* at 869. However, only some of the Authority's actions implicated amendment 1. Thus, the part of the refinancing plan that involved releasing bond proceeds and remarketing them was not subject to voter approval. *Id.* at 870-71. Nor did the "collection and expenditure of revenues by the Authority as part of its financing plan require[] voter approval under Amendment 1." *Id.* at 871-72. Conversely, an intergovernmental multi-year loan obligation required voter approval. *Id.* at 871. See also infra notes 46-49 and accompanying text.

n46 897 P.2d 779 (Colo. 1995).

n47 *Id.* at 782-83. The Taxpayer's Bill of Rights provides: "State Mandates . . . a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration . . ." Colo. Const. art. X, <sect> 20(9).

The court's reasoning why the county's mandatory contribution was not a 'subsidy' appears somewhat weak.

The court stated:

A government cannot subsidize itself. "A county is not an independent governmental entity existing by reason of any inherent sovereign authority of its residents; rather, it is a political subdivision of the state, existing only for the convenient administration of the state government, created to carry out the will of the state."

Id. at 782 (quoting Board of County Comm'rs v. Love, 470 P.2d 861, 862 (Colo. 1970)).

The court probably realized the far-reaching and devastating impact which would result from a contrary holding. "To hold otherwise would require overruling Colorado Department of Social Services and subject the entire social services funding scheme to constitutional attack. We decline to do so." Romer, 897 P.2d at 782.

n48 897 P.2d 788 (Colo. 1995)

n49 *Id.* at 791. See also Feese v. City of Lake Ozark, 893 S.W.2d 810 (Mo. 1995). In Feese, the Supreme Court

of Missouri considered the validity of increased sewerage service charges in light of article X, <sect> 22(a) of the Missouri Constitution, which requires voter approval of "any tax, license or fees" increases. Id. at 811-12. The court held that the service charges were a tax, license or fee, id. at 812, which the local voters must approve before it is levied. Id. at 814.

-----End Footnotes-----

29-1-304.8 (turnback of programs delegated to local governments by the general assembly) is a statute that was enacted by the Colorado legislature to implement Colo. Const. Art. X, Section 20 (9) on state mandates:

COLORADO REVISED STATUTES

TITLE 29. GOVERNMENT - LOCAL

GENERAL PROVISIONS

ARTICLE 1. BUDGET AND SERVICES

PART 3. ANNUAL LEVY - INCREASE OR REDUCTION - LIMITATION

C.R.S. 29-1-304.8 (1998)

29-1-304.8. Programs not delegated by the general assembly

(1) A local district, within the meaning of section 20 (2) of article X of the state constitution, shall not reduce or end its subsidy pursuant to section 20 (9) of said article to any program if:

(a) The program is one of the inherent powers, duties, or functions of an officer whose office is created as a county office by the state constitution, including but not limited to the county clerk and recorder, the county sheriff, the county coroner, the county treasurer, the county surveyor, the county assessor, and the county attorney; or

(b) The program is required by the state constitution to be administered by the local district, including but not limited to duties related to the maintenance of the state court system and the equalization of property tax assessments.

(2) Nothing in the general assembly's enactment of a requirement that a local district contribute toward the funding of a program operated by an agency or officer which is not under the jurisdiction of that local district, including but not limited to the requirement that counties pay a portion of the costs of maintaining the office of the district attorney, shall imply that the general assembly has delegated the program to the local district for administration within the meaning of section 20 (9) of article X of the state constitution.

(3) A board of county commissioners shall not cease exercising or performing its inherent legislative, executive, or quasi-judicial powers, duties, or functions in the guise of reducing or ending its subsidy to a program

pursuant to the provisions of section 20 (9) of article X of the state constitution.

(4) As used in this section:

(a) "Administration" means the executive management or superintendence of public affairs, as distinguished from policy-making.

(b) "Inherent" means in the essential character of or belonging by nature or settled habit to.

HISTORY: Source: L. 93: Entire section added, p. 1517, § 21, effective June 6.

Here are other state constitutional provisions regarding mandates:

-----Original Message-----

From: LEXIS/NEXIS Print Delivery

[mailto:lexis-nexis@prod.lexis-nexis.com]

Sent: Friday, December 24, 1999 1:37 PM

To: peter.dykman@legis.state.wi.us

Subject: LEXIS(R)-NEXIS(R) Email Request (711:0:5254234)

108DW6

Print Request: Selected Document(s): 15,22,31,46,51,54,60

Time of Request: December 24, 1999 02:37 pm EST

Number of Lines: 414

Job Number: 711:0:5254234

Client ID/Project Name:

Research Information:

State Codes, Constitutions, Court Rules and ALS, All heading(const!) and text (mandate!)

