

Amendment 78: Legislative Authority for Spending State Money

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

1 **Amendment 78 proposes amending the Colorado Constitution and the**
2 **Colorado statutes to:**

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

10 **What Your Vote Means**

YES A "yes" vote on Amendment 78 requires that all state spending be allocated by the state legislature and that custodial money be deposited in and spent from a new fund.

NO A "no" vote on Amendment 78 allows state agencies to continue spending custodial money and certain other money without appropriation by the state legislature.

1

1 **Summary and Analysis for Amendment 78**

2 **What does this measure do?**

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

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

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

20 **How is spending authorized now?**

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

30 **How would the measure change the process for spending custodial money?**

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

36 The state receives custodial money throughout the year, including when the legislature
37 is typically out of session between May and December. Implementation of the measure
38 could require the legislature to establish a new process to allow spending of custodial
39 money outside of the regular legislative session, or to meet for a special session. These
40 changes may affect the timing of certain spending decisions, potentially resulting in
41 delayed or interrupted operations until spending is directly allocated.

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

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

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

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

24 **State revenue limit.** Under current law, most and maybe all custodial money and the
25 interest earned on it are exempt from the state’s constitutional revenue limit. Under the
26 measure, all custodial money and the interest earned on it are exempt.

27 **Interest revenue.** Currently, interest earned on custodial money remains available for
28 the same purpose as the custodial money. This measure would move interest earned
29 on the Custodial Fund Transparency Fund into the General Fund, where it could be
30 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 78**

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

8 **Argument Against Amendment 78**

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

16 **Fiscal Impact for Amendment 78**

17 Amendment 78 increases state spending on the budgeting process, may change how
18 custodial money is spent, and may affect state revenue, as discussed below.

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

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

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