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State of Colorado



**COLORADO GENERAL ASSEMBLY
OFFICE OF LEGISLATIVE LEGAL SERVICES**

091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045 Facsimile (303) 866-4157
E-mail: olls.ga@state.co.us

Senior Attorneys

Deborah F. Haskins Sharon L. Eubanks
Bart W. Miller Dan L. Cartin

Senior Staff Attorneys

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Christine B. Chase Robert S. Lackner
Gregg W. Fraser Thomas Morris
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MEMORANDUM

TO: Representative Keith King

FROM: Office of Legislative Legal Services

DATE: January 22, 2003

SUBJECT: General Assembly's Authority to Rescind a Portion of Public School Funding for the 2002-03 Fiscal Year¹

ISSUES AND CONCLUSIONS:

ISSUE I:

Does section 17 of article IX of the state constitution (Amendment 23) limit or otherwise restrict the General Assembly's authority to set the level of appropriations for public education?

CONCLUSION I:

No, unless growth in personal income for the state equals or exceeds the minimum level established in Amendment 23.

Subsection (1) of Amendment 23 directs that statewide base per pupil funding for public education and total state funding for all categorical programs shall grow

¹ This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, OLLS legal memoranda generally resolve doubts about whether the General Assembly has authority to enact a particular piece of legislation in favor of the General Assembly's plenary power.

annually by specified amounts. The text of subsection (1) does not directly impose a duty on the General Assembly with regard to appropriations for public education.

The first sentence of subsection (5) of Amendment 23 prohibits the use of state education fund moneys to supplant the level of general fund appropriations existing on December 28, 2000, for total program funding and for categorical funding. The text of the first sentence of subsection (5) does not directly impose a duty on the General Assembly to maintain a specific level of appropriations for public education. It merely prohibits the General Assembly from maintaining the same level of appropriations for total program existing on December 28, 2000, by substituting state education fund moneys for general fund moneys.

The second and third sentences of subsection (5) of Amendment 23 require the General Assembly to increase the level of general fund appropriations for district total program funding by at least 5% over the prior year's appropriation unless Colorado personal income does not grow by at least 4.5% between the two prior calendar years. The text of the second and third sentences of subsection (5) directly imposes a duty on the General Assembly with regard to the overall level of general fund appropriations for public education for years in which the state experiences growth in personal income. In years where the minimum level of personal income growth does not occur, Amendment 23 does not impose a duty or requirement on the General Assembly with regard to the level of appropriations for public education.

The General Assembly's power of appropriation is plenary except as limited in the state constitution. While Amendment 23 sets levels of funding growth for public education, it does not limit the General Assembly's plenary power of appropriation, except to require a specified level of growth in general fund appropriations in years in which personal income grows at a specified rate. For years in which personal income does not grow at the specified rate, Amendment 23 is silent as to any limitations, restrictions, or requirements imposed on the General Assembly's plenary power to determine the level of appropriations for state government, including public education.

ISSUE II:

Does Amendment 23 limit the General Assembly's authority to rescind a portion of the general fund appropriation for total program funding for public schools for the 2002-03 fiscal year?

CONCLUSION II:

No. Since Colorado personal income grew by only 3.8% between 2000 and 2001, the 5% maintenance of effort requirement is not triggered for the 2002-03 fiscal year.

Since Amendment 23 does not impose a duty or requirement on the General Assembly with regard to the level of appropriations for public education during years in which personal income does not grow at the minimum rate, it does not limit the General Assembly's authority to rescind a portion of total program funding for public schools.

There are a variety of ways by which the General Assembly may effectuate a rescission, including a reduction in the appropriation for total program funding, which results in a pro rata reduction for all school districts, or a reduction in the appropriation for total program funding accompanied by changes in the formula for calculating total program funding, which may result in greater reductions for some school districts than others.

The General Assembly may also consider reducing the general fund appropriation for total program funding and appropriating more moneys from the state education fund, either by appropriating more from the current fund balance or by redirecting state education fund moneys currently appropriated to other programs. However, if the General Assembly chooses to rescind the general fund appropriation for total program funding below the December 28, 2000, level of general fund appropriations for total program funding, it may not use additional state education fund moneys to restore the level of total program funding above that appropriated for the 2000-01 fiscal year. Restoration with state education fund moneys above this level may result in a violation of the restriction in subsection (5) of Amendment 23 pertaining to the use of state education fund moneys to supplant the level of general fund appropriations in existence on December 28, 2000.

ISSUE III:

How does a reduction in district total program funding in the 2002-03 fiscal year affect district total program funding in future fiscal years?

CONCLUSION III:

If the General Assembly chooses to reduce the amount of general fund appropriations for total program funding for the 2002-03 fiscal year, the reduction may impact the amount of general fund moneys that the General Assembly appropriates for total program in future fiscal years. The 5% maintenance of effort requirement is stated as increasing the general fund appropriation by "an amount not below five percent of the prior year general fund appropriation for total program" Thus, in future years when the 5% general fund appropriation increase is again applicable, the General Assembly will be required to increase the general fund appropriation for total program funding only by 5% over the amount of general fund moneys that was appropriated in the preceding fiscal year.

BACKGROUND:

Amendment 23 Public Education Funding Requirements

Section 17 of article IX of the state constitution, also known as "Amendment 23," establishes growth requirements for certain aspects of public education funding and establishes a fund that the General Assembly may use in appropriating funding to meet these requirements.²

1. Statewide base per pupil funding increase.

Subsection (1) of Amendment 23 requires that the statewide base per pupil funding for public education from preschool through twelfth grade increase annually by at least inflation plus one percentage point for fiscal years 2001-02 through 2010-2011, and by at least inflation for fiscal year 2011-12 and each fiscal year thereafter. In the legislation enacted in the 2001 Regular Session to implement and clarify the provisions of Amendment 23,³ the General Assembly specified that the "statewide base per pupil funding" is "the amount specified for each budget year in section 22-54-104 (5) (a)" of the "Public School Finance Act of 1994," as amended (school finance act).⁴ Statewide base per pupil funding is the base amount to which the district total program formula is applied to determine a school district's total program funding. Under the formula, statewide base per pupil funding is adjusted by the district's cost-of-living factor, personnel and nonpersonnel cost factors, and size factor.⁵

2. State funding increase for categorical programs.

Subsection (1) of Amendment 23 also requires that the total state funding for all categorical programs increase annually by at least inflation plus one percentage point for fiscal years 2001-02 through 2010-2011, and by at least inflation for the 2011-12 fiscal year

² See section 17 of article IX of the state constitution, attached hereto in Addendum A.

³ See article 55 of title 22, C.R.S., attached hereto in Addendum C.

⁴ See Addendum C, section 22-55-102 (14), C.R.S.

⁵ See "School Finance in Colorado," December 2002, prepared by the Colorado Legislative Council Staff, available at http://www.state.co.us/gov_dir/leg_dir/lcsstaff/schfin/02-03-bkt.htm.

and each fiscal year thereafter. Categorical programs are "programs designed to serve special groups of students or student needs."⁶

To comply with the required increase in total state funding for categorical programs, the General Assembly "may annually determine the particular categorical programs for which state funding will be increased" ⁷ Thus, the General Assembly can determine the specific categorical programs that will receive increased funding and the level of increased funding each will receive and can choose not to increase funding for one or more categorical programs.

