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*Colorado
General
Assembly*

**LEGISLATIVE COUNCIL,
OF THE
COLORADO GENERAL ASSEMBLY**

**AN ANALYSIS OF
1982 BALLOT PROPOSALS**

Law Lib. KFC 1820 .L4
no. 269

Colorado. General Assembly.
Legislative Council.

An analysis of 1982 ballot
proposals

**Search Publication No. 269
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August 19, 1982

This analysis of measures to be decided at the 1982 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and to the general public pursuant to section 2-3-303, *Colorado Revised Statutes 1973*.

Six proposed constitutional amendments and two statutory measures are analyzed in this publication. The first four measures are proposed amendments to the constitution and were referred by the General Assembly. Amendments 6 and 8 are initiated measures. If approved by the voters, these six constitutional amendments could only be revised by a vote of the electors at a subsequent general election.

The statutory proposals, amendments 5 and 7, are both initiated measures. If approved by the voters, these items may be changed by the General Assembly. Initiated measures may be placed on the ballot by petition of the registered electors. Initiated measures require the signature of registered electors in an amount equal to five percent of votes cast for Secretary of State.

The provisions of each proposal are set forth, with general comments on their application and effect. Careful attention has been given to arguments both for and against the various proposals in an effort to present both sides of each issue. While all arguments for and against the proposals may not have been included, major arguments have been set forth, so that each citizen may decide for himself the relative merits of each proposal.

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

Respectfully submitted,

/s/ Representative John G. Hamlin
Chairman
Colorado Legislative Council

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**AMENDMENT NO. 1 — CONSTITUTIONAL AMENDMENT
PROPOSED BY THE GENERAL ASSEMBLY**

Ballot Title: Shall sections 3 and 15 of article X of the Colorado constitution be amended in the following manner:

(a) Regarding actual value and valuation for assessment: To reduce the valuation for assessment of residential real property, consisting of all residential dwelling units and underlying land, and mobile home parks, but excluding hotels and motels, from thirty to twenty-one percent of actual value; to require the general assembly to adjust such percent for years in which a new level of value is used in determining actual value as such adjustment is needed to maintain the previous year's percentage of statewide valuation for assessment attributable to residential real property; to reduce the valuation for assessment of all other taxable property from thirty to twenty-nine percent; to provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal, except actual value of residential real property shall be determined by consideration of cost and market approaches only and actual value of agricultural lands shall be determined by consideration of earning or productive capacity capitalized at a rate prescribed by law; to provide that valuation for assessment for producing mines and oil and gas leaseholds and lands be a portion of actual annual or actual average annual production and be based upon the value of the unprocessed material;

(b) Regarding exemptions from property tax: To exempt the following classes of personal property: Household furnishings; personal effects; inventories of merchandise and materials and supplies held for business consumption or for sale; livestock; agricultural and livestock products; and agricultural equipment used on the farm or ranch in producing agricultural products;

(c) Regarding enforcement of property tax laws: To provide enforcement provisions against counties that fail to determine actual value or valuation for assessment in accordance with the state constitution or with applicable statutes;

(d) Regarding the state board of equalization and the property tax administrator: To provide that the board be composed of the governor or his designee, the speaker of the house of representatives or his designee, the president of the senate or his designee, and two members appointed by the governor with the consent of the senate each of whom shall be an appraiser or a former county assessor or a person knowledgeable and experienced in property taxation; to provide for the appointment of the administrator by the board; and to remove the administrator from the state personnel system?

Property Tax

Provisions of the Proposed Constitutional Amendment

Valuation of property. The amendment would set forth guidelines in the Colorado Constitution for determining the actual value of property and the valuation for assessment of such property for tax purposes. The determination of actual value of property by assessing officers would involve consideration of three approaches to appraisal: 1) cost; 2) market; and 3) income. However, the actual value of residential real property would be determined by cost and market approaches to appraisal, and the actual value of agricultural land would be determined by earning or productive capacity, capitalized at a rate prescribed by law.

Following determination of actual value, the amendment would require that valuations for assessment of classes of property would be established in three ways.

1) Residential real property (excluding hotels and motels) and mobile home parks would be valued for assessment at 21 percent of actual value through 1985. Thereafter, this percentage could fluctuate based on changes in the aggregate statewide valuation for assessment of various classes of property. Specifically, the General Assembly would be required to adjust the assessment percentage for residential property to ensure that the percentage of the aggregate statewide valuation for residential property in relation to other taxable property would remain the same as that in the prior year, except for increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production.

2) The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas would be a portion of the value of the actual annual or average annual production of the unprocessed material.

3) All other taxable property would be valued for assessment at 29 percent of its actual value.

Exempt property. Household furnishings and personal effects, not used for the production of income; inventories of merchandise and materials and supplies held for business consumption or for sale; livestock; agricultural and livestock products; and agricultural equipment used on a farm or ranch in the production of agricultural products would be expressly exempt from property taxation under this amendment.

Enforcement of uniform valuations for assessment. The amendment would establish procedures to determine whether the assessor in each county of the state has complied with the provisions of the amendment and appropriate laws. The General Assembly would be charged with providing for an assessment study in 1983 and annually thereafter. The amendment would then require that counties not in compliance with the law be reappraised.

If, based on the results of the assessment study, the State Board of Equalization found that a class of property within a county is not in compliance, the board would require the county assessor to reappraise such class of property beginning in January of 1984. If the state board found that the assessor failed to reappraise the property in accordance with the board's directive, the board would order an independent reappraisal beginning in January, 1985. The initial cost of such reappraisal would be paid by the state from an appropriation authorized by law. However, if it is found that the county assessor did not comply with the law, the county would be held liable for such costs. The reappraisal would be utilized as the county's abstract for assessment for any such class of property commencing in January of 1985. The county also would be liable for repayment to the state of any excess monies paid to school districts within the county during the property tax year commencing in 1985. Owners of all taxable property in the county would be liable for such costs.

Property Tax

The amendment provides that after 1985, the state board must order a reappraisal, at county expense, for any class of property not appraised in accordance with law as determined by the assessment study. The reappraisal would become the county's valuation for assessment for reappraised classes of property, and counties would be responsible for reimbursing the state for excess payments made to school districts. Even if the state board did not order a reappraisal of a county whose valuation falls more than 5 percent below the valuation as determined by the annual assessment study, the board of county commissioners would have to levy an additional tax to repay the state for excess payments made by the state to school districts.

Membership — State Board of Equalization. The amendment would revise the membership of the State Board of Equalization. The State Auditor, Secretary of State, Attorney General, and State Treasurer would be replaced by two members of the legislature, or their designees, and two persons knowledgeable in the field of property taxation. Specifically, the board would include: the Governor or his designee; the Speaker of the House or his designee; the President of the Senate or his designee; and two members appointed by the Governor.

The appointed members would have to be former county assessors, qualified appraisers, or people with knowledge of property taxation. The Governor's appointments would be subject to confirmation by the Senate.

The State Board of Equalization would appoint the state Property Tax Administrator to a five-year term. This position would be exempt from the state personnel system.

Comments

The Colorado General Assembly, by law, has established standards and procedures for the assessment, levy and collection of property taxes. Specifically, the law sets forth the method for determining the actual value of property and for the level of assessment of various classes of property. Primary responsibility for levying, administering, and collecting property taxes is vested with county governments. Generally, the elected county assessors are responsible for determining the actual value of individual properties in accordance with law. Technical assistance, however, is provided to county assessors by the state Property Tax Administrator who is charged with the preparation of manuals and procedures for use by the county assessors. The state also is responsible for assessment of public utilities.

Appeals on individual assessments may be taken to respective county boards of equalization, to the State Board of Assessment Appeals, and to the district court. The elected county commissioners serve as boards of equalization in each county. The State Board of Equalization is vested with responsibility for ordering increases or decreases in the aggregate valuation for assessment of various classes of property in each county in order to achieve just and equalized valuations for assessment among all counties in the state.

COMPARISON OF MAJOR PROVISIONS OF AMENDMENT NO. 1 WITH CURRENT STATUTORY REQUIREMENTS

Amendment No. 1

Current Statutes

Actual Value Provisions

Appraisal of property based on appropriate consideration of three factors — cost, market, and income. (These three factors are the

Actual value for most classes of property is based on appropriate consideration of seven factors — 1) location and desirability;

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most commonly used approaches to appraisal of property.)

The valuation of residential property would be based on cost and market approaches. The amendment does not make reference to the use of a base year for determining actual value.

The actual value of agricultural land would be determined solely by earning or productive capacity, capitalized at a rate established by law. (Current law could be applied.)

Valuation for Assessment Provisions

Residential property would be valued at 21 percent of actual value. It is intended that apartments would also be valued for assessment at 21 percent of actual value. (There is no reference in the amendment as to which base year manuals for assessment would be utilized. Implementing legislation probably would utilize the 1977 base year which is provided for in the current statute.)

Current Statutes

2) functional use; 3) current replacement cost new, less depreciation; 4) comparison with other properties of known or recognized value; 5) market value; 6) earning or productive capacity; and 7) appraisal value for loan purposes. Current statutes provide special consideration for certain classes of property such as open-space residential property, properties listed on the state register of historic properties, etc.

Those relevant factors listed above are applied to the determination of the value of residential property. An income factor may be considered in the valuation of apartments. Section 39-1-104 specifies that the 1977 level of value and the manuals and associated data published for 1977 by the Property Tax Administrator are to be used for determining actual value of real property during the years 1983 through 1986. (No reference is made in the amendment to base year level of value. "Base year level of value" is a procedure whereby the value of property is frozen at a particular level for a period of time. This level of value probably would be applicable under the amendment unless the statute is revised. There is nothing in the amendment which would prohibit the General Assembly from changing the year on which the level of value is based or from doing away with the base year concept.)

The valuation of agricultural land is based on earning or productive capacity of such lands, capitalized at 11½ percent.

Residential property, beginning January of 1983, is to be valued at 30 percent of actual value based on the 1977 level of value.

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The valuation of producing mines and of lands or leaseholds producing oil or gas would be a portion of the value of the actual or average annual production of the unprocessed material. (Current law could be applied.)

The valuation of all other classes of property would be at 29 percent of actual value.

Current Statutes

Producing mines and oil or gas leaseholds and lands are valued for assessment at various amounts less than one hundred percent of the value of production.

With certain exceptions, commercial, industrial, public utility, and agricultural property is assessed at 30 percent of actual value. (There are wide variations in the method of determining actual value.) Special reduced assessments are provided for property used in the production of gasohol and works of art. The major classes of property currently assessed at 5 percent of actual value are discussed under exempt properties.

Properties Exempt Under Amendment

Constitutional exemption for household furnishings and personal effects not used in the production of income.

Statutory exemption for household furnishings and personal effects not used in the production of income.

Constitutional exemption for inventories of merchandise and materials and supplies held for consumption or sale; livestock; agricultural and livestock products; and agricultural equipment used on a farm or ranch and in producing agricultural products.

Most of these properties are valued for assessment at 5 percent of actual value.

Enforcement Provisions

Annual assessment study to be provided by the General Assembly.

Section 39-1-104 (16), *G.R.S. 1973*, provides for an assessment study to be initiated beginning January of 1983.

Based on the assessment study, some county assessors could be required to reappraise property in 1984.

No similar provision

For some counties, an independent appraisal might then be made in 1985. The reappraisal would become part of the county's abstract of assessment, and repayment of excess payments to school districts would be required of some counties.

No similar provision

In the years following 1985, some counties

No similar provision

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Current Statutes

could be reappraised based on the annual study.

The reappraisal would become part of the county's abstract of assessment; and repayment of excess payments to school districts would be required.

