

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 6, 2021

SUBJECT: Proposed initiative measure 2021-2022 #29 concerning Requirements for Spending Custodial Money

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2021-2022 #19, was the subject of a memorandum dated March 9, 2021, and was discussed at a public meeting on March 11, 2021. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the **Colorado constitution and Colorado Revised Statutes** appear to be:

1. To transfer authority over custodial funds from the executive branch to the Colorado General Assembly;
2. To require that all money in the state treasury and custodial funds be appropriated;
3. To require all custodial funds the state receives to be deposited into a single account and to be annually appropriated for such purposes as specified by law; and
4. To allow the state to retain and spend custodial funds and any earnings and revenue from the custodial funds as a voter-approved revenue change to the constitutional limitation on state fiscal year spending.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Proposed section 24-75-201 (3)(e)(I) requires "Earnings and Revenue" from the custodial funds transparency fund to revert to the General Fund. Does this include money deposited in the custodial funds transparency fund, or only the interest earned thereon?
2. Proposed section 24-75-201 (3)(e)(II) requires money in the custodial funds transparency fund to be appropriated "for such purposes as specified by law." Does this require the General Assembly to codify the purposes of each source of custodial money that the state receives?
3. If the state must use custodial money for the purpose for which it was received, then why require that the money be appropriated for "such purposes as specified by law"?
4. Proposed section 24-75-201 (3)(e)(II) requires the General Assembly to "annually appropriate" the money in the fund. Although the General Assembly has the authority to modify that provision, is it your intent that the money in the fund should not be continuously appropriated to the various departments?

5. The amending clause for section 3 of the proposed initiative refers to a new subsection (3)(g). Is the amending clause incorrect, or was a provision inadvertently left out of the initiative?
6. The definition of "fiscal year spending" in article X, section 20 (2)(e) of the Colorado Constitution excludes "gifts, federal funds, . . . damage awards." Section 24-77-102 (17)(b)(II), (17)(b)(III), and (17)(b)(VII), C.R.S., exclude the "interest earned on each of those types of money." If revenue is excluded from fiscal year spending, it is unclear how the state can retain and spend it as a voter-approved revenue change to the fiscal year spending limit.
 - a. Do you intend for the state to be able to retain and spend under proposed section 24-7-201 (3)(f) an amount equal to all custodial funds and the earnings and revenue, regardless of whether any of that money is included in state fiscal year spending? So, for example, if the custodial funds and the related earnings and revenue are equal to \$1 billion and none of that money is included in state fiscal year spending, then the state would still be able to retain and spend \$1 billion and use that money for any purpose.
 - b. Or do you only intend for the state to retain and spend an amount of custodial funds and the related earnings and revenue that are included in state fiscal year spending? So if \$1 million of the \$1 billion from the prior example was actually included in fiscal year spending, then the amount that the state would retain and spend as a voter-approved revenue change under proposed section 24-7-201 (3)(f) would be \$1 million?
 - c. You might consider clarifying this provision to reflect your intent.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The amending clause for section 3 of the proposed initiative should read in part "...**add** (3)(d), (3)(e), and (3)(f)...".