

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Amber Drevon and Charles Dukes

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 2, 2020

SUBJECT: Proposed initiative measure 2019-2020 #169, concerning the Colorado out-of-school learning opportunities program

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of the Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #168 and #170-171. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #168, #170, and #171, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. To create the "Colorado Out-of-School Learning Opportunities Program" (program) within a newly established Colorado Out-of-School Learning Opportunities Agency (agency) within the Colorado Department of Education;
2. To establish a board of directors for the agency;
3. To specify the powers and duties of the agency to establish and oversee the program, including creating and developing criteria for the program;
4. To create or contract with a nonprofit organization doing business in Colorado to administer the program and to establish the duties of the administering nonprofit;
5. To establish parent-directed individual learning accounts (accounts) for eligible Colorado students under eighteen years of age to be used to pay certified providers for out-of-school learning opportunities, which opportunities provide supplemental educational or developmental support to eligible students outside of normal school operations;
6. To create and develop criteria for allowable uses of the money in the accounts, which uses include, in part, tutoring, targeted support for youth with special needs and learning disabilities, in-depth programs that teach youth new skills in the context of outdoor activities, and music and arts education;
7. To create and develop criteria for certifying providers of out-of-school learning opportunities under the program;
8. To create a competitive grant program for nonprofit providers to expand the capacity of free or low-cost programs that provide out-of-school learning opportunities in order to serve more students;
9. To provide an income tax credit for income tax years commencing on or after January 1, 2021, but before January 1, 2036, for one hundred percent of any monetary or in-kind contribution to the nonprofit organization selected to administer the Colorado Out-Of-School Learning Opportunities Program. The

tax credit is not refundable, but unused portions may be carried forward to future income tax years, and the aggregate amount of all income tax credits claimed is limited to a specified amount every fiscal year;

10. To establish that any contributions that lead to the availability of the income tax credit may not be directed, restricted, or conditioned (presumably by the taxpayer making the contribution) in certain specified manners;
11. To eliminate all new corporate net operating loss deductions for income tax years commencing on or after January 1, 2021, but before January 1, 2036. The initiative allows net operating losses from prior tax years (presumably from tax years before January 1, 2021) to be carried forward as currently allowed;
12. To require the state treasurer to transfer any revenue increase that results from the elimination of the corporate net operating loss deduction to the Out-Of-School Learning Opportunities Fund; and
13. To specify that the revenue increase that results from the elimination of the corporate net operating loss deductions is a voter approved revenue change that is exempt from all revenue, spending and other limitations specified in TABOR.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. The language of proposed article 86.1 of title 22 appears to be identical to the language of proposed article 86.1 of title 22 in initiative 2019-2020 #168 with the exception of the new definitions for "eligible contribution" and "eligible taxpayer" in proposed section 22-86.1-102 and the use of those terms in proposed section 22-86.1-103 (2)(m)(V). Is this correct?
4. The fund created in proposed section 22-86.1-105 consists of "all moneys transferred or credited to the fund pursuant to section 39-22-504 (7)." Does the fund also consist of eligible contributions for which an income tax credit is

authorized pursuant to proposed section 39-22-121.5? If so, a reference to eligible contributions pursuant to proposed section 39-22-121.5 should be included in the fund language.

5. The proposed initiative includes a definition for "eligible taxpayer". Was it the proponents' intent to leave out partnerships, S Corporations, or other pass through entities? If not, consider using the definitions already provided in section 39-21-101.
6. The proposed initiative adds a new section 39-22-121.5. Why did the proponents choose to place this new income tax credit here? Please use either section 39-22-130 or section 39-22-543 instead.
7. Subsection (1) of the new section 39-22-121.5 uses the phrase "every individual, estate, trust, and corporation" in two places. Please use the defined term "eligible taxpayer" instead.
8. What is included in an "in-kind contribution"?
9. How will the value of in-kind contributions be calculated?
10. Subsection (1) of the new section 39-21-121.5 reads as if the income tax credit is created in perpetuity, but the entire section is repealed effective January 1, 2036 by operation of subsection (4). If the intention is to limit the tax credit for a specified number of years, please include that in subsection (1). For example, "For income tax years commencing on or after January 1, 2021, but before January 1, 2036. . .". The repeal date in subsection (4) should only occur after all possible losses are carried forward and the statute of limitations for the filing of late and amended returns has passed.
11. Have the proponents considered whether the contribution made to the nonprofit organization could also be considered a charitable contribution and thus possibly deductible under the federal income tax return and section 39-22-104 (4)(m)? Is it the proponents' intent that such a contribution receive both tax benefits?
12. The proponents have based the credit cap on the state fiscal year. However, income taxes are frequently not calculated on a fiscal year basis. Most individuals file on a calendar year basis, and corporations can fashion their own

fiscal year. Consequently the use of a fiscal year cap can potentially cause calculation issues in the cap. Please consider revising.

13. The proponents should be aware that the department of revenue will have administrative costs requiring an appropriation for the management of the "fiscal year credit cap".

Technical Comments

There are no additional technical comments.