No similar provision

Membership of State Board of Equalization

Governor or his designee, President of the Senate or designee, Speaker of the House or designee, two members knowledgeable in property taxation such as a former county assessor or qualified appraiser

Governor, Attorney General, Secretary of State, State Treasurer, and State Auditor

Arguments For

1) The amendment would provide an immediate reduction in the percentage of valuation for assessment of residential property from 30 to 21 percent of actual value. This proposed reduction in the assessed valuation of residential property would reduce the potential impact of an increase in the assessed valuation of residential property that would occur as a result of a scheduled statutory change in the base year utilized by assessors in the determination of actual value of property. Section 39-1-104 (10) (a), *Colorado Revised Statutes 1973*, provides that manuals and associated data published by the Property Tax Administrator, utilizing a 1977 level of value, are to be implemented for the assessment years beginning in January of 1983. The 1973 level of value has been utilized by the assessors for the last six years. It is estimated that without this amendment, or a change in law, the aggregate statewide residential valuation for assessment will increase statewide, at least 36.5 percent. With the adoption of the amendment, however, the total aggregate statewide valuation for assessment for residential property, utilizing the 1977 level of values, is estimated to decrease about 4.5 percent.

The amendment further protects residential property owners from bearing a larger proportion of the property tax burden in relation to other classes in the years ahead except, of course, if there is real growth or new construction. This simply means that, after 1985, the General Assembly would have to enact legislation or revisions in the percentage of valuation for assessment of residential property if inflation would result in a change in the proportion of the statewide valuation of residential property compared to other classes of property.

2) This amendment would be a major step in achieving uniformity in the determination of the actual value of property for tax purposes for various classes of property subject to property taxation in Colorado. County assessors are responsible for valuing property for municipalities, school districts, and other special taxing districts within their respective counties. Both local governments and taxpayers are dependent on the county assessor to ensure that valuations of various classes of property are fair and equitable. Furthermore, the distribution of over \$600 million annually in state monies to school districts is based upon the capacity of the individual school districts to generate property tax revenues. Thus all taxpayers in the state of Colorado have a direct interest in the fairness of the valuations for tax purposes.

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3) The amendment offers the most reasonable approach to achieving uniform practices for valuing property for tax purposes in Colorado. The amendment would not disrupt the traditional concept of local control over property valuations and would provide an opportunity for county assessors to bring property valuations to a uniform standard over the next three years. Specifically, the amendment would provide for an annual study of such practices and give county assessors in underassessed counties an opportunity to reappraise properties in the next year. If a county still remained out of compliance, a penalty would be imposed based on the findings of an independent appraisal.

4) The amendment would offer stability in the level of valuations for assessment of property that is crucial to the tax base of cities, counties, school districts, and special districts. In recent years, there has been increased pressure on the General Assembly to raise or lower the level of assessment of various classes of property because inflation has had a dramatic effect on property values. Changes made by the General Assembly affecting assessment levels have different impacts on local communities depending on the class of property affected in a given jurisdiction. By limiting the authority of the General Assembly to adjust the level of assessment of various classes of property, the amendment would protect the tax base of local governments and give assurance to residential, commercial, industrial, public utility, and agricultural property owners that the basic valuation for assessment would not change dramatically in the years ahead without a change in the state constitution. The amendment would keep a balance between the valuation for assessment statewide of residential property and the valuation for assessment statewide of other classes of property, as affected by inflation or deflation.

5) The present level of assessment of inventories, agricultural equipment, livestock, and other classes of property assessed at, or below, 5 percent of actual value tends to derive such little revenue that it constitutes a nuisance tax. There is an extremely heavy workload placed on assessors in relation to the amount of revenue raised by mill levies on such property. By providing such properties with a constitutional exemption from property taxation, the amendment would greatly simplify property tax administration and allow assessors more time to assure equity and uniformity in the assessment of other classes of property.

6) The amendment would provide for more effective representation on the five-member State Board of Equalization. At least two members of the board would be persons skilled in the property tax field such as former appraisers or county assessors. The inclusion of legislative leaders on the board also would foster better communication between the legislative and executive branches. The State Board of Equalization would appoint the state Property Tax Administrator, thus giving added assurance that the Property Tax Administrator would be responsive to board policies. This latter provision follows modern personnel practices in which the chief administrative officer is removed from civil service.

7) The amendment would continue past efforts to foster a property tax climate that would be healthy for both business and agriculture. Since the mid-1960's, the General Assembly has adopted legislation providing tax relief for business and agriculture. For example, the valuation for assessment of agricultural land on the basis of income rather than a market value approach is important to keeping a healthy agricultural economy. Agricultural land values are impacted by urban development, recreation, and income tax shelters which are unrelated to the value of the land for its productive capacity. The assessment of agricultural land on the basis of full market value rather than productive capacity would create serious tax incentives for the transfer of agricultural land to nonagricultural purposes. The maintenance of a healthy

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economy in Colorado, however, is dependent on a viable agricultural base. The amendment would provide a constitutional safeguard that the current policy of utilizing an income approach for valuation of agricultural land would be continued.

Arguments Against

1) An amendment to the Colorado Constitution is not needed to achieve uniform procedures for valuing property among the counties in this state or to avoid scheduled increases in the assessed valuation of various classes of property. Current provisions of the Colorado Constitution are sufficiently broad that both of these objectives could be achieved by legislative action. Many classes of property already have been given reduced levels of assessment by statutory enactment. Except for those classes of property that would be exempt from property taxation under this amendment, the valuations for assessment proposed in this amendment could be implemented by statute. Major improvement in funding the office of the state Property Tax Administrator would enable the State Board of Equalization to develop the data base needed for the state board to order counties with undervalued classes of property to meet requirements of law. State law could be amended to ensure that the state board has adequate authority to equalize valuations among counties and to ensure that the elected assessors meet necessary qualifications for office.

2) No one can forecast with absolute certainty the impact of this amendment. Assessment studies are needed to clearly identify what the current level of assessments in the respective counties in the state are for individual classes of property. Such a study has been funded for calendar year 1983. This amendment should not be considered until a complete analysis of current assessment practices has been documented. Remedial legislation to reduce the impact of inflation on property taxes could be adopted by the General Assembly in the 1983 session. This legislation would suffice until more information is available.

3) By reducing the valuation for assessment for residential property from 30 to 21 percent of actual value, some persons may be misled that there will be a reduction in the assessed value of their respective residences. This simply is not true for a number of reasons. It is uncertain what base year the General Assembly will ultimately apply for the purpose of determining the actual value of residential property. For the current assessment year of 1982, the base year for determining actual value of property is 1973. Section 39-1-104 (10) provides, however, that for the assessment year beginning in January, 1983, the base year for determining the actual value of residential property will be 1977. Because of inflation, it is expected that a 36.5 percent increase in the aggregate statewide valuation for assessment of residential property will occur. For counties in which the valuation for assessment is actually well below 30 percent of value, this amendment could mean a sizeable increase in the valuation for assessment of individual residences despite the ratio reduction proposed in this amendment. Furthermore, depending on which base year is in effect at the time, the amendment would establish a permanent relationship between the total statewide valuation of residential property and the total valuation of other classes of property. The ratio of the valuation for assessment of residential property could be adjusted to a higher or a lower figure than the 21 percent ratio set forth in the amendment.

4) The amendment could have an adverse effect on the property tax base of individual local governments. For example, the amendment would provide a property tax exemption for inventories, livestock, agricultural and livestock products, and agricultural equipment used on farms and ranches. The valuation for assessment of producing mines would be based

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upon the value of the unprocessed material. For some mining activities, the unprocessed material has little value — unprocessed shale oil and molybdenum. Thus, similar to current law, the language of the amendment would not get at the true value of such mineral production for property tax purposes. The amendment would reduce the valuation for assessment on residential property including apartment buildings. The reduction in the valuation for assessment of residential property is proposed to offset the high escalation in property values in the metropolitan areas or growth areas. Some communities, however, have not experienced equivalent increases in the value of residential property. Thus the amendment could mean an unexpected reduction in the total assessed valuation for a given city, town, county, or special district. This might mean that the amendment could reduce the aggregate bonding capacity of a given local unit of government or that the amendment would have an adverse impact on the revenue raising capacity for those governmental entities with fixed mill levies.

5) The Colorado Constitution is the fundamental law of the state, and its purpose is to set forth basic principles of government and the rights of citizens. The constitution should not be so detailed or inflexible as to preclude elected representatives from revising the details of tax law. The amendment would not simplify the constitutional provisions related to the property tax, but would place in the constitution formulae and procedures normally reserved for statutory law. For example, the amendment would set forth a complex procedure for adjustment of the valuation for assessment of residential property; it would set different levels of assessment for various classes of property; and would establish different systems for determining the actual value of property.

6) The penalty provision of the amendment would unfairly tax all the property owners of a county for any underassessment of a given class of property, including state assessed property. Under the provisions of the amendment, if one classification of property in a county is underassessed, the county would be liable for repayment of any excess school monies paid to the school district. This excess payment would be financed from a mill levy on all taxable property in the county.

7) The amendment would not permit the General Assembly to adjust assessments for specific classes of property. For example, the actual value of land utilized for open space residential purposes, up to 34 acres, is less than that for other classes of nonagricultural land. The provision of the amendment requiring that residential property be valued in accordance with market and cost approaches probably would mean that such special treatment would not be permissible. In addition, the statutes now provide for reduced valuation for assessment or special provisions with regard to determining actual value for the following classes of property: property used in the production of gasohol, works of art, rehabilitation of certain older residential property, renovation of certain older commercial buildings that are part of a public redevelopment project, and property utilized in developing alternate energy sources.

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

Ballot Title: An amendment to section 19 of article II of the constitution of the state of Colorado, authorizing the denial of bail to persons accused of a capital offense when proof is evident or presumption is great, persons convicted of a crime of violence who are awaiting sentencing for such conviction or appealing such conviction or in the following cases if a court finds that proof is evident or presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril: A crime of violence alleged to have been committed while on conditional release from confinement, or a crime of violence alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would expand the number of situations in which a state court could deny bail. (Generally, bail means that a person accused of a crime may be eligible for release from jail pending trial, or pending ultimate disposition of his or her case, by paying a fee set by the court.) The amendment would provide that all persons would be bailable by sufficient sureties, except in circumstances involving capital offenses and crimes of violence, as defined by the state legislature.

A person accused of committing a crime of violence could be denied bail under the amendment, if he or she:

- was on probation or parole resulting from a conviction of a crime of violence;
- was on bail pending disposition of a crime of violence charge;
- had two previous felony convictions; or
- had one previous felony conviction for a crime of violence.

Bail also could be denied to a person convicted of a crime of violence who is appealing such conviction or awaiting sentencing for such conviction.

Denial of bail in the aforementioned circumstances involving noncapital offenses would be based on court determination that proof was evident and presumption great as to the crime committed and that the public would be placed in significant peril. A court would have to hold a denial of bail hearing within 96 hours of arrest.

The trial of a person denied bail, except under a capital offense, would have to commence not more than ninety days after the date on which bail was denied. If the trial was not commenced within ninety days and the delay was not attributable to the defense, the court would immediately schedule a bail hearing and set the amount of bail for the person.

Bail

Comments

Both the United States and the Colorado constitutions make reference to bail. The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Sections 19 and 20 of Article II, Colorado Constitution, also detail certain constitutional guarantees with regard to bail:

Section 19. Right to Bail. All persons shall be bailable by sufficient sureties except for capital offenses, when the proof is evident or the presumption great.

Section 20. Excessive Bail, Fines or Punishment. Excessive bail shall not be required; nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Historically, the federal courts have held that the primary purpose of bail is the assurance of an accused person's presence at trial, while allowing an accused person awaiting trial to be at liberty. The protection against "excessive bail" detailed in the Eighth Amendment of the federal constitution is derived from a clause in the English Bill of Rights of 1689. The test for excessive bail has been whether the amount of bail is reasonably set so as to assure the accused person's presence at trial.

