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NEW GENERAL FUND SPENDING AFTER REFERENDUM C **By Carol Hedges**

Passage of Referendum C (Ref C), on November 1, 2005, demonstrated the willingness of Colorado voters to invest more of their money in public programs and services. The “five year time out” from the TABOR inflation plus population spending limitation will add nearly \$4 billion to state spending. This \$4 billion will not only be used for programs and services. How much will be appropriated for programs and services is under discussion and decisions of the General Assembly will affect the outcome.

Voters generally believed the election authorized the money to be used for health care, higher education, K-12 education, transportation and fire-police pensions. There is little debate that those are the authorized spending categories. What is very unclear, however, is how much of the total will be allocated for each purpose.

This analysis discusses the controversy on how the newly authorized money can be spent. It details the language of Ref C as well as other implementing legislation adopted in concert with the ballot proposal. It outlines other statutory provisions that affect general fund spending. It then concludes with a series of alternative definitions of the term “new money” in these important budget discussions.

WHAT DID THE VOTERS WANT WHEN THEY PASSED REF C?

Referendum C was authorized by the 2005 General Assembly in House Bill 1194. Referendum C, incorporated in statute as CRS 24-77-103.6, authorizes the state to retain and spend all state revenues collected in excess of the TABOR limitation and creates the “General Fund Exempt Account” to hold all revenues retained above the limit.

Referendum C places restrictions on how money in the General Fund Exempt Account can be used. It states:

The moneys in the account shall be appropriated or transferred by the general assembly for the following purposes: (a) to fund health care; (b) to fund public elementary and high school education and higher education; (c) to fund pension plans for firefighter and police officers, so long as statutorily required; and (d) to pay for strategic transportation projects included in the Department of Transportation’s strategic transportation project investment program.

The statute continues, “(3) The statutory limitation on general fund appropriations set forth in section 24-75-201.1(1)(a)(II), and the exceptions or exclusions thereto, (the Arveschoug-Bird limit), shall apply to the moneys in the General Fund Exempt Account”.

In effect, the voters said the retained revenue must be used for health care, K-12 education, higher education, transportation and police and fire fighters pensions and that the 6 percent limitation on general fund spending applies to spending from the General Fund Exempt Account.

In addition to HB 1194, the 2005 General Assembly also passed HB 1350 to provide voters more specificity about the use of the new money authorized by Ref C. It directs that the money in the General Fund Exempt Account may be used to pay for costs associated with bonds that could have been issued if Referendum D passed.

HB 1350 states:

(b) If there are any moneys in the (General Fund Exempt) account after the appropriations or transfers required by paragraph (a) (see next paragraph of this issue brief) are made, then all moneys remaining in the account shall be split equally for the following three purposes: (I) Funding for health care, (II) funding for preschool through twelfth grade education; and (III) funding for the benefit of students attending community colleges and other institutions of higher education.

HB 1350 also contemplated what happens if Ref D fails, in fact the language reads: “(a)(I)(B) If the voters of the state do not approve referendum “D”..., monies in the account (general fund exempt account) shall be used in a manner consistent with CRS 24-77-103.6 (HB 1194).

There are significant disagreements about the effect of HB1350. Some people argue the spending directions are irrelevant since Ref D failed. Others argue that it is state law and it is consistent with CRS 24-77-103.6(2), so it should control how the money in the General Fund Exempt Account is spent.

OTHER RULES AFFECTING HOW THE REF C MONEY CAN BE USED

Referendum C changed the amount of total revenue that the state can keep. The language of the referendum restricts how the new general fund revenue can be spent. Even before Ref C, general fund spending was regulated through statute based on type of spending, and the amount of spending. Referendum C created a new category of spending when it authorized the creation of the General Fund Exempt Account. Two bills adopted by the General Assembly in 2005, HB 1194 and HB 1350, restrict the use of funds in General Fund Exempt Account to certain specified purposes. Those bills do not, however, set aside other laws restricting general fund use.

The most significant restriction on General Fund spending is the Arveschoug-Bird (A-B) statutory limitation found at CRS 24-75-201.1. Adopted in 1991, this statute provides that spending from the general fund for operating costs (with a few exceptions) can increase from year to year by no more than 6 percent. If the general fund contains money beyond what is needed to support 6 percent growth in the operating budget, the additional general fund can be used for capital construction including highways, capital maintenance and other limited purposes such as tax relief like the Senior Homestead Property Tax Exemption.

Another restriction on the use of general funds is found in the statute requiring a reserve equal to 4 percent of General Fund appropriations (approximately \$252 million in FY 2005-06). CRS 24-75-201.1 (1)(d)(VI)

Transportation construction is primarily funded through the revenue collected from the gasoline tax and deposited in the Highway Users Tax Fund (HUTF). However, legislation adopted in 1997, often referred to as SB 1, directs that if general funds are sufficient to support an increase of 6 percent in operating and provide a 4 percent reserve, an amount equivalent to 10.335 percent of sales and excise taxes (approximately \$215 million in FY 2005-06) is transferred to the Highway Users Tax Fund to be used exclusively for transportation purposes.