3. *Creation of the state education fund.*

Subsection (4) of Amendment 23 creates the state education fund. The fund consists of "all state revenues collected from a tax of one third of one percent on federal taxable income . . . of every individual, estate, trust and corporation, as defined in law" These revenues and all interest earned on them are to be deposited in the state education fund, and the moneys in the fund are exempt from the limitation on fiscal year spending established in section 20 of article X of the state constitution. Beginning in fiscal year 2001-02, the General Assembly may annually appropriate moneys from the state education fund, but only for the purpose of meeting the funding increases specified in subsection (1) of Amendment 23 or for any of the purposes specified in the provision.⁸

4. *Maintenance of effort requirement.*

Subsection (5) of Amendment 23, entitled "Maintenance of Effort," contains two requirements pertaining to the level of appropriations for public education, as follows:

⁶ See "Amendment 23: A Brief Overview," February 2001, prepared by the Colorado Legislative Council Staff, at p.1, available at http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2001/research/01Amendment23.htm. As defined in Amendment 23, "categorical programs" include:

. . . transportation programs, English language proficiency programs, expelled and at-risk student programs, special education programs (including gifted and talented programs), suspended student programs, vocational education programs, small attendance centers, comprehensive health education programs, and other current and future accountable programs specifically identified in statute as a categorical program.

⁷ See Addendum C, section 22-55-107 (2), C.R.S.

⁸ Under subsection (4) (b) of Amendment 23, moneys in the state education fund may be used:

. . . for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.

Monies appropriated from the state education fund shall not be used to supplant the level of general fund appropriations existing on [December 28, 2000] for total program education funding . . . and for categorical programs . . . In state fiscal year 2001- 2002 through state fiscal year 2010-2011, the general assembly shall, at a minimum, annually increase the general fund appropriation for total program . . . by an amount not below five percent of the prior year general fund appropriation for total program under the "Public School Finance Act of 1994" . . . This general fund growth requirement shall not apply in any fiscal year in which Colorado personal income grows less than four and one half percent between the two previous calendar years.

First, it appears this provision does not directly prohibit the General Assembly from reducing the level of general fund appropriations for total program funding below the level existing on December 28, 2000, but it precludes the General Assembly from using state education fund moneys to offset the reduction.

Second, this provision directly requires the General Assembly to increase annually the general fund appropriation for total program funding by at least 5% of the prior year's general fund appropriation for total program funding until the 2010-11 fiscal year. This "maintenance of effort" requirement essentially creates a general fund appropriation base for purposes of calculating the required increase in the general fund appropriation for total program funding for the next fiscal year.⁹

However, subsection (5) of Amendment 23 provides an exception to the 5% maintenance of effort requirement when Colorado personal income grows by an amount less than 4.5% between the two calendar years preceding the fiscal year in which the appropriation is made.¹⁰ If the exception is triggered, there are no stated limitations on the General Assembly's power to determine the level of general fund appropriations for total program funding for that fiscal year.

ANALYSIS:

I. Amendment 23 does not limit or otherwise restrict the General Assembly's authority to set the level of appropriations for public schools, except under specified economic conditions.

⁹ As defined in section 22-55-105 (2), C.R.S., the "maintenance of effort base" is the "aggregate amount of general fund appropriations for total program . . . for the immediately preceding state fiscal year . . ." including adjustments to the appropriations through the enactment of supplemental bills and the state backfill for business incentive agreements pursuant to section 22-54-106 (8), C.R.S.

¹⁰ See Addendum A, section 17 (5) of article IX of the state constitution and Addendum C, section 22-55-105 (1), C.R.S.

A. The General Assembly's power of appropriation is plenary or absolute, subject only to constitutional limitations.

In determining whether Amendment 23 imposes any limitations on the General Assembly's authority to set the level of appropriations for public schools, the analysis starts with the general principle that the General Assembly has plenary authority to legislate. The Colorado Supreme Court has repeatedly held that the General Assembly's power is plenary and is limited only by express or implied provisions of the constitution.¹¹ The scope and breadth of legislative power is reflected in the following statement: "Because state legislatures have plenary power for all purposes of civil government, state constitutions are limitations upon that power."¹² Especially when it comes to revenue, spending, and other fiscal matters, the General Assembly has broad legislative responsibilities, subject only to "express or implied restraints imposed thereon by specific constitutional provisions."¹³

Because the General Assembly has the legislative power to enact any laws not forbidden by the constitution, the exact scope of legislative power cannot be precisely defined. Only when the state constitution directly or indirectly addresses the limits of legislative power or when the judiciary defines the extent of that power in the context of a particular decision are the boundaries precisely known.

The General Assembly's plenary power is especially clear with regard to appropriations. The Colorado Supreme Court has stated that "the power of the General Assembly over appropriations is absolute."¹⁴ The Court characterized this power as that of determining "the objects and level of support to which the public revenues may be put"¹⁵ In short, the General Assembly has authority to determine the amount of state funds to be spent for particular purposes and appropriated amounts may increase or decrease.

How the General Assembly views its constitutional power of appropriations, including its authority to increase and reduce the level of appropriations, is set forth in sections 2-4-215 and 2-4-216, C.R.S.¹⁶ Section 2-4-215, C.R.S., specifies that each General Assembly is a

¹¹ *People v. Y.D.M.*, 197 Colo. 403, 593 P.2d 1356 (1979).

¹² *Colorado State Civil Service Employees Ass'n v. Love*, 167 Colo. 436, 448, 448 P.2d 624, 628 (1968).

¹³ *Dempsey v. Romer*, 825 P.2d 44, 51 (Colo. 1992).

¹⁴ *Colorado General Assembly v. Lamm*, 700 P.2d 508, 519 (Colo. 1985).

¹⁵ *Id.*

¹⁶ See sections 2-4-215 and 2-4-216, C.R.S., attached hereto in Addendum B.

separate entity and that acts of one General Assembly are not binding on future General Assemblies. Specifically, legislation passed by one General Assembly requiring an appropriation shall not bind future General Assemblies. Thus, the General Assembly must annually determine the amount of state revenues to be appropriated for the various programs and functions of state government.

Section 2-4-215, C.R.S., also clarifies that the General Assembly does not commit itself to any particular level of funding for a statutory program and that the level of funding for a program is in the "full and complete discretion of the General Assembly." In section 2-4-216, C.R.S., the General Assembly continues discussing the General Assembly's discretion in setting funding levels for state programs. Specifically, when determining the level of funding for a state program, the General Assembly takes "into account many factors, including but not limited to the availability of revenues, the importance of the program, and needs of recipients when balanced with the needs of recipients under other state programs."

Thus, constitutionally and statutorily, the General Assembly alone determines the level of funding for a state program. This plenary power can only be restricted by a limitation expressed or implied in the constitution.

B. Absent a limitation in Amendment 23, the General Assembly retains plenary power to set the level of appropriations for all of state government, including public education.

In determining whether the provisions of Amendment 23 expressly or impliedly limit the General Assembly's plenary power of appropriation, a court will look first to the language of the amendment and attempt to interpret it using the "plain meaning rule." The rule is generally stated as follows: "Where the language used is plain, its meaning clear, and no absurdity is involved, Constitution, statute, or contract, must be declared and enforced as written."¹⁷

¹⁷ *People ex rel. Park Reservoir Co. v. Hinderlider*, 98 Colo. 505, 507, 57 P.2d 894, 895 (1936). The following explanation of this rule is set forth in *Colorado State Civil Service Employees Association v. Love*, 167 Colo. 436, 445, 448 P.2d 624, 627 (1968):

Whether we are considering an agreement between parties, a statute or a constitution, with a view to its interpretation, the thing which we are to seek is the thought which it expresses. To ascertain this the first resort in all cases is to the natural signification of the words employed in the order of grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument, and neither courts nor legislatures have a right to add to or take away from that meaning.