A question exists as to the applicability of the Eighth Amendment to outright prohibitions or restriction on bail by state law. The United States Supreme Court has not ruled upon this issue specifically. There is a divergence of opinion among the lower federal courts, but the weight of federal cases appears to support the view that there is no constitutional "right to bail." A United States District Court found:

Further, while the Supreme Court has not passed upon the direct issue, the federal courts which have are in accord that the Eighth and Fourteenth Amendments do not require the state to grant bail in all cases as a matter of right; all have recognized that a state may constitutionally provide that bail be granted in some cases as a matter of right and denied in others, provided that the power is exercised rationally, reasonably and without discrimination.

Other States. The Colorado Constitution provides that noncapital offenses are bailable by sufficient sureties. The constitutions of a number of other states contain a similar "right to bail" provision: Alabama, Alaska, Arizona, California, Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Washington, and Wyoming.

Restrictions, however, have been imposed on the bailability of persons charged with noncapital offenses under the constitutions and statutes of some states. The laws of Georgia, Michigan, Nebraska, and Wisconsin single out particular felonies which, alone or in combination with other factors, permit the denial of bail. In Michigan, for example, when proof is evident or presumption great, bail may be denied for criminal sexual conduct in the first degree, armed robbery, and kidnapping with the intent to extort money.

In some states a factor to consider in whether to grant bail or not is the question of public safety or whether the accused poses a danger to other persons in the community. The following state laws specifically provide for the consideration of danger to the community:

Bail

Alaska, Delaware, Florida, Hawaii, Minnesota, South Carolina, South Dakota, Vermont, Virginia, and Wisconsin.

The state constitutions of the following states also impose restrictions on the bailability of persons accused of committing crimes while on pretrial or posttrial release and for persons who have previously been convicted of certain crimes: Arizona, Michigan, New Mexico, Texas, Utah, and Wisconsin.

A portion of Hawaii's law was struck down by the state supreme court (*Huihui v. Shimoda*, May 17, 1982). The Nebraska provision also was held unconstitutional by the United States Court of Appeals for the 8th Circuit (*Hunt v. Roth*, 648 F2d 1148 (1981)), but the United States Supreme Court ruled that the issue was moot (the individual had been tried and convicted). (See *Murphy v. Hunt*, 102 S. Ct. 1181 (1982)).

Crime of violence. Section 16-11-309 (2), *Colorado Revised Statutes of 1973*, defines crime of violence to mean a crime in which a person used or possessed and threatened to use a deadly weapon during a crime against an elderly or handicapped person, murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion. Crime of violence also means any unlawful sexual offense which caused bodily injury, or in which threat, intimidation, or force was used against a minor.

This language might be applicable to this amendment and may be modified from time to time by the General Assembly. Thus the term "crime of violence," as used in the amendment may fluctuate over a long period.

Arguments For

1) The amendment has been carefully drafted to provide the courts with authority to deny bail, under very limited circumstances, in order to protect the public from violent, repeat offenders. Article II, Section 19, Colorado Constitution, currently permits restrictions on bail only for persons accused of capital offenses (crimes for which the death penalty may be imposed). The courts must set bail for other persons accused of crimes of violence even though the accused may be a repeat offender who has been previously convicted of violent crimes. As a common practice, courts have set bail for persons accused of serious crimes at a level that often precludes accused persons from making bail. Some persons, in similar circumstances, however, may be able to post bail. The amendment would provide additional authority to the courts to detain violent repeat offenders who otherwise might be released on bail.

2) The amendment would set forth in the Colorado Constitution guidelines whereby the interests of the public would be carefully weighed in certain bail hearings. Specifically, under the terms and conditions of the amendment, if the court believes that the public would be placed in significant peril if an accused person were released on bail, the accused would not have any "right to bail." The amendment has been carefully drafted to ensure that the public protection would be applied judiciously.

3) With regard to those cases in which public protection would be an issue in determining eligibility for bail, the amendment would provide procedural safeguards to protect the due process rights of the accused as guaranteed by the Fourteenth Amendment to the United States Constitution. Within 96 hours of arrest, and upon public notice, a hearing would have to be held to determine whether "proof was evident or presumption great" that a crime had been committed and whether the public would be placed in significant peril if the accused was released on bail. For persons denied bail, except for a capital offense, the amendment would

Bail

require commencement of the trial within 90 days. Bail would have to be set if the trial was not initiated within this period.

4) There is no federal constitutional right to bail. The people of Colorado are free to define the offenses that are bailable and those that are not. The courts have held that the restriction against excessive bail applies only to offenses that are bailable and does not preclude the denial of bail for certain offenses or offenders.

Arguments Against

1) It is a basic tenet of common law in the United States that a person accused of a crime is innocent until proven guilty. Regardless of the reputed character of the accused, he or she is entitled to a legal presumption of innocence and the accused must be acquitted unless proven guilty beyond a reasonable doubt. Release of the accused on bail is intended to support the presumption of innocence until guilt is proven at a trial. There are no prohibitions on the right to bail in the United States Constitution, and the Colorado Constitution restricts bail only in capital offenses. The state of Colorado should not impose further restrictions on bail for persons who have not been tried. It is not in the public interest to erode the historic presumption of innocence until proven guilty.

2) The amendment would establish a new procedure whereby bail could be denied in certain criminal cases at a hearing held within 96 hours of arrest. This short time frame would make it extremely difficult for the defendant to prepare adequately for a hearing on the denial of bail. The accused person should be represented by counsel and should be entitled to present information and witnesses on his own behalf. It is unlikely that a defense attorney could be appointed or adequately prepare for a hearing within the four-day time limit. There is no provision for extension of the 96 hours or for appeal of the denial of bail. Defendants initially denied bail would be forced to serve 90 days in jail and only then would become eligible for bail. Thus procedurally, the provisions of the amendment are not sufficient to protect the rights of the accused.

3) It is unlikely that the amendment would have any real impact on bail procedures currently utilized in Colorado. For example, a pretrial detention program has been in effect in Washington, D.C., since 1979. Under the provisions of PL 91-358, certain persons may be denied bail if there is no condition of pretrial release that would reasonably assure the safety of the community. Persons in the Washington, D.C., program may also be denied bail if they have been convicted of a crime of violence within the last ten years or if they are charged with committing a crime of violence while on probation or parole. The provisions of PL 91-358 would seem to have many similarities to the proposed Colorado amendment in terms of the classification of crimes committed by accused persons. Of approximately 40,000 cases annually in Washington, D.C., less than 35 cases were placed in pretrial detention in 1981 and less than 12 cases were placed in pretrial detention in 1980. Similarly, it is expected that the utilization of such a program in Colorado would be minimal and would offer little additional protection to the public.

4) The Colorado Criminal Code already provides a mechanism to control the number of dangerous persons released on bail. When a person is accused of a crime, and the individual is brought before the court to be advised of his rights and to have bail set, section 16-4-105, C.R.S. 1973, requires, in part, that the court consider the following:

— the character and reputation of the accused;

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- the nature of the offense, probability of conviction, and the likely sentence;
- defendant's prior criminal record; and
- facts indicating possible violations of law, if the defendant were released without restrictions.

Colorado law also requires the court to consider various factors prior to setting the amount of bail or denying bail to a person who is appealing a conviction or awaiting sentencing. Generally, bail is set for persons accused of a crime of violence at a level to ensure the pretrial and posttrial detention of such persons. The present language of the Colorado Constitution and statutes provides a system whereby the courts must weigh the liberty of the accused against the need for public safety.

AMENDMENT NO. 3 — CONSTITUTIONAL AMENDMENT PROPOSED BY THE GENERAL ASSEMBLY

Ballot Title: An Amendment to section 23 (3) of article VI of the constitution of the state of Colorado, concerning the membership and appointment of the commission on judicial discipline, authorizing the removal or discipline of a justice or judge for committing specified offenses, establishing the procedure for removal or discipline of a justice or judge, and providing that papers filed with and proceedings before the commission or masters appointed by the supreme court shall be confidential prior to the filing of a recommendation by the commission.

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— Change the name of the Commission on Judicial Qualifications to the Commission on Judicial Discipline.

— Increase the number of members on the commission from nine to ten members. Citizen members who are neither judges nor lawyers would be increased from two to four, and the number of district court judges on the commission would be reduced from three to two members. The two county judge and two lawyer members would remain unchanged.

— Provide for appointment of two attorneys and the four nonjudge, nonlawyer members by the Governor with the consent of the Senate. The appointment of the two district and two county judges to the commission by the Colorado Supreme Court would remain unchanged.

— Provide for automatic resignation of members of the commission who are absent from three consecutive meetings. If any member ceased to be a member for whatever reason, his successor would be appointed for the unexpired term in the same manner as the original appointment.

— Allow the commission to appoint a special member for a commission member who is disqualified to act in any matter pending before the commission. The special member would sit on the commission solely for the purpose of deciding that matter.

— Expand the criteria for which a judge or justice could be removed from office to include a violation of any canon of the "Colorado Code of Judicial Conduct."

— Expand the alternatives available to the commission for disciplining judges or justices to include a recommendation to suspend, censure, reprimand, or otherwise discipline. The commission could also recommend that a justice or judge under investigation bear the cost of such investigation and any subsequent hearing.

— Provide that papers filed with and proceedings before the commission or masters

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appointed by the Supreme Court would be confidential prior to the filing of a recommendation to the Supreme Court concerning any justice or judge. Papers filed with and testimony given before the commission would be privileged in any action for defamation.

Comments

The Commission on Judicial Qualifications has been in existence since January, 1967. Its purpose is to investigate complaints against judges, hold informal or formal hearings as a fact-finding body, and take informal action or present recommendations to the Supreme Court for formal action.

The commission currently consists of nine members. Three district court judges and two county court judges are appointed by the Supreme Court. Two lawyers, each having practiced for at least ten years in Colorado, but who are not judges, are appointed by majority action of the Governor, the Chief Justice, and the Attorney General. The other two members, who must be citizens but must not be judges or attorneys, are appointed by the Governor. All members are appointed for four-year terms. Commission members serve without a salary, but receive reimbursement for actual and necessary expenses.

The commission is charged with the responsibility to investigate complaints against judges for: willful misconduct in office; willful or persistent failure to perform judicial duties; intemperance; or disability which interferes with the performance of official duties and which is, or is likely to become, permanent.

Under the rules of procedure adopted by the Supreme Court for the commission, the concept of willful misconduct includes, but is not limited to, conduct prejudicial to the administration of justice; conduct which brings the judicial office into disrepute; or conduct which violates the "Colorado Code of Judicial Conduct."

Generally, any citizen of the state may file a complaint with the commission or the commission may act on its own motion. Copies of each complaint are distributed to each of the members. The commission holds bimonthly meetings during which it reviews the complaints. Following initial discussion and evaluation of each complaint, the commission may commence an informal or formal investigation. A complaint may be dismissed on the grounds it is frivolous, unfounded, outside the commission's jurisdiction, or appellate in nature (involving issues which can be reviewed only by an appellate court). If the commission determines further investigation is warranted, the subject judge is given an opportunity to respond to the complaint and may present additional information to the commission.

Following a preliminary investigation, the commission may, under the rules of procedure adopted by the Supreme Court, decide to dismiss the case, continue the investigation and hold an informal hearing, or begin formal proceedings against the judge. The complainant is advised of the commission's decision.

If an informal hearing is conducted, the commission may dismiss the complaint if it finds no proof of misconduct, take informal action against the judge, or proceed to a formal action. Informal action may be a private admonishment, reprimand, or censure either in person or by letter; an order for a physical or mental examination of the judge; or an agreement with the judge regarding a specific remedial program.

The commission can begin a formal action by hiring an attorney to act as its examiner. The examiner prepares a written complaint against a judge, and files it with the commission. The commission may then dismiss the case, take any informal action described above, or make a recommendation to the Supreme Court that the judge be either retired or removed from office.

A complaint against a judge who is a member of the commission is disclosed to the judge but he does not participate in any action involving his case. Commission members who

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practice law or sit on the bench in the same judicial district as a judge against whom a complaint is brought also disqualify themselves from participating in that case.

