

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

DIRECTOR
Dan L. Cartin

DEPUTY DIRECTOR
Sharon L. Eubanks

REVISOR OF STATUTES
Jennifer G. Gilroy

ASSISTANT DIRECTORS
Deborah F. Haskins
Bart W. Miller
Julie A. Pelegroy

PUBLICATIONS COORDINATOR
Kathy Zambrano



STATE CAPITOL BUILDING, ROOM 091
200 EAST COLFAX AVENUE
DENVER, COLORADO 80203-1782
TELEPHONE: 303-866-2045 FACSIMILE: 303-866-4157
E-MAIL: OLLS.GA@STATE.CO.US

SENIOR ATTORNEYS
Jeremiah B. Barry Duane H. Gall
Christine B. Chase Jason Gelender
Edward A. DeCecco Robert S. Lackner
Michael J. Dohr Thomas Morris
Kristen J. Forrestal Nicole H. Myers
Gregg W. Fraser

SENIOR STAFF ATTORNEYS
Brita Darling Jane M. Ritter
Kate Meyer Richard Sweetman
Jery Payne Esther van Mourik

SENIOR ATTORNEY FOR ANNOTATIONS
Michele D. Brown

STAFF ATTORNEY
Jennifer A. Berman

RESEARCH MEMORANDUM

TO: Senator Nancy Todd

FROM: Office of Legislative Legal Services

DATE: April 10, 2014

SUBJECT: Summary of Section 17 of Article IX of the Colorado Constitution ("Amendment 23")

Section 17 of article IX of the state constitution, also known as "Amendment 23," establishes requirements for increasing certain aspects of public education funding, creates the state education fund, and places restrictions on the use of moneys transferred or appropriated to the state education fund. This memorandum provides a summary of Amendment 23, including a summary of the requirements specified in the measure for increasing public education funding and a description of the revenue sources and appropriations history for the state education fund.

I. Requirements for increasing public education funding

The voters of Colorado approved Amendment 23 as an amendment to the state constitution in the statewide general election held in November of 2000. The Amendment took effect December 28, 2000, upon proclamation of the Governor.

For fiscal years 2001-02 through 2010-11, Amendment 23 required the General Assembly to annually increase the amount of statewide base per pupil funding¹

¹ Statewide base per pupil funding is the statutory dollar amount that is the basis for calculating each school district's total program funding under the "Public School Finance Act of 1994". §22-54-104 (5) (a), C.R.S.

and the total amount appropriated for categorical programs² by at least the rate of inflation plus an additional one percentage point. For the 2011-12 fiscal year and fiscal years thereafter, Amendment 23 requires the amount of statewide base per pupil funding and the total amount appropriated for categorical programs to increase annually by at least the rate of inflation.³

These are the only requirements specified in Amendment 23 with regard to the level of education funding;⁴ the plain language of the provision does not require a certain level of total funding for public education.⁵ The courts have interpreted Amendment 23 as setting only the minimum required increases for funding for public education.⁶

The General Assembly has met the requirements of Amendment 23 by annually increasing the statewide base per pupil funding amount and the total amount appropriated for categorical programs by the annual rate of inflation plus an additional one percentage point for fiscal years 2001-02 through 2010-11 and by at least the annual rate of inflation in each fiscal year thereafter. The statewide base per pupil funding amount has increased from \$4,001.70 for the 2001-02 fiscal year to \$5,843.26 for the 2013-14 fiscal year and is expected to increase to \$6,121 for the 2014-15 fiscal year. The total amount appropriated for categorical programs has increased from \$7,200,000 in the 2001-02 fiscal year to \$127,100,000 for the

² Categorical programs are defined in Amendment 23 as including 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 categorical programs. Section 17 (2) (a), Article IX, Colorado Constitution.

³ Section 17 (1), article IX, Colorado Constitution.

⁴ Subsection (5) of Amendment 23 creates a maintenance of effort requirement to prevent the General Assembly from using moneys from the state education fund to reduce the level of general fund appropriations existing on December 28, 2000, for total program funding and categorical program funding. This requirement does not, however, specify a mandatory level of funding for total program funding or categorical program funding.

⁵ See *"General Assembly's Authority to Rescind a Portion of Public School Funding for the 2002-03 Fiscal Year"* memorandum prepared for Senator Keith King, Office of Legislative Legal Services, January 22, 2003.

⁶ *Lobato v. People*, 218 P.3d 358, 376 (Colo. 2009).

2013-14 fiscal year and is expected to increase to \$134,900,000 for the 2014-15 fiscal year.⁷

II. State Education Fund

Amendment 23 creates the state education fund in the state treasury. At a minimum, the state education fund consists of all state revenues collected from a tax of one-third of one percent on the federal taxable income of each individual, estate, trust, and corporation in the state.⁸ The General Assembly has also made several one-time transfers of additional moneys to the state education fund from the state general fund. A chart prepared by the Legislative Council Staff that summarizes the appropriations and transfers to and from the state education fund is attached as Addendum A.

The revenues that are deposited into the fund from a tax of one-third of one percent on federal taxable income are not subject to the limitation on fiscal year spending imposed by article X, section 20 of the state constitution ("article X, section 20").⁹ In addition, appropriations from the state education fund and the school districts' expenditures of those appropriated moneys from the fund are not subject to any statutory limitation on general fund appropriations growth, the fiscal year spending limits set forth in article X, section 20, and any other spending limit imposed by law.¹⁰

Amendment 23 limits the purposes for which the General Assembly may use state education fund moneys. Specifically, the General Assembly may appropriate state education fund moneys to comply with the increases in statewide base per pupil funding and categorical program funding required by Amendment 23 and for accountable education reform, accountable programs to meet state academic standards, class size reduction, expanding technology education, improving student safety, expanding the availability of preschool and kindergarten programs,

⁷ See *"Report on State Education Fund"*, memorandum prepared for Joint Budget Committee, House and Senate Education Committees, and Office of State Planning and Budgeting", Todd Herreid, Colorado Legislative Council Staff, February 3, 2014.

⁸ Section 17 (4) (a), Article IX, Colorado Constitution.

⁹ Section 17 (4) (a), article IX, Colorado Constitution.

¹⁰ Section 17 (3), Article IX, Colorado Constitution.

performance incentives for teachers, accountability reporting, and public school building capital construction.¹¹

When the General Assembly appropriates state education fund moneys for a purpose other than increasing statewide base per pupil funding or categorical program funding, it is the General Assembly's practice to enact a statutory legislative declaration that identifies the authorized category of use that the purpose fits within.

The General Assembly has appropriated state education fund moneys for a wide variety of purposes since the fund was created, including funding for statewide assessments, facility schools, the counselor corps program, early literacy programs, the quality teacher recruitment program, and charter school capital construction. For a more complete list of the purposes for which the General Assembly has appropriated moneys from the state education fund, see Addendum B.

¹¹ Section 17 (4) (b), Article IX, Colorado Constitution.