When interpreting the language of state constitutional provisions, the courts follow the general rule of constitutional construction "that the language of our constitution, so far as possible, must be given its ordinary meaning, and the words thereof their common interpretation."¹⁸ With regard to constitutional amendments, the words used in the amendment must be given their "natural and popular meaning usually understood by the people who adopted them."¹⁹ Effect must be given, if possible, to every word, and one must consider the object to be accomplished and the mischief to be avoided by the provision at issue.²⁰

Amendment 23 requires the statewide base per pupil funding and the total state funding for categorical programs to increase by the rate of inflation plus one percentage point for the 2002-03 fiscal year.²¹ Statewide base per pupil funding is a single component of the statutory formula used to determine a school district's total program funding. Thus, the plain meaning of Amendment 23 requires statewide base per pupil funding to increase, but it does not address the level of state funding for total program funding. Amendment 23 does not limit the General Assembly's authority to determine the formula for total program funding or the level of state appropriations for total program funding.²²

More importantly, however, Amendment 23 does not state that funding the increase in statewide base per pupil funding and the increase in funding for categorical programs must take priority over funding for all other state programs. Subsection (1) of Amendment 23

¹⁸ *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo. 1999).

¹⁹ *City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1114 (Colo. 1996) (citing *Urbish v. Lamm*, 761 P.2d 756, 760 (Colo. 1988)).

²⁰ *City of Aurora v. Acosta*, 892 P.2d 264 (Colo. 1995); *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995) (citing *People v. Y.D.M.*, 197 Colo. 403, 593 P.2d 1356 (1979)); *Havens v. Board of County Commissioners of Archuleta County*, 924 P.2d 517 (Colo. 1996) (citing *Nicholl*, 896 P.2d 859).

²¹ For purposes of determining the amount of the required increases for the 2002-03 fiscal year, the applicable inflation rate is four and seven-tenths percent (4.7%). Accordingly, for the 2002-03 fiscal year, the General Assembly is required to increase the statewide base per pupil funding and the total state funding for categorical programs by at least 5.7%.

²² The difference between statewide base per pupil funding and district total program funding was discussed during a review and comment hearing on one of the proposed versions of Amendment 23, and the proponents of the measure acknowledged that their intent was to require statewide base per pupil funding, and not total program funding, to increase by inflation plus one percent. In fact, the proponents specifically stated that since the rest of the factors affecting total program funding are "very fluid," their intent was to ensure that the statewide base per pupil funding increases by the rate of inflation plus one percentage point. Moreover, when it was pointed out to the proponents that even if the base increases by inflation plus 1%, a district's total program funding may not increase by that same amount because the district may lose a portion of its pupils or be negatively impacted by another factor in the formula, proponent Cary Kennedy's response was, "Okay, good. I think that is . . . that is our intent." See Addendum D.

states that statewide base per pupil funding and funding for categorical programs "shall grow annually," but it does not impose an absolute duty on the General Assembly to appropriate sufficient funds, regardless of economic or other circumstances, to ensure that such growth occurs. In the absence of language directly imposing on the General Assembly a duty to assure that the funding increases contemplated in subsection (1) of Amendment 23 take priority over funding all other state programs, the General Assembly retains its power to determine the level of funding for all state programs, including but not limited to, public education. Limitations on the General Assembly's plenary power cannot be lightly implied when not expressly stated in a constitutional provision.²³

Instead of imposing a duty on the General Assembly to prioritize the funding increases under subsection (1), Amendment 23 diverts one third of one percent of the income tax collected by the state into the state education fund and states that the General Assembly "may" use it to fund the growth requirements in subsection (1). Next, Amendment 23 states that the General Assembly cannot use state education fund moneys to reduce the level of general fund appropriations below that existing on December 28, 2000. Finally, Amendment 23 states that the General Assembly must increase the general fund appropriations for total program education funding under the "Public School Finance Act of 1994" by 5% per year for fiscal years 2001-02 through 2010-2011, but does not impose this requirement for fiscal years in which Colorado personal income grows less than 4.5% between the two previous calendar years.

Nowhere in Amendment 23 does it directly limit the General Assembly's power to balance the priorities within state government and the needs of persons receiving services from state programs. Amendment 23 does not state that funding the required increase in statewide base per pupil funding and funding for categorical programs is an absolute requirement that the General Assembly must place ahead of all other funding requirements for state government.²⁴

At most, subsection (1) of Amendment 23 may imply that the General Assembly has a duty to fund an annual increase in statewide base per pupil funding and funding for

²³ Constitutional Law, 16 C.J.S. §18 (1984).

²⁴ Other constitutional sections that impose restrictions on the General Assembly's power to appropriate state these restrictions explicitly. See article XXIV of the state constitution creating the old age pension fund, identifying the revenues that must be deposited in the fund, specifying the exclusive use of moneys in the old age pension fund, and requiring that the fund remain inviolate. See also section 18 of article X of the state constitution which states taxes or charges relating to the operation of motor vehicles and taxes on fuel shall be "used exclusively" for the public highways and taxes on aviation fuel shall be "used exclusively" for aviation purposes. The courts have interpreted this provision as limiting the General Assembly's power over these funds. *Johnson v. McDonald*, 97 Colo. 324, 49 P.2d 1017 (1935).

categorical programs. However, the fact that this duty is implicit, and not explicit, creates a textual ambiguity. This ambiguity is not resolved by the ballot analysis prepared for Amendment 23.²⁵ The analysis discusses the required increases in per pupil funding for public schools and total state funding for categorical programs, but does not state that the General Assembly has a duty under Amendment 23 to allocate funds for these increases or that funding for these increases must take priority over funding for other state programs.²⁶

Because an ambiguity exists in subsection (1) of Amendment 23, the General Assembly has the power to interpret this provision²⁷ and resolve the ambiguity in light of other constitutional provisions.²⁸ "In enacting legislation, the General Assembly is authorized to resolve ambiguities in constitutional amendments in a manner consistent with the terms and underlying purposes of the constitutional provisions."²⁹ In addition, "an interpretation which harmonizes different constitutional provisions is favored over one that would create a conflict between them."³⁰ This includes harmonizing the requirements of Amendment 23 with the General Assembly's plenary power over appropriations and funding priorities.

²⁵ In attempting to resolve an ambiguity in an initiated amendment, a court will attempt to determine what voters believed the amendment meant when they voted for it. *City of Wheat Ridge v. Cerveney*, 913 P.2d 1110 (Colo. 1996).

²⁶ See "An Analysis of the 2000 Statewide Ballot Proposals", September 11, 2000, Research Publication No. 475-0, prepared by the Colorado Legislative Council Staff, at pp. 9-13. The arguments for the amendment do not state that public education funding will take priority over funding for other state programs if Amendment 23 is adopted. The arguments against the measure state that "allocating money through the constitution reduces the state legislature's flexibility to respond to changing state needs" and argues that the measure "obligates state taxpayers to fund the five percent annual increase in state aid, competing with other state general fund commitments under current funding restrictions." But the argument refers only to the 5% maintenance of effort requirement and does not suggest that the funding increases in subsection (1) of Amendment 23 would impose a duty on the General Assembly beyond this requirement.

²⁷ ". . . in the performance of its assigned constitutional duties, each branch of government must initially interpret the Constitution, and the interpretation of it powers by any branch is due great respect from the other branches." Constitutional Law, 16 C.J.S. §17 (1984).

²⁸ When interpreting a constitution, all of its provisions "should be construed together so as to harmonize in their application, if possible, with a view to giving effect to each and every provision in so far as it shall be consistent with a construction of the instrument as a whole." Constitutional Law, 16 C.J.S. §27 (1984).

²⁹ *In re Great Outdoors Colo. Trust Fund*, 913 P.2d 533, 539 (Colo. 1996). Also see *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1, 11 (Colo. 1993).

³⁰ *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994), citing *Colorado Common Cause v. Bledsoe*, 810 P.2d 201, 207 (Colo. 1991).