The commission's jurisdiction covers all 215 justices and judges who serve in the Colorado state court system. The commission does not have jurisdiction over Denver county and municipal judges. The City and County of Denver has established a separate qualifications commission for its municipal and county judges.

A total of 547 complaints against judges and justices were filed from 1967 through 1981. In the fourteen year history of the commission, approximately 78 percent of the complaints were filed against district judges, with approximately 21 percent filed against county judges, and one percent filed against appellate judges.

As a result of the commission's work during the last fourteen years, six judges have been ordered retired for disability, 22 judges have resigned or retired following commission investigation, and 34 judges have been privately admonished, reprimanded, or censured.

Colorado Code of Judicial Conduct. The language of the proposed amendment provides that a justice or judge may be removed or disciplined for violation of "... any canon of the Colorado code of judicial conduct," The first canon of the code states:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Thus the code is designed to foster the highest ethical standards on the part of justices and judges. The other canons of the code, which are more specific, deal with the following subjects: impropriety or appearance of impropriety, impartiality, activities to improve the administration of justice or the legal system, regulation of extra-judicial activities, reports of compensation for extra-judicial activities, and limitations on political activity.

Confidentiality of proceedings. Under the current constitutional provision, the papers and testimony provided to the commission and masters appointed by the court are confidential and not available for public inspection. The record filed by the commission with the Supreme Court, concerning the retirement or removal of a judge from office, is open for public inspection. Commission materials that are not included as part of the record filed with the Supreme Court remain confidential. The amendment would provide that prior to the filing of a recommendation with the Colorado Supreme Court concerning a disciplinary action, all papers and proceedings before the commission are to be confidential and privileged. The amendment, however, is not specific on what happens after a recommendation is filed with the Supreme Court. The amendment does not contain language stating that the papers and proceedings of the commission must be made available for public inspection. Perhaps this matter could be subject to rules of procedure promulgated by the Colorado Supreme Court.

Arguments For

1) The amendment is a step in the right direction to help inform the general public of the operation of this governmental body. Changing the name of the commission to the Commission on Judicial Discipline will more accurately reflect the nature and function of the commission and may help inform the public that there is a commission whose duty is to investigate complaints of judicial misconduct. The amendment also would help remove the

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present constitutional veil of secrecy surrounding the proceedings of the commission. Under the provisions of the amendment, there no longer would be a constitutional provision protecting the confidentiality of the commission's files, concerning any investigation which is ultimately submitted to the Colorado Supreme Court for disciplinary action. Presently, with the exception of the record provided to the Supreme Court, the papers and information provided to the commission are confidential.

2) The preponderance of judges and lawyers currently on the commission may overwhelm the members who are not judges or lawyers with their legal knowledge and expertise. Judges and lawyers may be more likely to protect judges who are undergoing investigation. By increasing the number of members who are neither judges nor lawyers and decreasing the number of judges, public input, participation, and accountability would be enhanced. Furthermore, Senate confirmation of gubernatorial appointees ensures public scrutiny of the Governor's appointments and would result in a broader perspective being brought to the appointment process. Confirmation by elected representatives of the people is the best way to ensure a balanced commission.

3) The disciplinary provisions or actions that may be taken against a justice or judge under the existing constitutional language are inadequate because the language limits such action to removal or retirement. The language does not take into account those situations which are not serious enough to recommend removal or retirement, but for which some type of disciplinary action might be necessary. The proposed amendment would allow a judge to be disciplined without the necessity of removing him. This type of intermediate remedy could serve as a preliminary warning to a judge to encourage a change in behavior and it could have a deterrent effect on the potential misconduct of other judges. All of the remedies proposed which are short of actual removal or retirement could improve the effectiveness of the commission.

Arguments Against

1) The amendment would severely hamper the capacity of the commission to develop information necessary to institute proceedings for disciplinary action against a justice or judge. The commission depends on the submission of testimony and information of a confidential nature. Any report filed with the Supreme Court recommending that the court take disciplinary action is a matter of public record, but that report does not contain all the confidential records of the commission. The amendment, however, would ensure confidentiality only until a recommendation is filed with the Colorado Supreme Court. The entire investigative file and proceedings of the commission with regard to a specific case might become widely disseminated. Without confidentiality, lawyers, judges, court clerks, law enforcement officers and others who have constant dealings before the courts may be reluctant to be involved in a disciplinary action in a given judicial district when their effectiveness or livelihood is so directly affected. Without candid input from persons who are most directly concerned with the actions and performance of a judge or justice, the commission would lose its effectiveness in addressing a disciplinary problem.

2) The provisions of the amendment relating to a revised procedure for selection and appointment of members of the commission would needlessly complicate and politicize the process. The job of investigating and recommending disciplinary action against justices and judges for willful misconduct or failure to meet certain standards is a thankless job with little

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reward. Commission members are volunteers who serve without pay. Since commission members are volunteers, and their respective work schedules often conflict with commission meetings, vacancies can occur. Vacancies need to be filled as quickly as possible. The provisions of the amendment, however, would require that even gubernatorial appointees must be approved by the Senate. Such approval would be time-consuming. A legislative committee must schedule a public hearing, followed by committee approval and Senate confirmation. Legislative screening, which often involves a debate of political, philosophical, and parochial attitudes simply would be inappropriate and too cumbersome for such a program.

3) The proposed amendment seeks to expand the criteria for which a justice or judge may be disciplined by adding a reference to violation of any canon of the Colorado Code of Judicial Conduct and specifying the types of discipline the commission has the authority to recommend in addition to removal and retirement. The added reference to violation of any canon of the Colorado Code of Judicial Conduct is inappropriate. The canons employ language which lacks specificity and are designed to express principles of high standards of conduct. Reference to such broad language should not be set forth in the constitution as an absolute condition for disciplinary action. The commission already has a wide range of options in disciplining judges. Under the rules of procedure promulgated by the Supreme Court, the commission has the authority to not only consider violations of the Colorado Code of Judicial Conduct but to recommend temporary suspension, censure, retirement, removal, or other "appropriate action."

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

Ballot Title: An amendment to section 7 of article V of the constitution of the state of Colorado, concerning the elimination of the limitation on enactment of bills at regular sessions of the general assembly convening in even-numbered years and providing that regular sessions of the general assembly convening in even-numbered years shall not exceed one hundred forty calendar days.

Provisions of the Proposed Constitutional Amendment

The proposed amendment would amend Article V, Section 7 of the Colorado Constitution. In part, Section 7 states that at "... regular sessions convening in even-numbered years, the general assembly shall not enact any bills except those raising revenue, those making appropriations, and those pertaining to subjects designated in writing by the governor during the first ten days of the session." The amendment would repeal this portion of Section 7 and would substitute the following new language:

Regular sessions of the general assembly convening in even-numbered years shall not exceed one hundred forty calendar days.

Comments

From statehood until the early 1950's, regular sessions of the General Assembly (state legislature) occurred every other year and were convened in January of the odd-numbered years. At the 1950 general election, Colorado voters approved an amendment which provided for sessions in even-numbered years. The amendment, however, limited the subject matter that could be considered at the second regular session of each biennium to items designated by the Governor (the so-called Governor's "agenda" or "call"), and revenue raising and appropriation bills.

The first regular session of each biennium is known as the long session, because the legislature may consider any topic. The second regular session is termed the short session because of the subject matter limitation. The length of regular sessions, based on consecutive days from date of convening, for the last twenty years is listed below:

| Year | No. of Days Odd Year — Long Sessions | Year | No. of Days Even Year — Short Sessions |
|------|--|------|--|
| 1963 | 96 | 1964 | 55 |
| 1965 | 128 | 1966 | 51 |
| 1967 | 139 | 1968 | 83 |
| 1969 | 161 | 1970 | 79 |
| 1971 | 132 | 1972 | 152 |
| 1973 | 178 | 1974 | 141 |

Even Year Legislative Session

| | | | |
|---------|-------|---------|-------|
| 1975 | 175 | 1976 | 143 |
| 1977 | 169 | 1978 | 126 |
| 1979 | 185 | 1980 | 127 |
| 1981 | 151* | 1982 | 139 |
| Average | 151.4 | Average | 109.6 |

*Period in which main workload was completed. General Assembly did meet on 13 additional days. The average length of all regular sessions for the period from 1963 to 1982 is 130.5 days.

Six states — Colorado, Connecticut, Maine, New Mexico, Utah, and Wyoming — restrict the subject matter that may be considered by a state legislature in even-numbered year sessions. In total, thirty-five states impose conditions on the length of legislative sessions by: utilizing restrictions on the number of days; limiting compensation of state legislators to a definite period of time; or establishing a day limit that may be extended by legislative vote or authorization by respective governors. Specifically, the constitutions of five states make reference to "calendar day" limitations — Alabama, Kansas, Mississippi, Utah, and West Virginia. The term "calendar days" is utilized in Amendment No. 4. In the other states with limitations on sessions, reference is made to "legislative days" or simply "days." The North Dakota Constitution refers to "natural days," and several states require completion of sessions by a date certain.

Arguments For

1) Article III of the Colorado Constitution sets forth the basic concept that the powers of state government shall be divided into three distinct branches — legislative, executive, and judicial. Persons responsible for the exercise of the powers belonging to one of these branches shall not exercise the power belonging to the other branches, except as provided in the constitution. The present authority of the Governor to set a legislative agenda for even year sessions does not follow the spirit of the separation of powers doctrine. The Governor's "agenda" often has been drafted in such detail that members of the General Assembly have little flexibility in setting policy during even year sessions. Thus, the current subject matter limitation has resulted in an unnecessary intrusion of the Governor into the legislative process and precludes the members of the General Assembly from meeting their legislative responsibilities.

2) Colorado is the only state that has such a tight subject matter restriction over which the Governor has control. If an urgent policy matter occurs during the regular even-numbered year session, the General Assembly cannot address such an issue in the regular session if the matter comes up after the deadline for submission of the Governor's "agenda." The end result is that such matters may not be considered until the following January, or a special session must be called to deal with the issue. The proposed amendment would allow the General Assembly to address changes in the statutes at any time during an even-numbered year session.

3) The amendment would place an explicit time limitation (140 calendar days) on the length of even-numbered year legislative sessions, assuring continuation of the part-time citizen legislature. This limit would provide sufficient flexibility to balance the workload between legislative sessions. The average length of both long and short sessions in the last

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twenty years is 130 days. The 140 day limit established for even year sessions would be more than adequate to meet foreseeable workloads and is far less restrictive than that set forth in the constitutions of most states which impose a specific time limit. Also, adequate time is provided for the General Assembly to consider bills vetoed by the Governor.

4) Preparation of the Governor's "agenda" is a costly and time consuming process. For the 1982 session, for example, the Governor and his staff developed a detailed agenda containing over 300 items. Time must be spent by the Governor's staff, state officials, and legislators in meeting to review possible issues for inclusion on the Governor's "agenda." Inherently, this is a political process and contributes to conflicts and an emotionally charged atmosphere between the executive and legislative branch of government. The "agenda" may delay the legislative process itself. A completed Governor's "agenda" may not be submitted until the tenth day of a session. This delays bill preparation and slows the legislative process. Also, unnecessary costs are incurred in preparation of prefiled bills which are not included on the Governor's "call." Finally, there is constant debate and legislative maneuvering over whether a particular bill or amendment meets the requirements of the Governor's "agenda." Bills which are not on the Governor's "call" may or may not qualify for consideration as revenue bills. All of these roadblocks to the efficient operation of both the Governor's office and the General Assembly could be removed by the proposed amendment.

Arguments Against

1) Repeal of the Governor's "call" would remove an effective mechanism for limiting the type, character, and number of bills introduced and considered by the General Assembly in an election year. In the last three long sessions, over 3,600 bills were introduced for consideration by the General Assembly, compared to about 1,200 for the last three short sessions. The present process has been effective in limiting the number of bills debated in even-numbered year sessions, and repeal of this constitutional limitation could have long term implications affecting the custom and practices of the General Assembly.

