

Amendment 78: Legislative Authority for Spending State Money

Placed on the ballot by citizen initiative • Passes with 55 percent of the vote

1 **Amendment 78 proposes amending the Colorado Constitution and the**
2 **Colorado statutes to:**

- 3 • remove the state legislature’s ability to allow spending outside of the budget
4 process;
- 5 • prohibit state agencies from spending money received for a particular
6 purpose (custodial money) without direct allocation by the state legislature;
- 7 • require that custodial money be deposited into a newly created fund and that
8 interest earned on money in the fund be transferred to the state’s General
9 Fund; and
- 10 • require that the state legislature allocate any spending from the new fund
11 each year following a public hearing.

12 **What Your Vote Means**

YES

13 A “yes” vote on
14 Amendment 78 requires

15 that all state spending be allocated by the
16 state legislature and that custodial money
17 be deposited in and spent from a new
18 fund.

NO

A “no” vote on Amendment 78
allows state agencies to

continue spending custodial money and
certain other money as they do now.

Legislative Council Draft

1 **Summary and Analysis for Amendment 78**

2 **What does this measure do?**

3 The measure requires all state spending to be directly allocated, or
4 "appropriated," by the state legislature, and removes the legislature's ability to
5 pass laws that allow spending outside the budget process. In state government,
6 an appropriation is the primary way the legislature directly allocates money to be
7 spent for state programs. By requiring appropriations for all spending, the
8 measure disallows other currently legal ways for state agencies, public colleges
9 and universities, and elected officials, such as the Governor or the Attorney
10 General, to spend money without a direct allocation by the state legislature in the
11 state budget.

12 In addition, the measure deposits custodial money in a new fund, called the
13 Custodial Funds Transparency Fund. It defines custodial money as money
14 received by the state that must be used for a particular purpose. This includes
15 money received from the federal government, as a legal settlement from a
16 lawsuit, or as a donation from a private individual or organization. The word
17 "custodial" is used to refer to the money because the state acts as the custodian
18 of the money to ensure that it is spent on the intended purpose.

19 Each year, the legislature must allocate spending from the new fund and hold a
20 public hearing with an opportunity for public comment. Any interest earned on
21 money in the new fund is placed in the state's General Fund, where it may be
22 used for any purpose.

23 **How is spending authorized now?**

24 Under the Colorado Constitution, the state legislature has the power to direct
25 how money will be spent by the government through the annual budget process.
26 Each year, the state legislature passes the annual budget bill, completing a
27 process that includes time for public input and debate by legislators. This bill
28 sets the amount of funding available for state programs, allowing state agencies
29 to legally spend the money allocated to them. The budget does not typically
30 determine the spending of custodial money, as these funds originate outside of
31 state government, and the specific purpose for which they must be used is
32 already determined. The legislature may also pass laws that authorize spending
33 outside of the budget process.

34 **How would the measure change the process for spending custodial money?**

35 All state spending would require direct legislative allocation, including the
36 spending of custodial money. The measure does not change the particular
37 purpose for which custodial money must be spent. However, the state legislature
38 may make different spending decisions than state agencies would to address
39 that purpose, and the timing of when some moneys are spent may change.

40 The state receives custodial money throughout the year, including when the
41 legislature is typically out of session between May and December.
42 Implementation of the measure could require the legislature to establish a new
43 process to allow spending of custodial money outside of the regular legislative
44 session, or to meet for a special session. These changes may affect the timing of

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1 certain spending decisions, potentially resulting in delayed or interrupted
2 operations until spending is directly allocated.

3 **What are examples of money that the measure would affect?**

4 The state legislature would have to directly allocate the spending of all funds,
5 including the following types of money that are not part of the current budget
6 process.