During the 2001 Regular Session, the General Assembly adopted implementing legislation for Amendment 23. In a legislative declaration, the General Assembly recognized a duty to comply with the requirements of Amendment 23 and recognized that these requirements would affect the amount of money available to fund other state programs and services. The General Assembly also recognized a duty to preserve the viability of the state education fund.³¹ While these declarations reflect the intentions of the General Assembly at that time, they are not binding on a future General Assembly.³² The current General Assembly retains the authority to continue balancing the interests of public education under Amendment 23 and the interests of the other programs and functions of state government and to amend these statutory declarations, if necessary.

The General Assembly must interpret and apply the provisions of Amendment 23, recognizing the voters' expectations that funding for public education will increase, but also recognizing the competing funding needs of all of state government. This interpretation requires that the General Assembly retain its plenary power to determine the appropriate balance of functions and programs within state government, including public education, and to set appropriate spending levels to meet that balance.

Although some may read the wording of subsection (1) of Amendment 23 as establishing an absolute (i.e. "shall grow annually"), the courts have often interpreted other seemingly mandatory statements as being subject to the plenary power of the General Assembly to balance the needs of citizens and the burdens imposed on them.

For example, section 13 of article II of the state constitution states that "[t]he right of no person to keep and bear arms in defense of his home, person and property . . . shall be called in question" However, the Colorado Supreme Court has repeatedly held that the right to bear arms is not absolute and may be limited by the General Assembly in the exercise of its police powers. See *People v. Garcia*, 197 Colo. 550, 595 P.2d 228 (1979); *People v. Blue*, 190 Colo. 95, 544 P.2d 385 (1975). Similarly, section 10 of article II of the state constitution states that "[n]o law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will" But the Colorado Supreme Court has held that constitutional guarantees are not always absolute and full exercise thereof is not always possible. See *Stapleton v. District Court*, 179 Colo. 187, 499 P.2 310 (1972). Further, section 7 of article IX of the state constitution states that "[n]either the general assembly, nor any county . . . shall ever make any appropriation, or pay from any public fund or moneys whatever, anything . . . to help support or sustain any . . . college,

³¹ See Addendum C, section 22-55-101, C.R.S.

³² See Addendum B, section 2-4-215 (1), C.R.S., ". . . each general assembly is a separate entity, and the acts of one general assembly are not binding on future general assemblies"

university . . . controlled by any church or sectarian denomination whatsoever" But the Colorado Supreme Court has held that an educational grant program available to students at public and private universities, including the Jesuit-run Regis University, does not amount to constitutionally significant aid to a sectarian educational institution. See *Americans United for Separation of Church & State Fund, Inc. v. State*, 648 P.2d 1072 (Colo. 1982).

Without a clear statement limiting the plenary power of the General Assembly to appropriate funds, it is reasonable to conclude that Amendment 23 does not impose such a limitation. If the drafters of Amendment 23 had intended to impose such a limitation, they could have easily included the language to do so, as evidenced by the inclusion of the language in subsection (5) of Amendment 23 that imposes the 5% maintenance of effort requirement in certain years. Without a clear limitation, the General Assembly retains the authority to determine how much to appropriate from the general fund and how much to appropriate from the state education fund when appropriating moneys for public education, except as specifically limited in subsection (5) of Amendment 23.

In fiscal years in which there are sufficient funds in the state education fund or sufficient funds in the general fund to fully fund both the required increases in subsection (1) of Amendment 23 and all other aspects of state government, the General Assembly would be prudent to do so. But it remains the General Assembly's prerogative to balance the needs of public education, including the funding increases included in Amendment 23, and the needs of the other programs and functions of state government and determine the level of appropriations for all of state government.

II. Amendment 23 does not limit the General Assembly's authority to rescind a portion of the general fund appropriation for total program funding for public schools for the 2002-03 fiscal year.

A. The 5% general fund maintenance of effort requirement does not apply to the 2002-03 fiscal year, so the General Assembly may rescind a portion of the 2002-03 general fund appropriation for total program funding.

With regard to the 5% maintenance of effort requirement, the general fund appropriation for district total program funding was increased by 7.46%, or \$154.6 million, for the 2002-03 fiscal year.³³ However, Colorado personal income grew by only 3.8%

³³ In order to fund the increase in the state share of district total program funding over the 2001-02 level of funding required for the 2002-03 fiscal year, the General Assembly appropriated an additional \$154.6 million from the general fund and \$72.8 million from the state education fund and reduced the appropriation from the state public school fund by \$2.4 million. The \$154.6 million general fund appropriation for district total program is an increase of 7.46% over the general fund appropriation for district total program for the 2001-02 fiscal year. [continued . . .]

between calendar years 2000 and 2001. Therefore, the exception to the 5% maintenance of effort requirement is triggered for the 2002-03 fiscal year, and the General Assembly is not required to increase the general fund appropriation for total program funding for the 2002-03 fiscal year by 5% over the prior year's general fund appropriation level.

In years when the 5% maintenance of effort requirement is not applicable, the only remaining limitation on the General Assembly's power of appropriation appears to be the first sentence of subsection (5) of Amendment 23, which prohibits the General Assembly from appropriating moneys in the state education fund "to supplant" the level of general fund appropriations existing on December 28, 2000, for total program funding. In determining the meaning of this sentence, a court would begin by attempting to interpret the plain language of the provision. The New College Edition of the American Heritage Dictionary defines "supplant" as follows: "To take the place of; supersede or oust."

Applying this definition, the sentence appears to prohibit the General Assembly from reducing the level of general fund appropriations for total program funding existing on December 28, 2000, and then maintaining that level of funding for total program by using state education fund moneys to take the place of the general fund moneys that were reduced. The sentence does not, however, prohibit the General Assembly from reducing the level of general fund appropriations for total program funding in existence on December 28, 2000, and not replacing those funds.

Because the maintenance of effort requirement does not apply for the 2002-03 fiscal year, it appears that the General Assembly could reduce the level of the general fund appropriation for district total program for that year. Based on the plain meaning of the language in the constitution, Amendment 23 does not contain any explicit or implicit provision that would otherwise limit the plenary power of the General Assembly to enact a rescission of the general fund appropriation for fiscal year 2002-03.

The General Assembly has a variety of options in determining how to effect such a rescission. The General Assembly could choose to simply enact a "negative" supplemental to reduce the fiscal year 2002-03 general fund appropriation for total program funding under the "Public School Finance Act of 1994." This would result in insufficient moneys to fully fund the state share of total program funding. Under section 22-54-106 (4) (c), C.R.S., if a supplemental appropriation is made to reduce the state's share of the total program funding of all districts, the Department of Education is required to decrease the state aid for each school district on a pro rata basis.

[. . . continued]

Thus, the General Assembly increased the general fund appropriation for district total program by an additional 2.46% above the 5% maintenance of effort increase specified in section 17 (5) of Amendment 23.

The General Assembly could also choose to enact a negative supplemental to reduce the general fund appropriation for total program funding and to statutorily adjust the factors in the formula used to calculate total program. This would presumably result in greater reductions for some school districts than for others.

The General Assembly could also choose to enact a negative supplemental to reduce the general fund appropriation for total program funding and to redirect moneys in the state education fund that were previously appropriated to fund other programs. As stated previously, Amendment 23 created the state education fund as a possible funding source for the increases required in subsection (1) of Amendment 23. If the General Assembly determines there are insufficient moneys in the general fund to meet the funding increases specified in subsection (1), it may choose to direct more of the state education fund moneys toward meeting these requirements. However, if the General Assembly chooses to rescind the general fund appropriation for total program funding below the December 28, 2000, level of general fund appropriations for total program funding, it may not use additional state education fund moneys to restore the level of total program funding above that appropriated for the 2000-01 fiscal year. Using state education fund moneys to increase total program funding above this level may result in a violation of the provision of subsection (5) of Amendment 23, which prohibits the use of state education fund moneys to supplant the level of general fund appropriations in existence on December 28, 2000.

III. Reducing district total program funding in the 2002-03 fiscal year may result in lower district total program funding in future fiscal years.