2) The Governor, as the chief administrative officer of the state government, is in the best position to identify the problems encountered by state agencies and to set forth public policy issues for consideration by the General Assembly. It is not unreasonable that, once every two years, the General Assembly is directed to concentrate on fiscal issues and matters designated by the Governor. The Governor's "call" is not an unreasonable intrusion on legislative prerogative. Responsibilities of the three branches of state government — legislative, executive, and judicial — tend to overlap as provided by law. Just as the General Assembly places many restraints on the authority of the Governor to administer programs as a matter of public interest, Coloradans also benefit from the focus the Governor brings to the short sessions.

3) It is not entirely clear how the 140 day limit proposed in the amendment would affect even year sessions. Normally, it has been the procedure for the General Assembly to pass a number of bills in the last few days of a session and then recess for at least ten days. The Governor has ten days to consider possible vetoes and to return any vetoed bill to the General Assembly. The General Assembly may override a veto with two-thirds approval of both houses. In order for the General Assembly to consider the actions of the governor, all bills would have to be adopted within 130 calendar days. Thus, in practicality, the limit on length of sessions would be 130 days, unless the General Assembly could define calendar days to mean those days in session and not in recess.

AMENDMENT NO. 5 — PROPOSED STATUTE INITIATED BY PETITION

Ballot Title: Shall an act be adopted requiring a minimum refund value on beverage containers for beer or other malted beverages, mineral water, soda water, or other carbonated soft drinks manufactured, distributed, or sold for use in this state, with the refund value clearly shown upon each beverage container; providing for payment of such refund; prohibiting the sale of beverages in metal containers which open by means of detachable parts; prohibiting the sale of beverages in non-degradable beverage container carriers; and providing misdemeanor penalties for violation of the act?

Provisions of the Proposed Statute

The proposed statute would require that:

- as of December 31, 1983, beer, malt liquor, mineral water, and carbonated soft drinks offered for sale by a retailer or vending machine operator must be sold in a beverage container with a refund value of at least five cents;
- the refund value would be clearly stamped or labeled on each such container;
- dealers in malt liquor, beer, and carbonated soft drinks would pay the amount of the refund value to anyone who returns a container of the same type which they sell;
- manufacturers or distributors of malt liquor, beer, and carbonated soft drinks would pay to retailers the amount of deposit for each container and a handling fee of at least twenty percent of the refund value of each returned container;
- no metal beverage container, as defined by the proposed statute, may be sold with a detachable opening device;
- no beverage containers may be offered for sale that are connected to each other by a separate holding device constructed of plastic or other devices or materials which cannot be broken down by bacteria into basic elements under natural conditions within 180 days;
- violation of the proposal would be punishable as a class one misdemeanor; and
- the operator of a vending machine would have to provide notice as to the nearest location that beverage containers could be redeemed.

Comments

This proposal is the second attempt in recent years to enact a beverage container law in Colorado. An earlier initiative was placed on the ballot in 1976 and was defeated by the

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electorate. The 1982 proposed statute would establish a similar beverage container system, but it is different from the previous proposal in the following ways:

- it would not mandate reuse or recycling;
- it would require distributors to pay a handling fee to retailers of 20 percent of the refund value of each container;
- it would prohibit the sale of metal beverage containers with detachable opening devices and the sale of beverage containers with nondegradable connecting devices; and
- it would provide that violations are class one misdemeanors as opposed to civil penalties and fines.

During the 1982 session of the General Assembly, House Bill 1153 was adopted which provides that it will be unlawful to sell containers with detachable opening devices, as of January 1, 1983. The proposed statute would include a similar provision. However, the penalties included in this initiative would be more stringent.

As defined in this proposal, beverage means "beer or other malted beverage, mineral water, soda water, or a carbonated soft drink of any variety, in liquid form and intended for human consumption." A beverage container would include "the individual separate, sealed glass, metal or plastic bottle, can, jar, or carton, containing a beverage, except kegs intended to be refilled." Beverages such as fruit juices, milk, and various noncarbonated drinks would not be covered by this proposal. The pressure sensitive metal tape used on some juice cans also would not be subject to the provisions of this proposal.

An accurate estimate of the effects of a beverage container law on litter, energy and raw materials consumption, employment, and beverage prices and sales is dependent upon many complicating factors. These include, among others, the container mix before and after a law is in effect (refillable versus nonrefillable and cans versus glass bottles versus plastic bottles); trippage rates (the average number of times refillable containers are actually refilled); fuel costs associated with producing, cleaning, and transporting refillable containers; return rates for refillables; and the percentage of nonrefillables which are actually recycled.

Arguments For

1) The proposed statute would have a substantial impact on reducing litter, particularly roadside litter. Reduction of litter is important not only for purposes of achieving a more pleasing environment but because broken glass and jagged metal edges pose a threat to health and safety. A major study of can and bottle bills (the CalPIRG-ELS report) reported substantial reduction in roadside litter. With the adoption of returnable bottle legislation, the total litter volume was reduced 35-45 percent in states studied, and beverage container litter in individual states was reduced by 82 percent in Michigan and 77 percent in Iowa. A similar reduction in litter could be achieved in Colorado with expected savings in state and local government litter control programs. The Colorado State Department of Highways spent in excess of \$1.8 million for litter control along the state's highways in fiscal year 1981-82. Furthermore, the CalPIRG-ELS report also concluded that beverage containers were the most hazardous element of litter. In the study of injuries relating to California litter, 86 percent of the injuries were caused by glass or pulltabs.

2) The proposal would make an important positive contribution to conserving energy and

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natural resources. According to the CalPIRG-ELS report disposable containers are energy intensive because the primary inputs are the petroleum, natural gas, and coal required to mine and process new materials needed to manufacture new containers. Based on a total system analysis of mining, manufacturing, filling, transporting, sanitizing, and secondary packaging, the refillable bottle was the most energy efficient container.

3) The proposal would mean an overall reduction in the amount the general public in Colorado spends for beverage containers. A consumer purchasing beer or a soft drink in a nonreturnable container must purchase the container while the consumer who purchases a drink in a refillable bottle simply is borrowing the container which is intended for reuse. Each consumer may compare the current price per ounce of soft drinks sold in returnable bottles in Colorado with the price per ounce of soft drinks of the same brand sold in disposable containers. Colorado consumers will find, in most instances, that returnable bottles offer the most economical way to purchase soft drinks. The CalPIRG-ELS report also concluded that at the retail level soft drinks cost about 39 percent more in disposable bottles than in refillable bottles.

4) One Colorado litter control program proved to be ineffective. In 1977, following the defeat of the returnable beverage container initiative in 1976, the General Assembly adopted the Colorado Litter Control Act. This act established a grant program funded by a special litter tax on all Colorado businesses to be disbursed as grants to public or private organizations for the purpose of litter collection and removal, antilittering education and public information. The Act was repealed in 1979, effective July 1, 1982. Thus the ineffectiveness of the Litter Control Act and the total absence of such a program today point to the need for the proposed statute as a positive means of addressing litter on a statewide basis.

5) The proposal would result in an overall increase in employment related to the marketing of soft drinks and beer in Colorado. A General Accounting Office (GAO) study concluded that employment in Michigan increased as a result of the Michigan beverage container law. Employment increased because of the expansion of the refillable bottle production lines, deliveries and pickup of returnable bottles, sorting and counting, and packing of returnable containers by retailers. The CalPIRG-ELS report also found that in every state with a beverage container law there has been an increase in employment. The report concluded that between 1950 and 1976, the number of workers required to produce, package and deliver beer and soft drinks declined. While many factors contributed to this decline, the report indicates that the most influential factor was the transition from labor intensive returnables to resource intensive disposables. The proposal would help open up opportunities that are needed for unskilled workers in today's economy.

Arguments Against

1) Beverage prices could increase substantially in Colorado under this proposed statute, as have prices in other states after passage of beverage container statutes. The GAO study found that the Michigan beverage container law resulted in considerable public concern over the increase in beverage prices. Following enactment of the Michigan law, the CalPIRG-ELS report also found that in Michigan the prices for national beers increased, and the report cited one report that beer prices increased from 6 to 19 percent. The proposal would mean that Colorado retailers would incur additional costs related to sanitation and pest control, and the handling, sorting and storage of returned containers. Distributors would incur the costs for new trucks, additional warehouse space, and new handling systems. Manufacturers would

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also have increased costs associated with converting to a mandatory refund system. All these costs would be passed on to beverage consumers in the form of higher prices, in addition to the initial deposit.

2) The proposed statute would disrupt Colorado's existing recycling programs. According to data compiled by Price, Waterhouse and Company, Coloradans recycled more than 29 million pounds of aluminum beverage cans in 1981, which represents about 77 percent of the aluminum cans sold in this state. Roughly \$7 million was paid to consumers for the collection of these cans. Consumers would no longer be paid for bringing containers to recycling centers, but would only have their deposit refunded when returning containers. Thus, Coloradans would have to finance a program that would not significantly improve the present system.

3) Beverage container litter makes up only a small portion of the roadside litter and solid waste generated in our society. Not only would the proposed statute affect only a small proportion of the litter problem but the proposal would not apply to a variety of noncarbonated soft drinks. The GAO study reports that the Maine Department of Transportation reported only a 15 percent drop in total roadside litter in 1978 and only 10 percent in 1979. Thus beverage containers represent only a small proportion of the total problem of litter including styrofoam containers, all types of metal containers, glass bottles, candy and cigarette wrappers, disposable diapers, and an endless variety of paper and cardboard cartons.

4) Beverage container laws have resulted in the loss of skilled jobs in the container manufacturing industry. A study conducted by the Oregon Environmental Council concerning the impact of the Oregon law, revealed a reduction of between 140 and 160 jobs in can manufacturing. The GAO study also reported the loss of jobs in glass bottle and can manufacturing plants in Michigan following adoption of the Michigan law. The CalPIRG-ELS report also found in areas which experienced job gains under deposit laws that wages averaged 20 percent lower than those for job loss areas. The report also said that most of the new jobs which became available because of a deposit law are unskilled. Estimates made for the possible impact of a container law in California suggested that over 3,700 positions would be lost in the container industry.

AMENDMENT NO. 6 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title: Shall the constitution of the state of Colorado be amended in order to bring about the cessation of nuclear weapons component production in Colorado by providing that a taxpayer may designate a portion of his income tax refund to be deposited in the Rocky Flats Nuclear Weapons Conversion Fund, by appropriating moneys in the fund annually to the governor for his use in publicizing the hazards of plutonium processing and the opportunities for conversion to other activities and in promoting the cessation of plutonium processing, and by requiring the governor to direct state executive agencies to assist in such actions and to initiate an inventory of Rocky Flats facilities to determine which are unsafe for conversion?

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would provide for the establishment of a "Rocky Flats Nuclear Weapons Conversion Fund" to be utilized by the Governor of the state of Colorado to finance efforts to:

- publicize the hazards of radioactive plutonium processing in Colorado and the opportunities for conversion of related jobs and facilities; and
- promote, facilitate, and cause the cessation of radioactive plutonium processing in Colorado and the conversion of related jobs and facilities to other activities.

The conversion fund and programs would be financed from voluntary contributions through a check-off system under the state income tax. Each Colorado state individual income tax return would permit persons entitled to an income tax refund to donate all or a portion of their tax refund to the Rocky Flats Nuclear Weapons Conversion Fund.

The amendment would direct the Governor to cause each executive agency, by all lawful means within its respective jurisdiction, to discourage and prevent the processing of radioactive plutonium within the state of Colorado and to promote, facilitate, and cause the conversion of related jobs and facilities to other activities. Finally, the Governor would be responsible for an inventory of facilities at the Rocky Flats Plant to ascertain whether any facilities are so contaminated with radioactivity as to be unsafe for conversion.