- 7 • **Emergency relief funds.** For example, in 2020, the state received
8 \$1.67 billion in federal relief funds through the Coronavirus Aid, Relief, and
9 Economic Security Act (CARES Act), which was spent according to the
10 Governor's executive order.
- 11 • **Other money from the federal government.** The federal government
12 provides regular funding for many state programs each year including, but not
13 limited to, health care and human services, transportation, and education
14 programs. This money is custodial when federal law says how it should be
15 spent. Only some of this spending is currently directly allocated by the
16 legislature.
- 17 • **Legal settlements.** The state receives funds from various legal settlements,
18 such as prior and ongoing opioid-related settlements. These funds are spent
19 by state agencies according to the applicable court orders.
- 20 • **Transportation funding.** Under an existing law, nearly all funding for state
21 transportation projects is allocated by an independent commission rather than
22 by the state legislature.
- 23 • **Grants.** State agencies may receive competitive grant awards from the
24 federal government or from private organizations, which may be spent on the
25 specific programs or purposes for which the grant was awarded.
- 26 • **Gifts and donations.** State agencies, colleges, and universities may receive
27 and spend gifts or donations.

28 **What are other impacts of this measure?**

29 **State revenue limit.** Under current law, most custodial money is exempt from
30 the state's constitutional revenue limit. Under the measure, all custodial money
31 and the interest earned on it are exempt.

32 **Interest revenue.** Currently, interest earned on custodial money remains
33 available for the same purpose as the custodial money. This measure would
34 move interest earned on the Custodial Fund Transparency Fund into the General
35 Fund, where it could be spent by the legislature for any purpose.

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Legislative Council Draft

1 **Argument For Amendment 78**

- 2 1) The measure increases transparency and accountability in state government.
3 The Governor, the Attorney General, and unelected administrators in state
4 agencies currently spend large amounts of custodial money, often without
5 public input or accessible public records. By requiring that all state spending
6 be directly allocated by elected representatives, the measure allows for public
7 participation and provides transparency in how funds are spent.

8 **Argument Against Amendment 78**

- 9 1) The measure adds unnecessary and expensive bureaucracy and risks
10 significant unintended consequences. A longer allocation process could
11 delay or interrupt state services, including emergency responses to public
12 health or wildfire disasters. Further, making grant funding subject to
13 additional steps could jeopardize Colorado's competitiveness for grant
14 awards, resulting in the state receiving less money. Finally, the measure
15 shifts decision-making from program experts and independent commissions
16 to a political process in the state legislature.

17 **Fiscal Impact for Amendment 78**

18 Amendment 78 increases state spending on the budgeting process, may change
19 how custodial money is spent, and may affect state revenue, as discussed
20 below.

21 **State spending.** The measure increases spending by at least \$1.0 million
22 annually to add new staff in state agency budget offices and the legislative
23 budget committee. The additional staff are needed because the measure
24 requires state agencies to submit proposed spending of custodial money for
25 allocation by the state legislature.

26 Other state spending could be affected if the state legislature makes different
27 spending decisions than would be made by state agencies. While the purpose of
28 the spending is not altered, the state legislature could fund different programs to
29 implement that purpose.

30 **State revenue.** The overall impact of the measure on state revenue is unknown
31 and depends on how the measure is implemented. Because custodial funds
32 must be placed in the new fund before being spent, the measure could move
33 interest earnings to the General Fund rather than funds controlled by state
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Last Draft as Mailed to Interested Parties

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Last Draft Comments from Interested Parties

Amendment 78 Legislative Authority for Spending State Money

Legislative Council Staff received no public comments on the last mailed draft of Amendment 78.

Amendment 78
Legislative Authority for Spending State Money
Contact List

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Interested Party	Organization Name	Email Address
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Jack Wylie	Dept. of Personnel & Administration	jack.wylie@state.co.us

Amendment 78
Legislative Authority for Spending State Money

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado Constitution and a change to the Colorado Revised
3 Statutes concerning money that the state receives, and, in connection therewith, requiring all
4 money received by the state, including money provided to the state for a particular purpose,
5 known as custodial money, to be subject to appropriation by the general assembly after a public
6 hearing; repealing the authority to disburse money from the state treasury by any other means;
7 requiring all custodial money to be deposited into the newly created custodial funds transparency
8 fund and the earnings on those deposits to be transferred to the general fund; and allowing the
9 state to retain and spend all custodial money and earnings and revenue on that custodial money
10 as a voter-approved revenue change?

11 **Text of Measure:**

12 *Be it enacted by the People of the State of Colorado:*

13 **SECTION 1.** In the constitution of the state of Colorado, section 33 of article V, **amend** section 33
14 as follows:

15 No moneys in the state treasury, NOR CUSTODIAL MONEYS, shall be disbursed ~~therefrom~~ by the
16 treasurer except upon appropriations made by law, ~~or otherwise authorized by law,~~ and any
17 amount disbursed shall be substantiated by vouchers signed and approved in the manner
18 prescribed by law.