As previously discussed, the General Assembly must annually exercise its plenary power to determine the amount of state revenues to be appropriated for total program and categorical programs for a given fiscal year in light of any applicable limitations and requirements set forth in the state constitution.³⁴ If, as a result of determining "the objects and level of support to which public revenues may be put,"³⁵ the General Assembly reduces the amount of general fund moneys initially appropriated for total program for the 2002-03 fiscal year, such a reduction may impact the amount of general fund moneys that the General Assembly appropriates for total program in future fiscal years.

Lowering the general fund appropriation for total program funding in any given fiscal year will reduce any cumulative increase in state general fund appropriations for total program that has occurred since the adoption of Amendment 23. Since the 5% maintenance

³⁴ For example, the General Assembly must take into consideration the "thorough and uniform" requirement of article IX, section 2 of the Colorado constitution as well as any applicable requirements of Amendment 23.

³⁵ *General Assembly v. Lamm*, 700 P.2d 508, 520 (Colo. 1985).

of effort requirement is not triggered for the 2002-03 fiscal year, and it appears that the requirement will not be triggered for the 2003-04 fiscal year,³⁶ the General Assembly may reduce the amount of general fund appropriations for total program in those fiscal years as described previously. Once the 5% maintenance of effort requirement is again triggered,³⁷ this constitutional requirement only mandates the general fund appropriation for total program to be increased by 5% over "the prior year general fund appropriation for total program"³⁸ Therefore, the required 5% increase will be based upon the reduced level of general fund appropriations allowed for the previous fiscal year when the 5% maintenance of effort requirement is not triggered. Accordingly, total program funding will not grow as rapidly as it would have grown absent any reduction in general fund appropriations.

Reducing the amount of general fund moneys appropriated for total program for the 2002-03 fiscal year may also increase the expenditure of moneys from the state education fund.³⁹ Although subsection (5) of Amendment 23 states that state education moneys cannot be used to supplant general fund appropriations for total program below the December 28, 2000, level,⁴⁰ this provision does not prohibit the General Assembly from increasing the amount of state education fund appropriations used to offset the reduction of general fund appropriations down to the December 28, 2000, level, or some level in between, if the state education fund moneys are used to fund any increase in the amount of statewide base per pupil funding.⁴¹

Any increase in the amount of state education fund appropriations due to the reduction of general fund appropriations for total program in the 2002-03 fiscal year will adversely

³⁶ The Legislative Council Staff has estimated personal income to grow by only 1.4% in 2002 and 3.0% in 2003, so the 5% maintenance of effort requirement for the general fund appropriation for total program is not triggered for the 2003-04 and 2004-05 fiscal years. Colorado Legislative Council Staff Forecasts, 2002-2008, December 2002, p. 46, available at [http://www.state.co.us/gov_dir/leg_dir/lcs/focus/2002/December 2002/Forecast02-12.pdf](http://www.state.co.us/gov_dir/leg_dir/lcs/focus/2002/December%202002/Forecast02-12.pdf).

³⁷ Presumably, Colorado personal income will again grow by 4.5% or more in one or more fiscal years in the future, thereby triggering the 5% maintenance of effort requirement.

³⁸ See Addendum A, section 17 (5) of article IX of the state constitution.

³⁹ Report on the State Education Fund, Colorado Legislative Council Staff, dated February 1, 2002, p. 8. This report may be found at http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2002/research/02StateEducationFund.PDF.

⁴⁰ See Addendum A, section 17 (5) of article IX of the state constitution.

⁴¹ Section 17 (4) of article IX of the state constitution states: "Monies in the state education fund may only be used to comply with subsection (1) of this section and for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction."

affect the amount of moneys in the fund available for appropriation in future fiscal years for funding total program and other permissible uses. As noted by Legislative Council Staff Chief Economist Tom Dunn in his February 1, 2002, report on the state education fund, increased spending from the state education fund will negatively impact the viability of the fund in the long term.⁴² Accordingly, any additional appropriations from the state education fund now will affect the General Assembly's ability to use moneys in the fund in future years. Absent any increased availability of revenues from other sources, any decrease in available state education fund moneys may result in a greater demand on general fund moneys to meet the level of total program funding established by the General Assembly in the future, as well as funding other education programs and services currently funded from the state education fund.

There may be additional effects that a rescission may have on the amount of total program funding in future fiscal years, depending on the manner in which the rescission is accomplished. However, it is difficult to ascertain with any certainty such impact, if any, and any possible related legal issues without knowing the particular manner in which a rescission is made.

⁴² Report on the State Education Fund, *supra*, note 39.

ADDENDUM A

Colorado Constitution, Article IX, Section 17.

Section 17. Education - Funding. (1) **Purpose.** In state fiscal year 2001-2002 through state fiscal year 2010- 2011, the statewide base per pupil funding, as defined by the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes on the effective date of this section, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at least by the rate of inflation plus an additional one percentage point. In state fiscal year 2011-2012, and each fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at a rate set by the general assembly that is at least equal to the rate of inflation.

(2) **Definitions.** For purposes of this section: (a) "Categorical programs" include transportation programs, English language proficiency programs, expelled and at-risk student programs, special education programs (including gifted and talented programs), suspended student programs, vocational education programs, small attendance centers, comprehensive health education programs, and other current and future accountable programs specifically identified in statute as a categorical program.

(b) "Inflation" has the same meaning as defined in article X, section 20, subsection (2), paragraph (f) of the Colorado constitution.

(3) **Implementation.** In state fiscal year 2001-2002 and each fiscal year thereafter, the general assembly may annually appropriate, and school districts may annually expend, monies from the state education fund created in subsection (4) of this section. Such appropriations and expenditures shall not be subject to the statutory limitation on general fund appropriations growth, the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution, or any other spending limitation existing in law.

(4) **State Education Fund Created.** (a) There is hereby created in the department of the treasury the state education fund. Beginning on the effective date of this measure, all state revenues collected from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall be deposited in the state education fund. Revenues generated from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall not be subject to the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution. All interest earned on monies in the state education fund shall be deposited in the state education fund and shall be used before any principal is depleted. Monies remaining in the state education fund at the end of any fiscal year shall remain in the fund and not revert to the general fund.

(b) In state fiscal year 2001-2002, and each fiscal year thereafter, the general assembly may annually appropriate monies from the state education fund. Monies in the state education fund may only be used to comply with subsection (1) of this section and for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.

(5) **Maintenance of Effort.** Monies appropriated from the state education fund shall not be used to supplant the level of general fund appropriations existing on the effective date of this section for total program education funding under the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, and for categorical programs as defined in subsection (2) of this section. In state fiscal year 2001- 2002 through state fiscal year 2010-2011, the general assembly shall, at a minimum, annually increase the general fund appropriation for total program under the "Public School Finance Act of 1994," or any successor act, by an amount not below five percent of the prior year general fund appropriation for total program under the "Public School Finance Act of 1994," or any successor act. This general fund growth requirement shall not apply in any fiscal year in which Colorado personal income grows less than four and one half percent between the two previous calendar years.

Enacted by the People November 7, 2000 -- Effective upon proclamation of the Governor, December 28, 2000.

ADDENDUM B

2-4-215. Each general assembly a separate entity - future general assemblies not bound by acts of previous general assemblies. (1) The general assembly finds and declares, pursuant to the constitution of the state of Colorado, that each general assembly is a separate entity, and the acts of one general assembly are not binding on future general assemblies. Accordingly, no legislation passed by one general assembly requiring an appropriation shall bind future general assemblies.

(2) Furthermore, the general assembly finds and declares that when a statute provides for the proration of amounts in the event appropriations are insufficient, the general assembly has not committed itself to any particular level of funding, does not create any rights in the ultimate recipients of such funding or in any political subdivision or agency which administers such funds, and clearly intends that the level of funding under such a statute is in the full and complete discretion of the general assembly.

