

Amendment ? : Legislative Authority for Spending State Money

Placed on the ballot by citizen initiative • Passes with 55 percent of the vote

1 **Amendment ? proposes amending the Colorado Constitution and the**
2 **Colorado statutes to:**

- 3 • remove the state legislature’s ability to allow spending outside of the budget
4 process;
- 5 • prohibit state agencies from spending money received for a particular
6 purpose (custodial money) without direct allocation by the state legislature;
- 7 • require that custodial money be deposited into a newly created fund and that
8 interest earned on money in the fund be transferred to the state’s General
9 Fund; and
- 10 • require that the state legislature allocate any spending from the new fund
11 each year following a public hearing.

12 **What Your Vote Means**

YES

13 A “yes” vote on
14 Amendment ? requires

15 that all state spending be allocated by the
16 state legislature and that custodial money
17 be deposited in and spent from a new
18 fund.

NO

A “no” vote on Amendment ?
allows state agencies to

continue spending custodial money and
certain other money as they do now.

Summary and Analysis for Amendment ?

1 What does this measure do?

2 The measure requires all state spending to be directly allocated, or
3 "appropriated," by the state legislature, and removes the legislature's ability to
4 pass laws that allow spending outside the budget process. In state government,
5 an appropriation is the primary way the legislature directly allocates money to be
6 spent for state programs. By requiring appropriations for all spending, the
7 measure disallows other currently legal ways for state agencies, public colleges
8 and universities, and elected officials, such as the Governor or the Attorney
9 General, to spend money without a direct allocation by the state legislature in the
10 state budget.

11 In addition, the measure deposits custodial money in a new fund, called the
12 Custodial Funds Transparency Fund. It defines custodial money as money
13 received by the state that must be used for a particular purpose. This includes
14 money received from the federal government, as a legal settlement from a
15 lawsuit, or as a donation from a private individual or organization. The word
16 "custodial" is used to refer to the money because the state acts as the custodian
17 of the money to ensure that it is spent on the intended purpose.

18 Each year, the legislature must allocate spending from the new fund and hold a
19 public hearing with an opportunity for public comment. Any interest earned on
20 money in the new fund is placed in the state's General Fund, where it may be
21 used for any purpose.

22 How is spending authorized now?

23 Under the Colorado Constitution, the state legislature has the power to direct
24 how money will be spent by the government through the annual budget process.
25 Each year, the state legislature passes the annual budget bill, completing a
26 process that includes time for public input and debate by legislators. This bill
27 sets the amount of funding available for state programs, allowing state agencies
28 to legally spend the money allocated to them. The budget does not typically
29 determine the spending of custodial money, as these funds originate outside of
30 state government, and the specific purpose for which they must be used is
31 already determined. The legislature may also pass laws that authorize spending
32 outside of the budget process.

33 How would the measure change the process for spending custodial money?

34 All state spending would require direct legislative allocation, including the
35 spending of custodial money. The measure does not change the particular
36 purpose for which custodial money must be spent. However, the state legislature
37 may make different spending decisions than state agencies would to address
38 that purpose, and the timing of when some moneys are spent may change.

39 The state receives custodial money throughout the year, including when the
40 legislature is typically out of session between May and December.
41 Implementation of the measure could require the legislature to establish a new
42 process to allow spending of custodial money outside of the regular legislative
43 session, or to meet for a special session. These changes may affect the timing of

1 certain spending decisions, potentially resulting in delayed or interrupted
2 operations until spending is directly allocated.

3 **What are examples of money that the measure would affect?**

4 The state legislature would have to directly allocate the spending of all funds,
5 including the following types of money that are not part of the current budget
6 process.

- 7 • **Emergency relief funds.** For example, in 2020, the state received \$1.67
8 billion in federal relief funds through the Coronavirus Aid, Relief, and
9 Economic Security Act (CARES Act), which was spent according to the
10 Governor’s executive order.
- 11 • **Other money from the federal government.** The federal government
12 provides regular funding for many state programs each year including, but not
13 limited to, health care and human services, transportation, and education
14 programs. This money is custodial when federal law says how it should be
15 spent. Only some of this spending is currently directly allocated by the
16 legislature.
- 17 • **Legal settlements.** The state receives funds from various legal settlements,
18 such as prior and ongoing opioid-related settlements. These funds are spent
19 by state agencies according to the applicable court orders.
- 20 • **Transportation funding.** Under an existing law, nearly all funding for state
21 transportation projects is allocated by an independent commission rather than
22 by the state legislature.
- 23 • **Grants.** State agencies may receive competitive grant awards from the
24 federal government or from private organizations, which may be spent on the
25 specific programs or purposes for which the grant was awarded.
- 26 • **Gifts and donations.** State agencies, colleges, and universities may receive
27 and spend gifts or donations.

28 **What are other impacts of this measure?**

29 **State revenue limit.** Under current law, most custodial money is exempt from
30 the state’s constitutional revenue limit. Under the measure, all custodial money
31 and the interest earned on it are exempt.

32 **Interest revenue.** Currently, interest earned on custodial money remains
33 available for the same purpose as the custodial money. This measure would
34 move interest earned on the Custodial Fund Transparency Fund into the General
35 Fund, where it could be spent by the legislature for any purpose.

For information on those issue committees that support or oppose the measures on the ballot at the November 2, 2021, election, go to the Colorado Secretary of State’s elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

1 **Argument For Amendment ?**

2 1) The measure increases transparency and accountability in state government.
3 The Governor, the Attorney General, and unelected administrators in state
4 agencies currently spend large amounts of custodial money, often without
5 public input or accessible public records. By requiring that all state spending
6 be directly allocated by elected representatives, the measure allows for public
7 participation and provides transparency in how funds are spent.

8 **Argument Against Amendment ?**

9 1) The measure adds unnecessary and expensive bureaucracy and risks
10 significant unintended consequences. A longer allocation process could
11 delay or interrupt state services, including emergency responses to public
12 health or wildfire disasters. Further, making grant funding subject to
13 additional steps could jeopardize Colorado's competitiveness for grant
14 awards, resulting in the state receiving less money. Finally, the measure
15 shifts decision-making from program experts and independent commissions
16 to a political process in the state legislature.

17 **Fiscal Impact for Amendment ?**

18 Amendment ? increases state spending on the budgeting process, may change
19 how custodial money is spent, and may affect state revenue, as discussed
20 below.

21 **State spending.** The measure increases spending by at least \$1.0 million
22 annually to add new staff in state agency budget offices and the legislative
23 budget committee. The additional staff are needed because the measure
24 requires state agencies to submit proposed spending of custodial money for
25 allocation by the state legislature.

26 Other state spending could be affected if the state legislature makes different
27 spending decisions than would be made by state agencies. While the purpose of
28 the spending is not altered, the state legislature could fund different programs to
29 implement that purpose.

30 **State revenue.** The overall impact of the measure on state revenue is unknown
31 and depends on how the measure is implemented. Because custodial funds
32 must be placed in the new fund before being spent, the measure could move
33 interest earnings to the General Fund rather than funds controlled by state
34 agencies. However, whether interest earnings increase or decrease depends on
35 many factors, including the different rates of return of the two funds and the
36 amount of time the money remains in the new fund.