

Proposition 117: Voter Approval for Certain New State Enterprises

1 **Proposition 117 proposes amending the Colorado statutes to:**

- 2 • require voter approval for new state government-owned businesses, called
3 enterprises, if the enterprise's revenue from fees over its first five years
4 exceeds \$100 million; and
- 5 • require that specific language be included on the ballot when voters are
6 asked to approve enterprises.

7 **What Your Vote Means**

YES

A "yes" vote on
Proposition 117 requires
voter approval for new
state government enterprises with fee
revenue over \$100 million in the first five
years.

NO

A "no" vote retains the state
legislature's authority to
create new enterprises as
under current law.

Legislative Council Draft

1 **Summary and Analysis for Proposition 117**

2 **What is an enterprise?**

3 An enterprise is a largely self-funded, government-owned business that charges user
4 fees in exchange for services provided. The Colorado Constitution requires that an
5 enterprise meet the following three requirements:

- 6 • be a government-owned business;
- 7 • be authorized to issue its own revenue bonds; and
- 8 • receive less than 10 percent of its annual revenue from all Colorado state and
9 local governments combined.

10 Money collected by an enterprise is not subject to the state's constitutional revenue
11 limit, also called the Taxpayer's Bill of Rights (TABOR) limit, which is discussed
12 below. A state enterprise is evaluated each year to ensure it continues to meet the
13 required qualifications. It may lose or regain its status as an enterprise based on
14 these qualifications. If an enterprise loses its status as an enterprise, its revenue
15 becomes subject to the TABOR revenue limit.

16 In the 2018-19 budget year, fee revenue collected by state enterprises made up
17 approximately 20 percent of the state's total budget.

18 **What happens if Proposition 117 passes?**

19 If Proposition 117 passes, beginning in 2021, voter approval is required to create
20 new state government enterprises that are expected to collect fee revenue of over
21 \$100 million during the first five fiscal years. In addition, voter approval is required
22 for a state government enterprise that actually collects over \$100 million in fee
23 revenue during the first five fiscal years, even if fee revenue was not originally
24 projected to be over \$100 million. If an existing enterprise loses and then regains its
25 status as a state government enterprise, it may require a vote under this measure.
26 For multiple enterprises created to serve primarily the same purpose, including those
27 created during the past five years, revenue is added together to determine whether
28 voter approval is required. Proposition 117 also requires that titles for ballot
29 measures creating an enterprise begin with the amount of fees that an enterprise will
30 collect in its first five years.

31 **How do enterprises interact with the TABOR revenue limit?**

32 TABOR limits state government revenue to an amount adjusted annually for inflation
33 and population growth. Revenue collected under the limit may be spent or saved.
34 Revenue collected over the limit must be refunded to taxpayers unless voters
35 approve a measure allowing the government to retain the excess. When a program
36 is designated as an enterprise, revenue collected does not count toward the TABOR
37 revenue limit, and does not limit the amount available for the rest of the government.

38 **When is voter approval required for other measures?**

39 In Colorado, voter approval is required for any new or increased state tax; however,
40 a fee can be created by the state legislature without voter approval. A tax is
41 differentiated from a fee in that a tax is designed to fund the general expenses of

Legislative Council Draft

1 government, while a fee is collected from the users of a particular government
2 program to defray the cost of that program.

3 **How many enterprises would Proposition 117 have affected?**

4 As of 2018, there are 16 government programs that qualify as state enterprises,
5 seven of which had annual fee revenue over \$100 million in the first five state budget
6 years and would have required a vote under this measure. Table 1 below shows the
7 fee revenue collected by those seven enterprises in state budget year 2018-19, the
8 last state budget year for which fee revenue data are available.

9 **Table 1**
10 **Current Enterprises That Would Have Required Voter Approval**
11 **Under Proposition 117***

Enterprise	2018-19 Fee Revenue (Millions)	Fee Description	Year Created
Higher Education Colleges, Universities, and Auxiliary Institutions	\$5,108.7	Tuition and student fees, care at university hospitals	2004**
Colorado Healthcare Affordability and Sustainability Enterprise	\$996.3	Healthcare affordability and sustainability fee	2017
Colorado Lottery	\$679.8	Sale of lottery tickets, other games of chance	1992
Unemployment Insurance	\$546.8	Employer premiums, other surcharges	2009
Parks and Wildlife	\$157.0	Hunting/fishing licenses, habitat stamps, boat and vehicle registrations, state park entrance fees	2001
Correctional Industries	\$64.3	Sale of manufactured products, sale of agricultural products	1992
Petroleum Storage Tank Fund	\$34.9	Registration and annual review fees from tank operators, surcharges on petroleum sales	2005

12 *Source: Office of the State Controller.*

13 **The Health Insurance Affordability Enterprise, created in 2020, would also have required a vote under*
14 *Proposition 117.*

15 ***Certain functions of higher education institutions, such as campus stores and health centers, have been*
16 *enterprises since TABOR became effective in state budget year 1993-94. However, these functions would*
17 *not have been subject to voter approval under this measure. All functions of the University of Colorado at*
18 *Boulder became an enterprise in state budget year 2004-05, followed by all other higher education*
19 *institutions in state budget year 2005-06.*

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

Legislative Council Draft

1 **Argument For Proposition 117**

2 1) Proposition 117 strengthens the role of citizens in determining the proper size
3 and scope of government. The state government uses enterprises to grow its
4 budget without voter approval. Coloradans approved TABOR to require voter
5 consent for tax increases; this measure extends this principle to fees collected by
6 large new enterprises. Fees, like taxes, are paid by everyday Coloradans and
7 businesses, so voters should have a say in their creation.