Note:

Constitutions on mandates

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*** THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSION) ***
INCLUDING URGENCY LEGISLATION THROUGH 1999 REG. SESS. CH. 400, 9/15/99 AND 1999
EXTRA. SESS. CH. 5X, 4/12/99

CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE XIII B. GOVERNMENT SPENDING LIMITATION

Cal Const, Art XIII B @ 9 (1999)

@ 9. Scope of article

"Appropriations subject to limitation" for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 1/2 cents per \$ 100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents (\$ 0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990.

HISTORY: Adopted November 6, 1979.

Amendment adopted by voters, Prop 111, effective June 6, 1990, operative July 1, 1990.

NOTES:

AMENDMENTS:

PAGE 2

Cal Const, Art XIII B @ 9

1990 Amendment:

(1) Substituted "do" for "shall" in the introductory clause; (2) added "Appropriations for" in subd (a); (3) substituted "to comply" for "for purposes of complying" in subd (b); and (4) added subds (d) and (e).

NOTES OF DECISIONS

When a word or phrase has been given a particular meaning in one part of a law, it is to be given the same meaning in other parts of the law. Thus, in the government spending limitation provisions of Cal. Const., art. XIII B, the definition of "mandate" in @ 9, subd. (b), as being an enactment that directs compliance without discretion, governed with respect to @ 6, which required state reimbursement of local governments for costs of state mandated programs. *City of Sacramento v State of California* (1984, 3d Dist) 156 Cal App 3d 182, 203 Cal Rptr 258.

Under Cal. Const., art. XIII B (limit on government expenditures of tax revenues), enacted by the voters as Prop. 4, a city and county could not exclude contributions to its employees' retirement fund from its annual appropriations. The specific language of Cal. Const., art. XIII B, @ 5, states that the contributions are subject to the spending limitation. Although Cal. Const., art. XIII B, @ 9, excepts from the limitation appropriations for "debt service," which might include contributions to a retirement fund, the more specific provision of Cal. Const., art. XIII B, @ 5, prevails over the general provision of Cal. Const., art. XIII B, @ 9. By its plain language, Cal. Const., art. XIII B, @ 5, creates an exception to Cal. Const., art. XIII B, @ 9, and thus there is no need to harmonize further the provisions by distinguishing contractual retirement contributions from discretionary contributions. Also, the Legislative Analyst's comment in the voters' ballot material, which stated that a local government could appropriate excess revenues to reduce its liability relating to a retirement system, was unpersuasive, since it directly contradicted the language of the initiative. *San Francisco Taxpayers Assn. v Board of Supervisors* (1992) 2 Cal 4th 571, 7 Cal Rptr 2d 245, 828 P2d 147.

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MICHIE'S HAWAII REVISED STATUTES ANNOTATED
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*** STATUTES CURRENT THROUGH 1999 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 15, 1999 ***

THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE VIII. LOCAL GOVERNMENT

TRANSFER OF MANDATED PROGRAMS

HRS Const. Art. VIII, @ 5 (1999)

Section 5.

If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the

PAGE 3

HRS Const. Art. VIII, @ 5

legislature, it shall provide that the State share in the cost.

HISTORY: Add Const Con 1978 and election Nov 7, 1978

OPINIONS OF ATTORNEY GENERAL

NO REQUIREMENT THAT STATE SHARE IN COST OF MAINTAINING COUNTY HIGHWAYS. --Since the duty of the counties to maintain county highways predates the requirement of this section that the state participate in costs of programs mandated to the counties, there is no requirement thereunder that the state share in the costs. Op. Att'y Gen. No. 86-15 (1986).

RESEARCH REFERENCES

HAWAII LEGAL REPORTER.

As to amendment information sheet, see 78-2 Haw. Legal Rep. 78-616.

LEGAL PERIODICALS

UNIVERSITY OF HAWAII LAW REVIEW.

Article, The Hawaii State Plan Revisited, 7 U. Haw. L. Rev. 29 (1985).

USER NOTE: For more generally applicable notes, see notes under the first section of this article or title.

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LOUISIANA STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE MAY 1999 INTERIM UPDATE SERVICE ***
*** (1998 LEGISLATION) ***

CONSTITUTION OF THE STATE OF LOUISIANA OF 1974

ARTICLE VI. LOCAL GOVERNMENT

PART I. GENERAL PROVISIONS

La. Const. Art. VI, @ 14 (1999)

14. Increasing Financial Burden of Political Subdivisions

Section 14. (A) No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Section shall not apply to a school board.

PAGE 4

La. Const. Art. VI, @ 14

(B) This Section shall not apply to:

- (1) A law requested by the governing authority of the affected political subdivision.
- (2) A law defining a new crime or amending an existing crime.
- (3) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 1991.
- (4) A law enacted, or state executive order, rule, or regulation promulgated, to comply with a federal mandate.
- (5) A law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.
- (6) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature and any rule or regulation adopted to implement such instrument or adopted pursuant thereto.
- (7) A law having insignificant fiscal impact on the affected political subdivision.

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NEW HAMPSHIRE REVISED STATUTES ANNOTATED
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