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Amendment 66 and PERA

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Some opponents charge that money raised by Amendment 66 will be diverted to "backfill" an "unfunded pension liability" at the Public Employees' Retirement Association (PERA) rather than go to support students in the classroom.[1]

A thorough review of the text of Amendment 66 as well as the "new" School Finance Act (SB13-213) and the laws governing PERA shows that charge to be absolutely false and without any factual basis. In fact, state law clearly prohibits the use of any Amendment 66 revenues to "backfill" PERA.

PERA is the retirement system for state and local government employees, including teachers. It is the only retirement program for these employees, virtually all of whom do not participate in or receive Social Security benefits. Money from Amendment 66 can be used only to supplement existing education spending, so the additional amount that would go to PERA is limited to mandated contributions for *newly hired* teachers or other staff members or for *increases* in salaries.

Thus, only that portion of Amendment 66 funds used to pay retirement benefits for those who are hired or who receive increased compensation as a result of the reforms enacted under the amendment will legally end up in PERA accounts.

This brief reviews the legal provisions contained in Amendment 66, the Colorado Constitution and state statutes that dictate how education funds can be used. It also reviews the statutes governing PERA that prescribe who must contribute, and how much, to the retirement system.

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Amendment 66 restricts use of funds

If approved by the voters this fall, Amendment 66 will increase the state income tax rate to generate an estimated $950 million annually to pay for reforms and improvements to preschool through 12th-grade education – reforms and improvements already enacted by the legislature. Amendment 66 and state statutes specifically govern how this money can be used, and they direct where it is to go.[2]

Amendment 66 creates the State Educational Achievement Fund in the Colorado Constitution to receive revenue generated by the tax increase. Money in this fund can be used only:

> " . . . to benefit the education of participants in preschool programs and public school kindergarten through twelfth grade students by implementing educational reforms and programmatic enhancements, enacted by the Colorado General Assembly."
>
> *– Amendment 66, Section 1 (6) State Educational Achievement Fund*

Amendment 66 also states that the new revenues:

> ". . . shall be used to supplement revenues that were appropriated by the General Assembly in the previous fiscal year for kindergarten through twelfth grade and preschool education and shall not be used to supplant any portion of those previously appropriated revenues."
>
> *– Amendment 66, Section 1 (7) New Revenue to Supplement Previous Year Education Funding*

In addition, Amendment 66 directs that 43 percent of state General Fund revenues will be deposited in the State Education Fund (*Amendment 66, Section 1 (4) State Education Fund created*). Money in the State Education Fund is already restricted by the constitution and can be used only for base per-pupil funding, categorical programs 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."
>
> *– Colorado Constitution, Article IX, Section 17, subsection (1) and subsection (4)(b)*[3]

The "new" School Finance Act allocates revenue for specific purposes

The "new" School Finance Act (SB13-213)[4], enacted by the General Assembly in 2013, makes a number of changes in the way we finance schools, but it will go into effect only if the voters approve a ballot measure to increase revenues available to finance education (Amendment 66).

If the voters approve Amendment 66, the law says that additional revenues will be used for specific purposes, including:

- Expanding early childhood education and full-day kindergarten
- Improving reading skills by the third grade
- Reducing class sizes by adding more teachers
- Ensuring more individual attention for all students, especially low-income, gifted and talented and special-education students, as well as English-language learners
- Implementing new teacher-support and -evaluation procedures
- Increasing public understanding of education spending and making school officials more accountable for that spending

Some of these reforms are already law but have never been funded, while others go into effect only if Amendment 66 passes.

PERA is the only retirement program for public employees

PERA is the retirement system for Colorado state and local government employees. That includes teachers and others who work for school districts. It provides retirement and other benefits for employees in more than 500 state and local government entities and agencies.

Virtually all workers covered by PERA do not receive Social Security benefits. Their PERA pension represents both their Social Security and employer-provided retirement benefits.[5]

PERA was created by state law in 1931 and is governed by Title 24, Article 51 of the Colorado Revised Statutes. There is a 16-member board of public trustees that oversees its operations.