The amendment would take effect January 1, 1983 and would apply to tax returns filed for any tax year commencing on or after that date, or until such time as nuclear weapons components were no longer produced in Colorado.

Comments

The amendment would provide two basic programs. First, a program of voluntary contributions to the Governor would be used to finance efforts to publicize the hazards of radioactive plutonium processing, and second, the amendment would charge the Governor with directing state agencies to discourage and prevent plutonium processing. The efforts of

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state agencies in this latter effort could be financed through the voluntary check-off under the income tax or through normal agency funding and tax revenues. There is precedent for the check-off. A check-off on the state income tax has been utilized since 1977 to fund the Colorado Nongame Wildlife program. Through fiscal year 1981, donations to this program have been in excess of \$2.2 million. In 1981, over 10 percent of the returns which qualified for a tax refund participated in the program with an average donation of \$5.32.

In concept, Amendment No. 6 is intended to require the Governor to encourage the redirection of the present mission of the Rocky Flats Plant away from plutonium processing. The amendment, however, would not vest the Governor of the state of Colorado with legal control or jurisdiction over the operation of this plant. The United States government owns all tangible real and personal property of every kind used in the operation of the Rocky Flats Plant. The scope of primary production activity carried on at the Rocky Flats Plant is subject to the express consent and direction of the President of the United States in accordance with section 6 of the Atomic Energy Act of 1946, and section 91 of the Atomic Energy Act of 1954 (42 U.S.C. § 2121 (a) (2)). Congress annually appropriates funds for the operation of the plant.

History and description of the Rocky Flats Plant. The Rocky Flats Plant began operation in 1952. Although owned by the federal government, it always has been operated by a private contractor. Initially, the Atomic Energy Commission contracted with Dow Chemical Company. Since 1975, the plant has been operated by Rockwell International, under contract first to the Energy Research and Development Administration and currently to the Department of Energy (DOE). The plant is located on 6,500 acres in northern Jefferson County, approximately 16 miles northwest of downtown Denver. It is located within one to ten miles of the cities of Arvada, Boulder, Broomfield, Golden, and Westminster. Originally, the plant encompassed about 2,520 acres, but additional land was acquired as a buffer zone between the plant and adjacent communities. The plant employs about 5,000 people.

Activities at Rocky Flats involve the reprocessing, fabrication, assembly, and quality control testing of radioactive and nonradioactive components for nuclear weapons. The plant is not utilized for the final assembly of nuclear weapons. The component parts of obsolete nuclear weapons originally fabricated at the plant are returned to Rocky Flats for reprocessing to recover the plutonium and americium. Other related activities include chemical processing to recover plutonium and uranium from scrap material, and research and development activities. In 1976, the Department of Energy added a wind energy research and development program.

Plutonium. Plutonium is a fissionable element produced in nuclear reactors. It is radioactive and decays by alpha emission, subject to the alpha recoil effect which permits very small particles of plutonium to self-divide and self-scatter. In its metallic form it reacts with oxygen so that its handling is conducted in a dry, reduced-oxygen environment and care must be exercised to prevent a criticality accident, i.e., a release of nuclear energy by fission. The metal is not easily ignited but small pieces such as machine turnings or chips are subject to oxidation (they behave like charcoal). If ignited, fine plutonium particles are emitted.

At Rocky Flats, plutonium metal is utilized in operations similar to any metal working industry, but the physical characteristics of plutonium require special precautions in the working environment. To prevent emissions from occurring and to provide a safe working environment, all fabrication of plutonium at Rocky Flats is conducted in "glove boxes" (isolated enclosures) which are designed to contain the material and emissions. Since 1970, to minimize the possibility of fire, an inert atmosphere has been maintained in the glove boxes and storage areas where fire may occur.

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Arguments For

1) The amendment would provide an opportunity for Coloradans, through a system of voluntary contributions, to become better informed of the problems posed by hazardous materials utilized in nuclear weapons processing at Rocky Flats. The final Environmental Impact Statement prepared by the Department of Energy for Rocky Flats points out that plutonium is very radiotoxic and a potent cancer producer. It remains radioactive for a very long time and its most important isotope (form) — plutonium 239 — has a half-life of 24,000 years. Thus extraordinary care must be taken in its production, fabrication, and disposal. Plutonium emissions released into the atmosphere may be carried for miles and, when inhaled, it is absorbed by the lungs and lodges in the bones, liver, and other organs. Investigations of plutonium toxicity, as reported in the 1975 task force study indicate that plutonium is very difficult to excrete from the body and can persist through one's lifetime.

2) Despite extreme precautions, hazardous materials processed at Rocky Flats have been released into the environment. A variety of studies have documented numerous releases, both accidental and routine, of radioactive plutonium, americium, tritium, and other radionuclides into the nearby air, soil, and water. According to the 1975 task force final report, five major accidents at the plant have occurred. Four of these resulted in releases of plutonium into the environment and one release of tritium into the Broomfield water supply. The latter was acknowledged by plant personnel after three months investigation.

Major Accidents at Rocky Flats

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|-----------|---|
| 1957 | plutonium release due to fire and explosion |
| 1958-1969 | plutonium leakage from drum storage |
| 1969 | plutonium release due to fire (no release off-site) |
| 1973 | tritium release into water supply |
| 1974 | plutonium release due to equipment failure |

Several studies have also recorded routine emissions of radioactive materials during daily operation of the plant. The environmental impact statements, Rockwell's own environmental monitoring reports, and the Colorado Department of Health's monitoring program have all reported such routine releases. In fact, a 1979 DOE study showed higher plutonium concentrations in the air on the Rocky Flats plant site than any other DOE monitoring site in the Western Hemisphere for every month measured (1970 through 1978). The amendment would provide the public with additional information on the hazards of plutonium processing and would encourage the conversion of such facilities to safer uses.

3) The *Ambio Journal*, volume 10, number 4, Royal Swedish Academy of Sciences, contained a study of cancer incidence in the Rocky Flats area. The study pointed out that Rocky Flats has routinely released plutonium and other actinides and radionuclides in the exhaust from smokestacks since 1953. In addition, an unusual release occurred in a fire and explosion in 1957. The study found: "Cancer incidence in males was 24 percent higher, and in females 10 percent higher in the most contaminated suburban areas (population 154,170) (nearest the plant), compared to the unexposed area (population 423,870), also predominately suburban which had virtually the same age adjusted rate for all cancer as the state. . . ." The study was based on the evaluation of census tract data for areas downwind of the Rocky Flats Plant and for unexposed areas. This report concludes that the ". . . increase in incidence of all cancer and for certain classes of cancer in the exposed population supports

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the hypothesis that exposure of the general populations to small concentrations of plutonium and other radionuclides may have an effect on cancer incidence."

4) There is evidence that Rocky Flats' facilities have structural and other safety problems. A 1980 structural evaluation of 24 plutonium processing and related buildings indicated that nine buildings were inadequate to resist earthquakes in excess of 6.0 on the Richter Scale, all but two buildings were vulnerable to a tornado, all but five were vulnerable to windspeeds near 150 mph, and all the buildings were vulnerable to objects propelled by a tornado. A second study, conducted in 1981, of vital equipment within existing plutonium processing facilities found that less than one third of the items reviewed are now acceptable under the latest codes and criteria. A third study, released in June of this year, also found that none of the five major plutonium processing buildings nor the vital equipment within these buildings could withstand natural disasters, such as an earthquake, a tornado, strong winds, or objects propelled by a tornado. This third report estimated a cost of \$112 million to sufficiently strengthen the buildings.

5) The processing of radioactive materials for nuclear weapons productions, by definition, entails hazardous materials that should preclude the location of such a facility in close proximity to a metropolitan community. According to the 1975 task force report, when the site was selected by the Atomic Energy Commission in 1951, a prime condition was a dry climate and proximity to adequate supporting population. Other factors included an attractive environment for skilled personnel and ready accessibility to Los Alamos, Chicago and St. Louis. Final siting was based on the fact that the location was thought to be downwind of the population in Denver because prevailing winds in east Denver were from the south. This is the wind direction at Stapleton Airport. However, prevailing winds at Rocky Flats are predominantly from the west. At the time of the selection of the site in 1951, there was, and still is, little information on the effects of low levels of radiation over the long term and other hazards with regard to the processing of radioactive materials. The general public was not given an opportunity to comment on the siting, as to potential hazards of locating this nuclear processing plant in the Denver-Boulder Metropolitan area. Furthermore, the 1975 report came to the conclusion that such a plant would not be located at Rocky Flats today. In part, the report states: "The certainty that such a plant would not today be located at Rocky Flats, as well as our feeling that accidents will continue to occur even under the best of circumstances, dictate our belief that such a plant should not be located at Rocky Flats." Thus, the citizens of Colorado should have a voice in this matter.

6) One of the objectives of the amendment is to minimize the impact of the conversion of the Rocky Flats Plant and to develop alternate facilities and employment opportunities. There has been concern that closure of the Rocky Flats Plant would have a very substantial economic impact. Battelle Columbus Laboratories recently (June, 1982) completed a study for Rockwell International and the U.S. Department of Energy relating to the social and economic impacts of changing the mission at the Rocky Flats Plant. The report indicates that activities at Rocky Flats account for a small component of the regional economy, and factors such as growth, the small number of people displaced, and others suggest that a major mission change would have minimal impact. The loss of jobs at Rocky Flats would only account for about 2.1 percent of the total increase in jobs projected to occur in the region between 1980 and 1990. Phasing out of the nuclear processing at the Rocky Flats Plant would have to be accomplished over an extended period of time, and the Battelle report suggests that this could not be accomplished until the late 1980's. The majority of Rocky Flats' employees could easily be absorbed by the projected growth in employment for the Denver-

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Boulder area. Furthermore, the provisions of the amendment which are designed to minimize the impact of changing the role of the Rocky Flats Plant, including finding alternative employment opportunities for displaced workers, would ensure that the amendment would not have an adverse economic effect.

Arguments Against

1) The Environmental Protection Agency (EPA), the agency with exclusive federal authority for establishing environmental standards, has drafted standards for safe concentrations of transuranium elements such as plutonium in the general environment. These draft standards were issued in 1977. Rocky Flats operates well within these draft standards. In 1972, the state of Colorado requested the Administrator of the EPA to specifically address the question of off-site concentrations of transuranium elements near the Rocky Flats Plant. EPA's response concluded that doses to members of the public resulting from operations at the Rocky Flats Plant are only "a few percent" of the proposed guidance limits for inhalation and "well below" (about 20 percent of) the guidance limits for ingestion based on the draft standards. Thus the off-site concentrations of transuranium elements near the Rocky Flats Plant were found by the EPA to be acceptable and not likely to produce significant doses to the public.

Rockwell's 1981 environmental monitoring report shows that the levels of plutonium, uranium, tritium, beryllium and americium in the air, soil, and water are well below applicable standards of the Department of Energy, Environmental Protection Agency, and Colorado Department of Health. In addition, the Colorado Department of Health, in 1981, conducted independent environmental surveys, both on and off the plant site. Samples of air, water, and soil indicate safe levels of radioactive material in reference to federal draft guidelines or standards in 1981.

The Department of Energy recently commissioned a health and mortality study of Rocky Flats Plant workers. These individuals are susceptible to radiation exposure levels well above that of the general population. To date, the study group has not identified any health effects that were related to plutonium exposure.

The DOE Environmental Impact Statement addresses the maximum credible accident which could occur at the Rocky Flats Plant. This study shows that a person residing downwind of the Rocky Flats Plant for a period of 70 years has less than one chance in 60,000 of contracting a fatal cancer initiated by the postulated maximum credible accident. In comparison, the report indicates that there is one chance in 30 of being killed by a common accident over the same 70 years.