19 **SECTION 2.** In Colorado Revised Statutes, 24-31-108, **amend** (5) as follows:

20 (5) If all or a portion of any money received by the attorney general and paid to the department of
21 the treasury pursuant to subsection (2) of this section is custodial money, the attorney general
22 shall direct the state treasurer in writing to place such custodial money in a separate account. ~~Any~~
23 ~~custodial money placed in a separate account pursuant to this subsection (5) is not subject to~~
24 ~~annual appropriation by the general assembly. A copy of the written direction to the state treasurer~~
25 ~~must be delivered to the joint budget committee. Such written direction must set forth the basis~~
26 ~~for the attorney general's determination that the money is custodial money and must specify the~~
27 ~~manner in which the money will be expended. Such written direction must be given to the state~~
28 ~~treasurer within thirty days after the date the money is paid to the department of the treasury. Any~~
29 ~~custodial money placed in a separate account pursuant to this subsection (5) must be expended~~
30 ~~only for the purposes for which the money has been provided. The department shall provide with~~
31 ~~its annual budget request an accounting of how custodial money has been or will be expended.~~
32 ~~For informational purposes, the expenditure of such money may be indicated in the annual~~
33 ~~general appropriation act.~~

34 **SECTION 3.** In Colorado Revised Statutes, 24-75-201, **add 3(d)(e)(f) and (g) as follows:**

35 (3)(D) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "CUSTODIAL MONEY"
36 OR "CUSTODIAL FUNDS" MEANS MONEY RECEIVED BY THE STATE:

- 1 (I) THAT ORIGINATED FROM A SOURCE OTHER THAN THE STATE OF COLORADO;
- 2 (II) THAT IS AWARDED OR OTHERWISE PROVIDED TO THE STATE FOR A PARTICULAR PURPOSE;
- 3 (III) FOR WHICH THE STATE IS ACTING AS A CUSTODIAN OR TRUSTEE TO CARRY OUT THE PARTICULAR
- 4 PURPOSE FOR WHICH THE MONEY HAS BEEN PROVIDED.
- 5 (E) CUSTODIAL FUNDS TRANSPARENCY FUND CREATED.
- 6 (I) THERE IS HEREBY CREATED IN THE DEPARTMENT OF TREASURY A CUSTODIAL FUNDS
- 7 TRANSPARENCY FUND. THE CUSTODIAL FUNDS TRANSPARENCY FUND SHALL RECEIVE ALL REVENUE
- 8 COLLECTED BY THE STATE AS CUSTODIAL MONEYS. EARNINGS AND REVENUE FROM THE CUSTODIAL
- 9 FUNDS TRANSPARENCY FUND SHALL REVERT TO THE GENERAL FUND. ALL OTHER MONEY REMAINING IN
- 10 THE CUSTODIAL FUNDS TRANSPARENCY FUND AT THE END OF THE FISCAL YEAR SHALL REMAIN IN THE
- 11 FUND AND SHALL NOT REVERT TO THE GENERAL FUND.
- 12 (II) IN STATE FISCAL YEAR 2022-2023, AND EACH FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY
- 13 SHALL ANNUALLY APPROPRIATE THE CUSTODIAL FUNDS TRANSPARENCY FUND FOR SUCH PURPOSES
- 14 AS SPECIFIED BY LAW.
- 15 (III) MONEYS FROM THE CUSTODIAL FUNDS TRANSPARENCY FUND SHALL BE APPROPRIATED IN A PUBLIC
- 16 HEARING WITH OPPORTUNITY FOR PUBLIC COMMENT.
- 17 (F) REVENUE COLLECTED AS CUSTODIAL FUNDS, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE
- 18 ELECTION IN THE NOVEMBER 2021, TOGETHER WITH EARNINGS AND REVENUE, SHALL BE RETAINED
- 19 AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE AND SHALL BE EXEMPT FROM ALL
- 20 REVENUE, SPENDING, AND OTHER LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE
- 21 CONSTITUTION OR ANY OTHER LAW.

22 **SECTION 4. EFFECTIVE DATE.** All provisions of all sections shall take effect on July 1, 2022.