8 **Argument Against Proposition 117**

9 1) Enterprises were specifically exempted from the spending restrictions of TABOR
10 and work as intended; they shift the responsibility for paying for a
11 government-provided service from all taxpayers to the people who use and
12 benefit from the service. If fewer enterprises are created as a result of
13 Proposition 117, the state may be forced to choose between using tax revenue to
14 pay for critical services that would otherwise be funded through user fees, or not
15 providing these services.

16 **Estimate of Fiscal Impact for Proposition 117**

17 **State and local government spending.** Proposition 117 increases workload for
18 state agencies to estimate revenue that would be collected by proposed enterprises,
19 since these estimates will be necessary in order to determine whether an election is
20 required. County clerks may have additional workload or costs to the extent the
21 measure results in more measures placed on the ballot. Indirect impacts that may
22 result from the creation of fewer future enterprises are not estimated.

Proposition ? : Voter Approval for Certain New State Enterprises

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9 local governments combined.

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11 limit, also called the Taxpayer's Bill of Rights (TABOR) limit. A state enterprise is
12 evaluated each year to ensure it continues to meet the qualifications above. It may
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15 TABOR limit.

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17 approximately 20 percent of the state's total budget.

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19 If Proposition ? passes, beginning in 2021, voter approval is required to create new
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21 result from the creation of fewer future enterprises are not estimated.

Last Draft Comments from Interested Parties

Proposition 117 Voter Approval For Certain New State Enterprises

Douglas Bruce, representing himself:

1. I will NOT accept factually and legally false statements about TABOR in a government publication. See line 32, second draft, falsely saying TABOR limits how much the state may save ("or save"). Those two words must go! I said that below.
2. Arg against falsely says "forced to choose" between revenue redirection or "not providing these services." You left out the third choice, getting voter approval, which is the point of #295.
3. I don't understand the last sentence of the draft. WHAT impacts from (NON)creation of enterprises? What impact of establishing FEWER enterprises? That is too hypothetical for inclusion.
4. TABLE 1 implies retroactivity to 1992, contrary to text. The asterisk says UC functions are "NOT" subject to voter approval. So what is the point, since 295 does not apply back to 1992? Who knows the outcome of a non-existent ballot issue?

Michael Fields, representing himself:

Thanks. I think this draft is really good. I'm curious why this year's health insurance affordability enterprise isn't included. The projected 5 year revenue is well over \$100M. It seems very relevant since it passed earlier this year.

Proposition 117
Voter Approval for Certain New State Enterprises
Contact List

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**Proposition 117
Voter Approval for Certain New State Enterprises
Contact List (Cont.)**

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	legislative@lpcolorado.org

Proposition 117
Voter Approval for Certain New State Enterprises

1 **Ballot Title:**

2 Shall there be a change to the Colorado Revised Statutes requiring statewide voter approval at
3 the next even-year election of any newly created or qualified state enterprise that is exempt from
4 the Taxpayer's Bill of Rights, Article X, Section 20 of the Colorado constitution, if the projected or
5 actual combined revenue from fees and surcharges of the enterprise, and all other enterprises
6 created within the last five years that serve primarily the same purpose, is greater than
7 \$100 million within the first five fiscal years of the creation or qualification of the new enterprise?

8 **Text of Measure:**

9 *Be it Enacted by the People of the State of Colorado:*

10 SECTION 1. In Colorado Revised Statutes, add 24-77-108 as follows:

11 **24-77-108. Creation of a new fee-based Enterprise.** In order to provide transparency and
12 oversight to government mandated fees the People of the State of Colorado find and declare that:

13 (1) After January 1, 2021, any state enterprise qualified or created, as defined under Colo. Const.
14 Art. X, section 20(2)(d) with projected or actual revenue from fees and surcharges of over
15 \$100,000,000 total in its first five fiscal years must be approved at a statewide general election.
16 Ballot titles for enterprises shall begin, "SHALL AN ENTERPRISE BE CREATED TO COLLECT
17 REVENUE TOTALING (full dollar collection for first five fiscal years) IN ITS
18 FIRST FIVE YEARS...?"

19 (2) Revenue collected for enterprises created simultaneously or within the five preceding years
20 serving primarily the same purpose shall be aggregated in calculating the applicability of this
21 section.