2) The Rocky Flats Plant is an essential facility for the production of nuclear weapons. The components for every nuclear weapon in the United States arsenal are manufactured at Rocky Flats. There will be a need for such a plant as long as there is a need for an American nuclear deterrent. Even if there were a moratorium on nuclear weapons production, maintenance of existing weapons would be needed. If there were an actual disarmament, Rocky Flats or a similar plant would be necessary for disassembly of existing nuclear weapons. Thus, if the plant was closed down, the plutonium reprocessing activities would have to be relocated.

3) Valuable research into nuclear material processing and safety analysis is carried on at the plant. Such research contributes to scientific knowledge relating to civilian use of nuclear energy and thus also supports the promotion of energy independence.

4) Relocation of the Rocky Flats Plant would be so expensive as to make such a proposal impractical. A 1981 relocation cost study prepared by the Battelle Laboratory estimates that

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relocating the entire Rocky Flats Plant would cost \$2.1 billion and relocating only the plutonium processing operations would cost \$1.7 billion. The relocation would take from 10 to 15 years. Other studies estimated the decommissioning and decontamination of the major plutonium buildings at the plant could total \$215 million. All these costs are in 1981 dollars and do not consider escalated costs over 10 to 15 years.

It would make more sense to spend a fraction of such costs to improve the critical facilities by providing additional safeguards against potential catastrophies such as earthquakes or tornados.

The closing of the Rocky Flats Plant would add to unemployment in the area. Rocky Flats is the eighth largest employer in Colorado. There is a total work force at Rocky Flats of about 5,000 employees, 250 construction workers and about 50 federal employees. Rockwell International's Rocky Flats payroll in 1981 was about \$95,000,000. The company also spent about \$17,000,000 with vendors in the Denver area.

5) The amendment would simply result in the further expenditure of funds without achieving any real benefit. The amendment would not give any new jurisdiction to the Governor of the state of Colorado or empower state agencies to exercise any control over the operation of the Rocky Flats Plant. The plant, including the real estate, buildings, facilities, equipment and supplies is owned by the United States government. This facility was built and has been operated under the authority vested with the President of the United States and the Congress. Thus only the federal government can close the plant or change its mission.

6) The amendment would hinder federal/state relationships. The Rocky Flats Plant and the state of Colorado have already established a close working relationship. The Colorado Department of Health has access to the plant for monitoring purposes, monthly meetings are held between Colorado Department of Health, Department of Energy and other city and county agencies to review data obtained. The Department of Energy has also provided the state with radiological monitoring analysis equipment and funds to offset the state's cost in operating their monitoring program. The amendment could result in this cooperative program being turned into an adversary relationship.

AMENDMENT NO. 7 — PROPOSED STATUTE INITIATED BY PETITION

Ballot Title: Shall grocery stores, after licensing, be permitted to sell wine containing not more than fourteen percent of alcohol by volume in sealed containers not to be consumed on the premises, subject to the same requirements of law concerning age of purchaser, and hours and days sold, as are applicable to other retailers of wine in sealed containers?

Provisions of the Proposed Statute

The proposed statute would provide that effective January 15, 1983, any person who operates a retail grocery store, defined by the proposal, would be eligible to apply for a license to sell table wine (not exceeding 14 percent alcohol by volume) in sealed containers for consumption off the premises. Application for a license could be made in one of two ways.

— Any person with a license to sell 3.2 beer in a retail grocery store, which license was in good standing as of January 1, 1982, would be entitled to obtain a retail grocery store wine license through the license renewal procedures of the Colorado Liquor Code.

— Any person operating a retail grocery store, who does not have a license to sell 3.2 beer in such grocery store, could obtain a license to sell table wine by application to state and local authorities through procedures for a new license.

Other major provisions of the proposed statute would:

— provide that the employees of the licensee who are under eighteen years of age would be permitted to handle table wine in the same manner that such individuals may handle 3.2 beer under the Colorado Beer Code provided they are under the supervision of a person over eighteen years of age;

— make it unlawful for a licensee to have an opened container of table wine on the premises or one which contains less than the amount of wine specified on the label of the container;

— require that licensees purchase table wine from licensed wholesalers to be stored on the premises of the licensed retail grocery store;

— establish the state license fee for a retail grocery store wine license to be the same as the fees for beer and wine licenses, and establish the local license fee to be one hundred and seventy-five dollars (\$175.00) for premises located within municipal boundary limits or city and county limits and two hundred and seventy-five dollars (\$275.00) for premises located outside city or city and county limits;

— provide that no application for a retail grocery store wine license would be accepted for a

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location denied any type of liquor license during the previous two years based on the absence of need or the desires of the residents of the area; and

— provide that section 12-47-129 (4) (a), of the Colorado Liquor Code which prohibits the holder of a license for one retail liquor establishment from having any direct or indirect interest in another liquor establishment or license would not apply to any interest in a retail grocery store wine license with respect to any interest in any other retail grocery store wine license.

Table wine, as defined by the proposed statute, would mean all wine not exceeding 14 percent of alcohol by volume.

As defined by the proposed statute, a "retail grocery store" means a premises intended for the sale of groceries at retail and which receives its annual gross income primarily from the retail sale of edible food products regularly sold for human consumption off the premises. For the sole purpose of determining whether this income requirement has been met, "food" shall mean food as defined in section 39-26-102 (4.5), *C.R.S. 1973*. There shall be a rebuttable presumption that a premises is a retail grocery store if it receives over 50 percent of its annual gross income from such sales. It is intended to require a retail grocery store wine licensee to maintain a bona fide grocery store business, and not a mere pretext of such for obtaining a retail grocery store wine license.

Comments

State statutes (Title 12, Article 46, *C.R.S. 1973*) and regulations currently provide for the sale of package 3.2 beer in retail grocery stores. Licenses for the sale of 3.2 beer are separate and distinct from other licenses authorizing the manufacture, sale, or importation of alcoholic beverages containing more than 3.2 percent of alcohol by weight. State law prohibits the sale of 3.2 beer to any person under the age of 18 years or to any person between the hours of 12 midnight and 5 a.m. Sales of 3.2 beer may be made any day of the year. The proposed statute does not change standards concerning age of purchaser and hours and days sold.

The Colorado Liquor Code (Title 12, Article 47, *C.R.S. 1973*) provides for the licensed sale of all alcoholic beverages including wines, fortified wines not exceeding 21 percent of alcohol by volume, malt liquor containing more than 3.2 percent of alcohol by weight, and spirituous or distilled liquor. Licenses can be obtained to sell alcoholic beverages in sealed containers in retail liquor stores and liquor licensed drugstores, and by the drink in hotels, restaurants, taverns, clubs, establishments for the arts, and racetracks throughout the state. Alcoholic beverages and 3.2 beer, as defined by statute, currently may not be sold through the same outlets, and may not be served on the same premises at the same time. The proposed statute, however, would allow licensed retail grocery stores to sell both wine and 3.2 beer.

It is illegal to sell wine, malt liquor, or spirituous liquors to anyone under the age of 21 years. The hours permitted for sales under the liquor code are 8:00 a.m. to midnight; Sundays, holidays, and election days excluded. Colorado state law also prohibits the issuance of a license to any person to operate an establishment where liquor is sold either in packages or by the drink within five hundred feet of any public or parochial school or the principal campus of any college, university, or seminary. The proposal would prohibit a retail grocery store wine license for any building within five hundred feet of the property line of any public or parochial school.

In granting a license to sell alcoholic beverages, all licensing authorities are instructed by statute to consider the reasonable requirements of the neighborhood, the desires of the inhabitants as illustrated by petitions, any local licensing restrictions, and the number and

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proximity of existing outlets available in the area to serve the public. Basically, an applicant for a liquor license must affirmatively establish: 1) that the reasonable requirements of the neighborhood are not being met by existing outlets, and 2) that the inhabitants of the neighborhood desire the issuance of a liquor license.

Arguments For

1) Colorado food shoppers should be given the opportunity and convenience of selecting table wines at the same time and in the same store in which meals are planned and purchased. Table wine, for many persons, is an integral part of their dinner menu. Table wine is not only consumed as a part of the evening meal but is utilized in the preparation and cooking of food. The state of Colorado should not maintain an artificial barrier to prevent Colorado consumers from purchasing table wines with food products. All but three of the eleven contiguous western states (Colorado, Utah, and Wyoming) permit this convenience, and nationwide a total of 35 states allow the sale of wine in grocery stores.

2) Competition resulting from new marketing procedures for table wines would have a direct, favorable impact on consumers. With new outlets available where wine could be purchased, the competition for wine sales would be enhanced.

3) Many shoppers would find it more attractive to purchase table wine in the setting of a grocery store, rather than having to make their purchases at a retail liquor store.

4) In conjunction with the Colorado Liquor Code, the proposal first provides an opportunity for all the voters of Colorado to decide on whether wine should be sold in retail grocery stores in which 50 percent of sales are for food items. Secondly, the proposal would provide that a grocery store applying for a license to sell wine, and which currently does not sell 3.2 beer, would have to apply for a license with the local authority and such license application may be considered at a public hearing. For those grocery stores in which the sale of fermented malt beverages (3.2 beer) has already been approved, the proposal would permit immediate application and subsequent licensing through the license renewal procedure. Persons objecting to the sale of wine in a grocery store could express objection at the time of license renewal. The local licensing authority could hold a public hearing at its discretion. Thus the proposed statute is intended to ensure that the sale of wine in grocery stores meets wide public acceptance.

Arguments Against

1) The proposed statute would mean a substantial expansion in the number of outlets in which wine could be purchased, thus bypassing existing limits on the number of outlets dispensing alcoholic beverages. In the long run, Colorado would not benefit from the sale of wine in grocery stores. Domination of the market in wine sales by chain stores could reduce the sales volume and result in closure of small liquor stores. Other states place restrictions on the sale of wine in chain grocery stores. For example, the laws of Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, North Dakota, New Jersey, South Dakota, Wisconsin, Rhode Island, Georgia, and Texas restrict the number of table wine licenses a retail entity may possess, or the qualifications of the holder of the license, thus preventing chain grocery stores from selling table wine in numerous outlets.

2) The proposal would result in considerable special interest pressure on elected officials

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to allow the sale of fortified wines and liquor in grocery stores. While wine may be considered a "food item" by some people because it is used in the preparation and cooking of food, many other types of liquor also may be classified in the same manner. Over 50 percent of the states which permit the sale of wine in grocery stores, also permit the sale of liquor in grocery stores. If this proposal were adopted, the same arguments now being offered in support of the sale of wine in grocery stores would be offered to support the sale of liquor in grocery stores. Many Coloradans are offended by the continuous efforts to expand the availability of alcoholic beverages or to allow the sale of wine or liquor in grocery stores.

3) There is no provision in the proposal to prohibit the sale of wine by persons under the age of 18. Presently, only persons 21 years of age or older sell liquor and wine in licensed liquor stores. The proposed statute would permit persons under the age of 18, employed by a grocery store, to handle table wine in their normal course of employment, in the same manner as permitted by the Colorado Beer Code. Section 12-46-115, of said code provides "... any person under eighteen may handle and otherwise act with respect to fermented malt beverages in the same manner as he does with other items sold at retail; except that no person under eighteen shall check age identification. . . ." Thus, the Colorado Beer Code restricts who may check age identification but does not restrict actual sales by persons under eighteen.

4) Special licensing advantages would be given to grocery stores that are not enjoyed by retail liquor establishments. For example, grocery stores that have a 3.2 beer license in good standing would be entitled to obtain a wine license without a showing of community needs and desires. Such grocery stores could apply for a retail grocery store wine license under the renewal procedures of the Colorado Liquor Code. Under present law, before a local licensing authority grants a new license for a person to sell wine and spirituous liquors, facts and evidence are considered as to the desires of the inhabitants and the number, type and availability of outlets in a neighborhood. This procedure is not required of licensees applying for renewal of a retail liquor store license.