Contributions to PERA are set in law

PERA is funded through contributions from employees and their employers, school districts in the case of teachers and other school employees. The amount each contributes into the retirement fund is dictated by state law. Any employees hired as a result of passage of Amendment 66 will be subject to this same requirement.

All PERA-covered school district employees pay, by law, 8 percent of their salaries into the retirement fund (C.R.S. 24-51-401). (Workers in the private sector pay 6.2 percent of their salaries to Social Security, with an additional 1.45 percent to Medicare. The employer matches each amount.)

In 2015, school districts other than Denver Public Schools will pay an amount equal to 10.15 percent of their employees' salaries to PERA; that includes 1.02 percent for the PERA Health Care Trust Fund to help cover the costs of health insurance premiums for those who participate in the PERACare Health Benefits program.

Denver Public Schools will contribute 13.75 percent of employees' salaries to PERA in 2015, including the 1.02 percent for health insurance premiums.[6]

In addition, all school districts will pay an amount equal to 4.2 percent of employee salaries to PERA in an Amortization Equalization Disbursement (AED) and 4 percent in a Supplemental Amortization Equalization Disbursement (SAED). These contributions were enacted by the legislature in 2004 and 2006 to bolster PERA's solvency.

The SAED is to be funded with money that otherwise would be available for employee wage increases. The SAED is not credited to the workers' retirement accounts, so employees do not receive these funds if they leave PERA before retirement. These are considered employee contributions to help ensure PERA's solvency.

Employer contributions are scheduled to increase through January 2018, when they will total 13.75 percent for Denver Public Schools, plus 4.5 percent in AED and 5.5 percent in SAED. All other school districts will pay 10.15 percent, plus 4.5 percent in AED and 5.5 percent in SAED.[7]

Most of the changes in contribution rates were made in 2010 as part of bipartisan legislation to ensure that the PERA retirement fund is fully funded over 30 years.[8]

Only mandated retirement contributions will go to PERA

The funding for PERA is spelled out clearly in law. The amount that employees pay into the system is specified, as is the amount that employers contribute. These are based on a percentage of the employees' salaries and were carefully negotiated among employers, employees and lawmakers when the current schedule was enacted into law in 2010.

PERA can accept contributions only in the amounts set out in statute. Employers and employees can contribute only the amounts established in law.

Taxpayers will be able to track how the money is spent because of the enhanced reporting requirements established by the "new" School Finance Act. It requires all school districts to show expenditures at the individual school level, including salary and benefit expenditures. The Colorado Department of Education is directed to post this information online and make it easily accessible by the general public. With this tool, anyone will be able to see how much each school district spends on all items, including PERA benefits, right down to their local school.

Conclusion: Claims about diverting funds to PERA are false

Based on a detailed review of Amendment 66, the "new" School Finance Act and state laws governing PERA, we conclude that the charge that the new revenue for education will be diverted to PERA is absolutely false. Only that portion of the funds used to pay the mandated retirement contribution for new employees or those who receive raises will go to PERA. State law is very clear that the money cannot be used in any other way.

1) Coloradans Against Unions Using Kids as Pawns, http://www.kidsnotpawns.org/#!about_us/csgz, 2) Amendment 66, 2013 State Ballot Information Booklet, Legislative Council Staff, September 2013, http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251888042891&ssbinary=true, 3) Colorado Constitution Colorado Constitution, Article IX, Section 17, http://www.lexisnexis.com/hottopics/colorado/, 4) SB13-213, signed into law May 21, 2013, http://www.leg.state.co.us/CLICS/CLICS2013A/csl.nsf/fsbillcont3/27A661F189ABDCF787257AEE00571A66?Open&file=213_enr.pdf , 5) Colorado PERA Overview, Colorado PERA website, accessed Sept. 30, 2013, https://www.copera.org/pera/about/overview.htm, 6) Denver Public Schools had its own pension system but merged it into PERA in 2010. The different contribution amounts were created to equalize funding between DPS and other school districts in the state, 7) Colorado PERA Contribution Rates, Colorado PERA website, accessed Oct. 14, 2013, https://www.copera.org/pdf/5/5-123.pdf 8) SB10-001, signed into law Feb. 23, 2010, http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/DD3F57C1B220E34A872576A80029E75E?Open&file=001_enr.pdf