2-4-216. Limitations on statutory programs. (1) When the general assembly creates statutory programs which are not required by federal law and which offer and provide services or assistance or both to persons in this state, the general assembly gives rise to a reasonable expectation that such services or assistance or both will be provided by the state in a manner consistent with the statutes which created the programs. However, the general assembly does not commit itself or the taxpayers of the state to the provision of a particular level of funding for such programs and does not create rights in the ultimate recipient to a particular level of service or assistance or both. The general assembly intends that the level of funding, and thus the level of service or assistance or both, shall be in the full and complete discretion of the general assembly, consistent with the statute which created the program.

(2) In the statutes creating some of these programs, the general assembly expressly conditions any rights arising under such programs by the use of the words "within available appropriations" or "subject to available appropriations" or similar words of limitation. The purpose of the use of these words of limitation is to reaffirm the principles set forth in subsection (1) of this section.

(3) At the time such a program is created, the general assembly appropriates funds for its implementation, taking into account many factors, including but not limited to the availability of revenues, the importance of the program, and needs of recipients when balanced with the needs of recipients under other state programs. The amount of the initial appropriation indicates a program's priority in relation to other state programs. The general assembly reasonably expects that the priority of the program will be subject to annual changes which will be reflected in the modification of the annual appropriation for the program. If the general assembly desires a substantive change in the program, or to eliminate

the program, that can be accomplished by amendment of the statutory law which created the program.

(4) It is the purpose of the general assembly, through the enactment of this section, to clarify that the rights, if any, created through the enactment of statutory programs are subject to substantial modification through the annual appropriation process, so long as the modification is consistent with the statute which created the program.

ADDENDUM C

Article 55 of Title 22, Colorado Revised Statutes State Policies Relating to Section 17 of Article IX of the State Constitution

22-55-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 17 of article IX of the state constitution, which was approved by the registered electors of this state at the 2000 general election, requires the general assembly to increase funding for preschool through twelfth grade public education and for categorical programs.

(b) Specifically, section 17 of article IX of the state constitution requires:

(I) A specified percentage of state income tax revenues collected on income earned on or after December 28, 2000, to be diverted to a newly created state education fund from which moneys may be appropriated only for specified education-related purposes;

(II) The general assembly to annually increase the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs by at least the rate of inflation plus one percentage point for state fiscal years 2001-02 through 2010-11, and by at least the rate of inflation for state fiscal year 2011-2012 and each succeeding state fiscal year; and

(III) The general assembly to annually increase the general fund appropriation for total program education funding under the "Public School Finance Act of 1994", article 54 of this title, or any successor act, for each state fiscal year from 2001-02 through 2010-11 by at least five percent over the amount of the prior year's general fund appropriation for total program education funding, unless Colorado personal income grows less than four and one-half percent between the two calendar years preceding the state fiscal year in which an appropriation is made.

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

(a) It is the duty and intent of the general assembly to comply with the requirements of section 17 of article IX of the state constitution.

(b) It is within the legislative prerogative of the general assembly to enact legislation to implement section 17 of article IX of the state constitution that will ensure compliance with the requirements of said section 17 of article IX and facilitate its operation.

(c) In enacting legislation to implement section 17 of article IX of the state constitution:

(I) The general assembly has attempted to interpret the provisions of section 17 of article IX of the state constitution in a manner that gives its words their natural and obvious significance.

(II) The general assembly has attempted to ascertain the intent of the proponents who initiated section 17 of article IX of the state constitution and the voters who adopted it and

to apply other generally accepted rules of constitutional construction where the meaning of said section 17 of article IX is uncertain.

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

(a) Because the amount of funding provided for the prior state fiscal year plays a significant role in the calculation of the minimum amount of the increase in state appropriations for education required for each state fiscal year by section 17 of article IX of the state constitution, the amount of money that the state will be required to spend for education funding for each state fiscal year will increase dramatically over time due to a compounding effect.

(b) Since section 17 of article IX of the state constitution does not create any new tax, increase the rate of any existing tax, or otherwise increase the amount of revenues that will be collected by the state, some of the increases in state education funding that said section 17 of article IX requires will affect the amount of money available to fund other state programs and services.

(c) In enacting legislation to implement section 17 of article IX of the state constitution, it is the duty, intent, and legislative prerogative of the general assembly to mitigate any adverse impact that the state education funding requirements of said section 17 of article IX may have on the financial condition of the state and other state programs and services by ensuring that moneys are credited to the state education fund, invested while in the fund, and expended from the fund in a manner that will ensure that the fund remains viable and that fund moneys will always be available to meet a significant portion of the long-term state education funding requirements of said section 17 of article IX.

(d) This article reflects the considered judgment of the general assembly regarding the meaning and implementation of the provisions of section 17 of article IX of the state constitution.

22-55-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accountability reporting" means any requirement established in law that mandates public school districts to report or provide information relative to school improvement to the state board or the department, including, but not limited to:

(a) Data collection and reporting requirements that are required pursuant to part 6 of article 7 of this title in connection with school report cards;

(b) Reporting requirements in connection with the administration and implementation of the Colorado student assessment program developed pursuant to part 4 of article 7 of this title; or

(c) Requirements related to the education accreditation process set forth in article 11 of this title.

(2) (a) "Accountable education reform" means any program or plan for reforming preschool through twelfth grade education in the state that complies with accountability standards imposed by law on public school districts in the state, including, but not limited to, the requirements set forth in:

(I) Part 6 of article 7 of this title relating to school report cards; and
(II) Part 4 of article 7 of this title relating to the Colorado student assessment program.

(b) "Accountable education reform" includes any program or plan for improving teacher quality.

(c) "Accountable education reform" includes any program for improving student academic achievement that conforms with the requirements of federal programs related to student achievement.

(3) "Accountable programs to meet state academic standards" include, but are not limited to, programs designed to assist students in demonstrating improved academic achievement on student assessments administered under the Colorado student assessment program developed pursuant to part 4 of article 7 of this title. "Accountable programs to meet state academic standards" include, but are not limited to, programs:

- (a) For the purchase of additional or improved textbooks;
- (b) To provide incentives to increase parental involvement;
- (c) To improve literacy; or
- (d) To provide assistance with English language proficiency beyond what is currently provided pursuant to the English language proficiency program established pursuant to section 22-24-104.

(4) "Categorical programs" include only the following programs:

- (a) Public school transportation as described in article 51 of this title;
- (b) The English language proficiency program created in section 22-24-104;
- (c) The expelled and at-risk student services grant program created in section 22-33-205;
- (d) Special education programs for children with disabilities as described in article 20 of this title;
- (e) Special education programs for gifted children as described in article 20 of this title;
- (f) The grant program for in-school or in-home suspension described in article 37 of this title;
- (g) Vocational education as described in article 8 of title 23, C.R.S.;
- (h) Small attendance centers for which state aid is available pursuant to section 22-54-122;
- (i) The comprehensive health education program created in section 22-25-104; and
- (j) Other current and future accountable programs specifically identified in statute as a categorical program.

(5) "Department" means the department of education created and existing pursuant to section 24-1-115, C.R.S.

(6) "Federal taxable income, as modified by law" means federal taxable income as modified by sections 39-22-104, 39-22-304, 39-22-509, and 39-22-518, C.R.S., and as apportioned under section 39-22-303 or 39-22-303.1, C.R.S., to the extent federal taxable

income is not being modified to effectuate a refund of excess state revenues required pursuant to section 20 of article X of the state constitution, earned on or after December 28, 2000.

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

(8) "Kindergarten programs" include, but are not limited to, the full-day kindergarten program described in section 22-28-104 (2) (d) (II).