AMENDMENT NO. 8 — PROPOSED CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Ballot Title: Shall the Colorado constitution be amended: to provide for the conduct of casino gaming on and after January 1, 1984, upon approval at local elections, in counties of the Southern Colorado Economic Development District and such resort areas and economically depressed counties as are defined by the general assembly; to direct the appointment of a five-member gaming commission to regulate casino gaming; to provide for the distribution of twelve percent of the proceeds of casino gaming for public purposes; and to direct the general assembly to enact laws to implement the amendment?

Provisions of the Proposed Constitutional Amendment

The General Assembly would be charged with enacting necessary laws, by January 1, 1984, to make casino gaming lawful in Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Mineral, Otero, Prowers, Pueblo, Rio Grande, and Saguache counties, and in other counties designated by the General Assembly as economically depressed, and in resort areas as defined by the General Assembly; provided that a local election could be held in each affected county to determine whether the registered electors of any such county approve of casino gaming.

The amendment provides that the Governor, President of the Senate, Senate majority leader, Senate minority leader, Speaker of the House, House majority leader and House minority leader of the General Assembly would appoint, subject to confirmation by the Senate, a five-member Gaming Commission to administer and enforce casino gaming laws. Casino gaming would mean a variety of games played with cards, dice or mechanical devices, including but not limited to craps, poker, blackjack, roulette, keno, pai gow, etc., and any other game or device approved by the gaming commission, but would not include bingo, lotto or raffles operated by charitable or educational organizations or games operated under a state lottery.

The General Assembly would define gross proceeds from gaming operations. A total of 12 percent of the gross proceeds from gaming operations would be paid to the commission for distribution to state and local governments.

Unless otherwise provided by statute, 4 percent of the gross proceeds would be distributed to participating counties for property tax relief. Any town, city and unincorporated area within an eligible county would receive a portion of such revenue based on population. The remaining 8 percent of gross proceeds would be allocated to state government to be used as follows: 2 percent for public education, 2 percent for social services, 2 percent for highways, and 2 percent for water resources. The amendment would permit the state to deduct a reasonable fee from proceeds received for collection and distribution of such revenues.

In addition to the 12 percent fee levied on gross proceeds, the commission additionally could assess a reasonable fee on casinos to cover the costs of administration and enforcement of the provisions of the amendment.

The amendment would provide that the three provisions relating to: local elections, a definition of casino gaming, and distribution of gross proceeds would be self-enacting but that laws may be enacted supplementary to and in pursuance of, but not contrary to, the amendment.

Casino Gaming

Comments

Although the amendment is intended to make casino gaming lawful in certain counties after January 1, 1984, the amendment is ambiguous on several points. The amendment provides that certain provisions would be self-enacting, but also calls for the General Assembly to enact legislation.

If the amendment is intended to be self-executing, how would the following questions be resolved, if the General Assembly did not enact implementing legislation?

— The amendment makes reference to a local election of registered electors which may be held before casino gaming is permitted by ordinance. Who would call the election? Who would pay for the election? Would the local election be countywide?

— Would each city council authorize casino gaming? Would the county board of commissioners authorize casino gaming?

— How would the proposed gaming commission function? For example, compensation, terms of office, and duties are to be established by the General Assembly. Furthermore, the amendment does not vest any specific power with the proposed Gaming Commission to license casino games.

Nevada. Casino gambling was legalized in Nevada in 1931. Basically, the state issues quarterly and annual licenses which are renewed when the license fee is paid. The annual state license fee is based on the number of games operated; this money reverts back to the counties. The state also imposes quarterly state license fees based on the number of games operated and on gross revenues. A system is employed whereby the gross revenue license fee increases at a graduated level depending upon the amount of gross revenue earned. The maximum level is 5¾ percent of all gross revenue which exceeds \$400,000 per quarter year. With the exception of the annual state license fee, license fees and penalties are credited to the general fund. Counties and municipalities are authorized to issue licenses and to impose fees. The state also levies a casino entertainment tax of 10 percent on money paid for admission, food, refreshment and merchandise in licensed establishments.

The administration of state gaming laws is the responsibility of three agencies created by statute. The Nevada Gaming Commission is the primary agency for issuing licenses, promulgating regulations, and invoking disciplinary action. The State Gaming Control Board is mainly an investigatory and enforcement body. A third body — the Gaming Policy Committee — discusses matters of gaming policy. Licensure is required for those who own or operate a gaming establishment and for those who furnish services or equipment. Gaming employees are mandated to hold work permits.

The licensure process is quite involved. Each person who makes an application to invest money or hold an equity interest in a gaming establishment must submit a disclosure of his personal and financial history. The Gaming Control Board is responsible for conducting thorough background investigations into the personal and professional histories of applicants to determine suitability for licensing. Nevada law stipulates that the applicant must bear the entire cost of the investigation, regardless of the outcome. If irregularities are uncovered after a license is issued, the Gaming Commission has the authority to suspend or revoke the license.

New Jersey. In 1976, New Jersey voters approved a constitutional amendment permitting casino gambling only in Atlantic City. The amendment provided that any state revenues

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derived from gambling be used to reduce property taxes, rentals, and utility charges of eligible senior citizens and disabled residents of the state.

New Jersey has established a regulatory structure similar to that in Nevada. The Casino Control Commission was formed to promulgate regulations and issue licenses, and the Division of Gaming Enforcement is oriented toward investigation and enforcement. In New Jersey, not only are gambling operations licensed, but all employees must also undergo investigation and licensing. New Jersey law directs the commission to promulgate extensive regulations on the facilities of the casino, internal controls, gaming and gaming equipment, credit, junkets, etc. Approximately \$30 million per year is spent in New Jersey for administration and regulation, while Nevada spends about \$7.6 million per year.

According to the New Jersey law, the state imposes an 8 percent annual tax on gross revenues of casinos. Also, this law mandates that if the gross revenue of a licensee in a calendar year exceeds the licensee's cumulative investments in the state, the licensee is required to make investments in land and real property of not less than 2 percent of the gross revenue for said calendar year. Portions of such investments shall be made in the municipality in which the licensed premises are located. Factors considered in determining the eligibility of investments include public interest and social and economic benefits to be derived from such investments.

Arguments For

1) Pueblo and other Southern Colorado Economic Development District counties listed under the provisions of this amendment have not shared in the economic and population growth of northern front range counties. While per capita income in 1980 in Adams, Arapahoe, Boulder, Denver, and Jefferson counties was well in excess of \$10,000 per year, and the statewide average exceeded \$10,000, the average per capita income in the 19 counties listed was \$7,454. Furthermore, 11 of the 19 counties had per capita incomes below \$8,000 per year in 1980. Nearly all of these counties experienced unemployment in excess of statewide averages. In Pueblo County in June of 1982, unemployment was 8.8 percent compared to 4.7 percent statewide. Recently, the Pueblo economy has experienced layoffs in the steel industry (which traditionally has been the major employer), cutbacks and closings in the meat industry, closure of a United States Department of Transportation Office, and reductions in the workforce of the Pueblo Army Depot. Federal agencies have classified the Pueblo area for special preference due to persistent unemployment and loss of employment opportunity. The amendment could provide an injection of new capital and new opportunities for this economically depressed region.

2) The introduction of casino gambling in Atlantic City and in Nevada has provided employment opportunities for these communities. Casino gaming would stimulate the economy of Southern Colorado in the same way. Pueblo's local economy, which has been so dependent on the steel industry, is very susceptible to downturns in the nation's economy. Similar to Pueblo, the Atlantic City economy experienced high unemployment and increased unemployment insurance claims from the decline in tourism, manufacturing, and construction related jobs prior to the opening of casino gambling in 1978. According to a report by the Federal Reserve Bank of Philadelphia on the effects of casino gambling in Atlantic City, employment has increased and unemployment insurance claims have stabilized. With implementation of casino gambling, Atlantic City experienced a larger personal income growth rate than any other standard metropolitan statistical area in 1979. Casino gaming would tend to stabilize Pueblo's economy. The state of Nevada, whose primary industry is casino gambling, is not as dependent upon the prevailing economic conditions of the country according to the

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Commission on the Review of the National Policy Towards Gambling. Finally, long-term capital investments by the gaming industry could provide an additional source of economic growth for the Pueblo area.

3) There are already several types of legalized gambling in Colorado. Bingo, raffles, and dog and horse tracks have existed in the state for a number of years. More recently, the legislature and the citizens of Colorado have approved satellite betting and a state lottery. Casino gaming is merely an extension of legalized gambling in Colorado and would be limited to only a few areas in the state. The amendment would simply provide an opportunity for the citizens in the depressed Southern Colorado counties to conduct an election to decide whether they wish to have casino gaming. If casino gaming were approved, the state as a whole would benefit from a tax on gross proceeds of gaming revenue produced by the Southern Colorado region.

Arguments Against

1) Legalization of casino gambling in Colorado would not only be an attraction for organized crime but would inevitably result in increased levels of violent crime. The Uniform Crime Report for September 10, 1981, reveals that the Las Vegas metropolitan area has one of the nation's highest per capita violent crime rates per 100,000 population. Reno also has been burdened with violent crimes.

| City | 1980 Census | Murder | Metro Area Crime rates per 100,000 | | |
|---------------|----------------|--------|---------------------------------------|---------|-----------------------|
| | | | Forcible Rape | Robbery | Aggravated Assault |
| Las Vegas | 164,674 | 23.4 | 76.2 | 630.7 | 418.0 |
| Reno | 100,756 | 12.9 | 75.3 | 323.4 | 245.0 |
| Atlantic City | 40,199 | 9.5 | 59.2 | 424.1 | 365.5 |
| Pueblo | 101,686 | 2.4 | 50.9 | 105.8 | 633.0 |

With the advent of casinos in Atlantic City there has been an increase in violent crimes.

In comparison, the violent crime rate in Pueblo, per 100,000 population was substantially less than the aforementioned casino communities in terms of murder, forcible rape, and robbery.

The financial inducements of casino operations would be an immense attraction to organized crime and could be infiltrated by organized crime. The ancillary services for highly transient casino customers, both legal and illegal, would be an attraction for organized crime — loan sharking, prostitution, liquor, food services, and drug trafficking.

In general, with the advent of casinos, the character of neighborhoods would change. Street thugs, prostitutes, and other undesirable elements would be lured by the large amounts of ready cash and the transient population. Normal business operations would be driven out of the casino neighborhoods, and elderly residents would not only sustain a loss in service industries but would be exposed to increased violent crime.

2) A number of Coloradans believe that gambling is a moral issue, and gambling in any form is wrong on both religious and secular grounds. Gambling drains the earnings, savings, and resources of a community for an activity that serves no real need and produces no beneficial product for the community. There is fear that the incidence of compulsive

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gambling, with its injurious effects to the individual and society, would increase in Colorado with the authorization of casino gambling. The problem gambler becomes so preoccupied with gambling that every waking moment is devoted directly or indirectly to gambling. The end result often is lost time from work, a breakdown of family and interpersonal relationships, and a financial crisis so great that the compulsive gambler cannot provide his family with the necessities of life. In the report, *Gambling in America*, the Commission on the Review of a National Policy Toward Gambling found that there were three times as many probable compulsive gamblers in Nevada than among the population for the nation as a whole.

3) Southern Colorado is not located in sufficient proximity to a large population base to sustain the casino gambling activity occurring in either Atlantic City or Las Vegas. In excess of 10 million people live within one day's drive of Atlantic City. Las Vegas is in close proximity to 4 million people in southern California. Casinos operating in the Reno-Sparks area, which would be more comparable to the Colorado situation, are providing a very small return on capital investment.

The state of Nevada Gaming Control Board reports and analyzes income derived from major casinos. The annual return on the dollar for major casinos in the Reno-Sparks area is far below that for downtown Las Vegas and the Las Vegas strip. For 1981, only a one cent return on each dollar of investment was calculated for the Reno-Sparks area for an average casino compared to a 13 cent return in downtown Las Vegas and an 18 cent return on the Las Vegas strip. The Reno-Sparks area is much more susceptible to seasonal variations than Las Vegas.