Once the 6 percent operating growth is funded, the reserve is filled, and the SB 1 transfer is made, the remaining estimated General Fund can be used for non-operating spending like capital construction and capital maintenance. The capital expenditures include state buildings including office buildings, prisons, university buildings as well as K-12 facilities. The amount of capital investment fluctuates with the economy and the size of the General Fund.

Occasionally, General Fund revenue exceeds the estimate used to set the appropriations in the Long Bill. The unanticipated revenue is classified as excess reserve and is allocated 2/3 to HUTF and 1/3 to capital construction according to the provisions of a statute passed in 2001.

Thus, the restrictions on use of the General Fund have significant implications for how the newly authorized General Fund Exempt Account can be used.

HOW DO WE DEFINE “NEW” MONEY FROM REF C?

One of the most frequently asked questions since the November 1, 2005 election is, how much new money does the state have to spend? Unfortunately, the answer is not obvious and depends on how the term “new money” is defined. The question must be considered, however, before there can be accountability to the voters as to how the money is used. As is pointed out above, it is not clear what the voters intended when they passed Ref C but most of the campaign discussion implied that the “new money” was to be split 30 percent for health care, 30 percent for K-12, 30 percent for higher

education and 10 percent for transportation and other items that could have been financed by the debt proposed in Referendum D. This 30 percent, 30 percent, 30 percent, 10 percent split will be used in this analysis to illustrate the significance of the different definitions of “new money”. A different split could be used but the logic of the distinctions between the definitions would be the same.

Nearly everyone agrees that the total amount of money made available by Ref C is the amount in the General Fund Exempt Account. Using FY 2006-2007 as an example, current estimates indicate that the Exempt Account will contain \$760.3 million. Applying the 30- 30-30-10 split, health care, K-12 and higher education should all receive \$228.1 million in new money and transportation should receive \$76 million. Using the total amount in the General Fund Exempt Account is one way to define “new money”.

A second way to define “new money” is the amount used for operating expenditures. Based upon the Arveschoug-Bird (A-B) limit, General Fund spending for operating expenses in FY 2006-07 can only be 6 percent larger than in FY 2005-06. The 6 percent growth amounts to \$377.6 million, leaving \$382.7 million in the Exempt Account that can only be used for capital/non operating spending. This approach would mean **\$377.6 in “new money” for operating expenses. Since all of transportation is capital and can use funds above the 6 percent, the \$377.6 million would be divided equally among health care, K-12 and higher education, with each receiving 33.3 percent of the allowable “new money” or \$125.7 million. Transportation could receive its share from the non-operating amount.**

Each of the first two ways of defining “new money” would result in service reductions in areas other than health care, K-12 and higher education. These service reductions would occur because the amount of money needed to merely maintain existing statutory or regulatory definitions of caseloads grows at nearly 6 percent a year. For example, JBC staff estimates that it will take \$303.0 million in FY 2006-07 to avoid cuts from 2005-2006 service levels.

Another way to define “new money” is to use the Exempt Account to fund caseload increases or, said another way, to avoid cuts in services and use what is left for the 30-30-30-10 split. Since A-B limits 2006-07 General Fund operating spending increases to \$377.6 million, this definition of “new money” would mean that there would be \$74.6 million to split three ways. Applying the equal split, **health care, K-12 and higher education should all receive \$24.9 million in new money above caseload –driven increases. The total increase for K-12, its share of the current service increase plus the new money, would be \$173.7 million. The total increase for Higher Education would be \$44.8 million. The total increase for Health Care would be \$76.3 million. The transportation share could come from the non-operating amount.**

IS THIS WHAT THE VOTERS WANTED?

The current statutory restrictions, without modification, make it nearly impossible for the General Assembly to divide the total amount of money made available by Referendum C in the way discussed during the campaign—30 percent for health care, 30 percent of K-12, 30 percent for Higher Education and 10 percent for transportation.

In order to get to this allocation of the General Fund Exempt Account, there must be changes to current statutes and equally important, it could mean that some services would have to be reduced below FY 2005-06 levels.

This analysis is the beginning of the discussion on this important budget issue. The outcome will affect provision of critical services to Coloradans and will directly affect the public accountability to voters who approved Referendum C.

BIBLIOGRAPHY OF CITATIONS FOR STATUTES CONCERNING GENERAL FUND SPENDING

Referendum C

HB 05-1194

http://www.leg.state.co.us/Clitics2005a/csl.nsf/fsbillcont3/60F288DEECFCFFE287256F5E0078D116?Open&file=1194_enr.pdf

C.R.S. §24-77-103.6

Blue book explanation

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/bluebook/BlueBook2005.pdf

HB 05-1350

<http://www.leg.state.co.us/Clics2005a/csl.nsf/fsbillcont3/ABDC71225BB51B1287256FEE004F2346?Open&file=13>

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C.R.S. §24-77-104.5

Arveschoug-Bird Statutory Limitation

C.R.S. §24-75-201.1

4% Statutory General Fund Reserve

C.R.S. §24-75-201.0 (1)(d)(VI)

Senate Bill 97-1 General Fund Transfer to Highway Users Tax Fund

C.R.S. §39-26-123

Revenue Estimates and General Fund Overviews

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/Scrollpages/EconForecastScroll05.htm

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