(9) "Performance incentives for teachers" include, but are not limited to, programs that:

- (a) Promote teacher retention;
- (b) Promote teacher recruitment;
- (c) Promote teacher use of technology; or
- (d) Provide salary incentives based in whole or in part on student performance.

(10) "Preschool programs" include, but are not limited to, the state preschool program created pursuant to section 22-28-104.

(11) "State board" means the state board of education created and existing pursuant to section 1 (1) of article IX of the state constitution.

(12) "State education fund" means the state education fund created pursuant to section 17 (4) of article IX of the state constitution and section 22-55-103.

(13) "State education fund revenues" means revenues collected from a tax of one-third of one percent on federal taxable income, as modified by law, of every individual, estate, trust, and corporation, as defined in law, that are required to be transferred to the state education fund pursuant to section 17 (4) (a) of article IX of the state constitution.

(14) "Statewide base per pupil funding" means the amount specified for each budget year in section 22-54-104 (5) (a).

(15) "Statutory limitation on general fund appropriations growth" means the limitation on annual general fund appropriations set forth in section 24-75-201.1, C.R.S.

(16) "Student safety" includes, but is not limited to, any plan, program, or project designed to improve the safety of the physical environment of preschool through twelfth grade students while on property owned or under the control of the school district.

(17) "Technology education" includes, but is not limited to, any plan, program, or project designed to enhance the computer and telecommunication skills of preschool through twelfth grade students and teachers or improve instruction through technology application.

(18) "Total program" or "total program education funding" means a district's total program as determined pursuant to section 22-54-104 (1).

(19) "Total state funding for all categorical programs" means the aggregate amount of state funding for all categorical programs in any given fiscal year, including any adjustments made to said funding through the enactment of a supplemental appropriation bill or bills for that fiscal year.

22-55-103. State education fund - creation - transfers to fund - use of moneys in fund - permitted investments - exempt from spending limitations. (1) In accordance with section 17 (4) of article IX of the state constitution, there is hereby created in the state treasury the state education fund. The fund shall consist of state education fund revenues, all interest and income earned on the deposit and investment of moneys in the fund, and any gifts or other moneys that are exempt from the limitation on state fiscal year spending set forth in section 20 (7) (a) of article X of the state constitution and section 24-77-103, C.R.S., that may be credited to the fund. All interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any state fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not revert to the general fund or any other fund.

(2) (a) The legislative council, in consultation with the office of state planning and budgeting, shall calculate the amount of state education fund revenues for the period commencing December 28, 2000, and ending June 30, 2001, and the amount of state education fund revenues for each state fiscal year commencing on or after July 1, 2001. The legislative council and the office of state planning and budgeting shall rely upon the quarterly state revenue estimates issued by the legislative council in calculating such amounts and shall update its calculations no later than five days following the issuance of each quarterly state revenue estimate.

(b) To ensure that all state education fund revenues are transferred to the state education fund and that other state revenues are not erroneously transferred to the fund:

(I) No later than two days after calculating or recalculating the amount of state education fund revenues for the period commencing December 28, 2000, and ending June 30, 2001, or for any state fiscal year commencing on or after July 1, 2001, the legislative council, in consultation with the office of state planning and budgeting, shall certify to the department of revenue the amount of state education fund revenues that the department shall transfer to the state treasurer for deposit into the state education fund on the first day of each of the three succeeding calendar months as required by paragraph (c) of this subsection (2);

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), no later than May 25 of any state fiscal year commencing on or after July 1, 2000, the legislative council, in consultation with the office of state planning and budgeting, may certify to the department of revenue an adjusted amount for any transfer to be made on the first business day of the immediately succeeding June; and

(III) Subject to review by the state auditor, the legislative council, in consultation with the office of state planning and budgeting, may correct any error in the total amount of state education fund revenues transferred during any state fiscal year by adjusting the amount of any transfer to be made during the next state fiscal year.

(c) On the first business day of each calendar month that commences after June 5, 2001, the department of revenue shall transfer to the state treasurer for deposit into the state education fund state education fund revenues in an amount certified to the department by the

legislative council, in consultation with the office of state planning and budgeting, pursuant to paragraph (b) of this subsection (2).

(3) (a) Except as provided by law, all moneys in the state education fund are subject to annual appropriation by the general assembly to the department of education for the purposes set forth in this subsection (3). The department shall expend all interest derived from the deposit and investment of moneys in the fund prior to expending any of the principal in the fund. The moneys in the fund shall only be used to comply with the requirements of section 17 (1) of article (IX) of the state constitution and for such purposes as may be authorized by law and that are consistent with section 17 (4) (b) of article IX of the state constitution.

(b) Nothing in this subsection (3) shall be construed to require additional or future appropriations from the state education fund for any program for which an appropriation from the fund has previously been authorized for any given fiscal year in accordance with the provisions of paragraph (a) of this subsection (3).

(4) Moneys in the state education fund may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(5) Pursuant to section 17 (3) of article IX of the state constitution, all moneys credited to the fund, appropriated by the general assembly out of the fund, or distributed from the fund and expended by any school district shall be exempt from:

(a) The limitation on state fiscal year spending set forth in section 20 (7) (a) of article X of the state constitution and section 24-77-103, C.R.S.;

(b) The limitation on local government fiscal year spending set forth in section 20 (7) (b) of article X of the state constitution; and

(c) The statutory limitation on general fund appropriations growth.

22-55-104. Procedures relating to state education fund revenue estimates - legislative declaration. (1) The general assembly finds and declares that:

(a) Section 17 (4) (a) of article IX of the state constitution requires that a portion of state income tax revenues be deposited in the newly created state education fund.

(b) Section 17 (4) (b) of article IX of the state constitution authorizes the general assembly to annually appropriate moneys from the state education fund to comply with the required increase in funding for preschool through twelfth grade public education and for categorical programs.

(c) In order to ensure the availability of moneys in the state education fund to comply with the increase in funding for preschool through twelfth grade public education and for categorical programs, the general assembly must preserve the fund, foster its growth, and protect its solvency.

(d) To preserve the fund, foster its growth, and protect its solvency, the general assembly must restrict appropriations from the fund and make an annual determination of the maximum amount that may be appropriated from the fund based on analyses prepared on a regular basis.

(2) (a) By March 1, 2002, and by March 1 of each year thereafter, the general assembly, acting by joint resolution sponsored by the chair and vice-chair of the joint budget committee, shall certify the amount of moneys in the state education fund that should be considered available for appropriation for the next state fiscal year. The joint resolution shall be prepared by the joint budget committee, in cooperation with the education committees of the senate and house of representatives, and introduced after taking into consideration the review of the model conducted by the staff of the legislative council pursuant to subsection (3) of this section. The joint resolution shall include, but need not be limited to, the following information:

(I) The amount of total state moneys required to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year;

(II) The amount of state moneys available from funds other than the general fund and the state education fund to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year;

(III) Revenue projections for the state education fund for the next state fiscal year;

(IV) The maximum amount of moneys that can be appropriated from the state education fund and the minimum amount of moneys that can be appropriated from the general fund pursuant to section 22-55-105 to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year without adversely impacting the solvency of the state education fund or the ability of the general assembly to comply with said funding requirements in future years; and

(V) The impact of various levels of general fund appropriations above the minimum level identified pursuant to subparagraph (IV) of this paragraph (a) on the amount of moneys available in the state education fund to provide funding in the next state fiscal year for programs that may be authorized by law and that are consistent with section 17 (4) (b) of article IX of the state constitution.

(b) The general assembly should not appropriate an amount of moneys from the state education fund for the next state fiscal year that exceeds the amount of moneys certified in the joint resolution.

(3) By February 1, 2002, and by each February 1 thereafter, the staff of the legislative council, in consultation with the state auditor, the office of state planning and budgeting, the state treasurer, the department of education, and the joint budget committee, shall cause to be conducted a review of the model used to forecast revenues in and expenditures from the fund and the spending requirements of the "Public School Finance Act of 1994", article 54 of this title. Copies of the review shall promptly be transmitted to the joint budget committee, and the office of state planning and budgeting, and the education committees of the senate and the house of representatives. The review shall include, but need not be limited to, the following:

(a) A determination of the reasonableness of the assumptions used to forecast the revenues and expenditures;

(b) A revision of the assumptions as necessary;

- (c) Information on the financial stability of the fund;
- (d) Projections of the amount of total state moneys required to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year;
- (e) Projections of the amount of state moneys available from funds other than the general fund and the state education fund to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year;
- (f) Revenue projections for the state education fund;
- (g) An estimate of the maximum amount of moneys that can be appropriated from the state education fund and the minimum amount of moneys that can be appropriated from the general fund to meet the funding requirements of sections 22-55-106 and 22-55-107 for the next state fiscal year without adversely impacting the solvency of the state education fund or the ability of the general assembly to comply with said funding requirements in future years; and
- (h) Estimates of the impact of various levels of general fund appropriations above the minimum level identified pursuant to paragraph (d) of this subsection (3) on the amount of moneys available in the state education fund to provide funding in the next state fiscal year for programs that may be authorized by law and that are consistent with section 17 (4) (b) of article IX of the state constitution.

22-55-105. General fund appropriations requirements - maintenance of effort base. (1) In accordance with section 17 (5) of article IX of the state constitution, for state fiscal years 2001-02 through 2010-11, the general assembly shall annually appropriate from the general fund for total program under the "Public School Finance Act of 1994", article 54 of this title, an amount equal to the maintenance of effort base plus an amount as determined annually by the general assembly that is equal to at least five percent of the maintenance of effort base, unless Colorado personal income grows less than four and one-half percent between the two calendar years preceding the state fiscal year in which an appropriation is made.

(2) For purposes of this section, "maintenance of effort base" means the aggregate amount of general fund appropriations for total program pursuant to the "Public School Finance Act of 1994", article 54 of this title, for the immediately preceding state fiscal year, including:

- (a) Any increases or decreases made to said appropriations through the enactment of a supplemental appropriation bill or bills for that state fiscal year; and
- (b) Any general fund appropriation for the state's share of the district's total program as determined pursuant to section 22-54-106 (8).

22-55-106. Statewide base per pupil funding - increases. (1) (a) For school district budget years 2001-02 through 2010-11, the general assembly shall annually increase the statewide base per pupil funding for public education from preschool through the twelfth

grade by at least the rate of inflation for the calendar year ending in the immediately preceding school district budget year plus one percentage point.

(b) For the school district budget year 2011-12 and each school district budget year thereafter, the general assembly shall annually increase the statewide base per pupil funding for public education from preschool through the twelfth grade by at least the rate of inflation for the calendar year ending in the immediately preceding school district budget year.

(2) The general assembly may annually appropriate moneys in the state education fund, the general fund, any other state fund, or some combination thereof, as necessary in the sole discretion of the general assembly, to satisfy the requirements of subsection (1) of this section, and such moneys shall be distributed to public school districts in accordance with the provisions of the "Public School Finance Act of 1994", article 54 of this title.

22-55-107. Categorical programs - increases in funding. (1) (a) For school district budget years 2001-02 through 2010-11, the general assembly shall annually increase the total state funding for all categorical programs by at least the rate of inflation for the calendar year ending in the immediately preceding school district budget year plus one percentage point.

(b) For the school district budget year 2011-12 and each school district budget year thereafter, the general assembly shall annually increase the total state funding for all categorical programs by at least the rate of inflation for the calendar year ending in the immediately preceding school district budget year.

(2) The general assembly may annually appropriate moneys in the state education fund, the general fund, any other state fund, or some combination thereof, as necessary in the sole discretion of the general assembly but consistent with section 17 (5) of article IX of the state constitution, to satisfy the requirements of subsection (1) of this section. The general assembly may annually determine the particular categorical programs for which state funding will be increased for purposes of complying with the requirements of subsection (1) of this section, and the allocation of such increase shall be reflected in the annual general appropriations bill.

22-55-108. Accountability. Each school district in the state shall include in its accreditation contract entered into with the state board in accordance with section 22-11-201 a continuous plan for the use of revenues distributed to the school district pursuant to sections 22-55-106 and 22-55-107. The plan shall be annually updated by the school district to reflect any changes in the use of the revenues distributed to the school district pursuant to sections 22-55-106 and 22-55-107. The plan shall include, but need not be limited to, a statement concerning the need for lower class sizes in school districts with a total enrollment of more than six thousand pupils and the need for increased funding for textbooks in the school district as determined based on discussions in public meetings held in the school district to address the class size and textbook funding issues and whether the need will be addressed by the plan. Each school district shall also include in its electronic transmissions

required by section 22-7-603 (3) (d) an accounting of the impact of such revenues on student achievement.

ADDENDUM D

Excerpt from Review and Comment Hearing
on Proposed Initiative Measure 1999-2000 - #236,
Providing Additional K-12 Funding,
Held on Wednesday, December 22, 1999
in House Committee Room 011

Discussion of Substantive Questions outlined in the Review and Comment Memorandum on Proposed initiative measure 1999-2000 #236, Providing Additional K-12 Funding, dated December 21, 1999

Question No. 3:

Subsection (1) of the measure refers to the "statewide average base per-pupil funding." What do the proponents intend this term to mean? Is the term intended to refer to the "statewide base per pupil funding" as used in the "Public School Finance Act of 1994"? Would the proponents want to use the term "statewide base per pupil funding" in the measure? If not, would the proponents consider defining this term?

Response & Discussion:

Proponent Cary Kennedy:

"Where I got confused is we want the mandated increase to apply to both the base and the categoricals . . . which is the total, right? Total program?"

OLLS Attorney Julie Pelegrin:

"I don't think so. Total program doesn't include the categoricals. Categoricals are separate."

Proponent Cary Kennedy:

"What's the difference between base and total . . . total per pupil?"

* * *

LCS Assistant Director Deb Godshall:

"Well, I think that there are a number of different factors that are going to affect how the total increases. Changes in size factors, changes in cost of living factors, changes in enrollment; whereas, the single, individual term, the amount that the General Assembly increases now, is the statewide base per pupil funding."

Proponent Julie Phillips:

"I think we need to use that, because the rest of it is very fluid . . . and it could get us into huge amounts of trouble."

* * *

Question No. 5:

In subsection (1), two references are made to the phrase "total programs". The term "district's total program" is utilized in the "Public School Finance Act of 1994". Is it the proponents' intent that "total programs" has the same meaning as "district's total program"? If so, would the proponents consider changing the phrase to "total program", which is singular?

Response & Discussion:

Proponent Cary Kennedy:

"We may end up taking total program out altogether because if we're going to refer specifically to base per pupil and categoricals individually, then total program doesn't come into the initiative . . . it sounds like . . . if that's a . . . separate definition."

Proponent Julie Phillips:

"Well, and I think we need to keep it simple, and I think that those are really the two areas that we want to approach, and they're the formula, from that, for calculating the rest of it, so I think we'll stick with the fundamental two things that we need to deal with."

* * *

Proponent Cary Kennedy:

". . . Will every single district receive exactly one percent? I mean, it's the total program that's going to grow by a percent, the total appropriation, not . . ."

LCS Assistant Director Deb Godshall:

"No, see that's not what I picked up . . ."

Proponent Cary Kennedy:

"It's, it's per pupil . . . if per pupil grows by one percent, then each district would grow by one percent. Okay."

LCS Assistant Director Deb Godshall:

"If they're losing 10% of their kids, they might not get one percent total funding, but their per pupil funding will grow by one percent."

Proponent Cary Kennedy:

"Okay, good. I think that is . . . that is our intent."