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Colorado General Assembly

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MEMORANDUM

TO: Martha Olson and Donald Anderson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 17, 2017
SUBJECT: Proposed initiative measure 2017-2018 #75, concerning funding for public schools

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 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 2017-2018 #72 to #79. This initiative is substantially similar to 2017-2018 #74, and therefore the comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative #74, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in the memorandum for proposed initiative #74 are also relevant and those comments and questions are hereby

incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

1. The major purposes of the proposed amendments to the Colorado constitution appear to be:
 - a. To create the quality public education fund (fund) in the state treasury to receive all revenues collected through an income tax increment for public school funding and any other tax or source of funding directed to the fund.
 - b. To allow the general assembly to annually appropriate money from the fund for purposes specified in law to improve, support and enhance the quality of pre-primary, primary, and secondary public school educational program, resources, and opportunities on an equitable bases for the benefit of students statewide.
 - c. To allow all moneys deposited in the fund to be collected and spent as voter approved revenue changes without regard to limitations on revenue, spending, or appropriations contained in section 20 of article X of the Colorado constitution, commonly known as "TABOR", or any other law and without voter approval to retain such money.
 - d. To use money appropriated from the fund to supplement, not supplant, the level of general fund appropriations existing on the effective date of the initiative.
 - e. To freeze the assessment rate for residential real property at the current rate of 7.2% and for all other real property at 29% for purposes of the school district mill levies.
 - f. To create an exception to TABOR to allow taxable net income of individuals, trusts, estates, and corporations to be taxed at multiple rates to provide a tax increment dedicated to funding public schools.
2. The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:
 - a. To determine the purpose of the fund, to implement the provisions creating the fund in the Colorado constitution, and to require annual appropriations from the fund.

- b. To express the intention of the people that the general assembly enact a new public school finance law that substantially meets the requirements set forth in the proposed initiative.
- c. To establish the purposes for which the money in the fund must be appropriated and spent until such time as a new public school finance law has been enacted and has taken effect.
- d. To require all money appropriated from the fund to be expended to support public schools, except as required by an individualized education program for an individual with a disability.
- e. To use money appropriated from the fund to supplement, not supplant, the level of general fund appropriations existing on the effective date of the initiative, plus annual inflation adjustments.
- f. To require each school district receiving money from the fund to make publicly available information concerning its mission and vision, current budget, audit, uniform improvement plan, and student achievement scores.
- g. To require the Colorado department of education within five years of implementation of the fund to commission a study on how money from the fund was spent as well as other reporting regarding the impact of the funding.
- h. To require the general assembly to review a successor public school finance act within specific timeframes.
- i. To authorize the state to retain and spend all revenues credited to the fund.
- j. To increase income taxes imposed on certain individuals, estates, and trusts by creating an income tax increment for public school funding dedicated to the fund at graduated rates specified in the proposed initiative based on the federal taxable income of the taxpayer.
- k. To increase income taxes imposed on corporations by creating an income tax increment for public school funding dedicated to the fund at a rate specified in the proposed initiative.

1. To require that revenue generated from the tax increment for public school funding be credited to the fund.

Substantive Comments and Questions

In addition to the substantive comments and questions raised in the memorandum for proposed initiative #74, which are incorporated by reference in this memorandum, the substance of the proposed initiative raises the following additional comments and questions:

1. The following questions and comments relate to section 3 (1)(b)(II) of article X of the Colorado constitution:
 - a. Is it your intent to freeze the residential assessment rate for residential property at the current rate of 7.2% for purposes of the school district mill levies?
 - b. After this amendment, every residential real property will have two assessed values: one that applies for school districts and one that applies to all other local governments that levy a property tax. Which assessed residential value is used for purposes of calculating the future residential assessment rates in accordance with the Gallagher Amendment, which is now in subsection 3 (1)(b)(I) of the section?
 - c. Under this provision, "all other real property shall be valued at twenty-nine percent of its actual value."
 - i. Is the purpose of this phrase to clarify the assessment rate for other property for purposes of the school district's property taxes? If so, why only mention real property? For example, is personal property valued at twenty-nine percent? Are the valuation for assessments for producing mines and lands or leaseholds producing oil or gas, assessed as provided in law?
 - ii. If your intent is that, for purposes of school district property taxes, all other property is valued as set forth in subsection (1)(b)(I) of the section, would it be more clear to make a cross-reference back to subsection (1)(b)(I) rather than restating the rates?

- iii. Alternatively, if this clause is excluded, would subsection (1)(b)(II) be read as an exception to requirements in subsection (1)(b)(I) and, therefore, any of the existing assessment rates described in subsection (1)(b)(I) would continue to apply for purposes of the school districts' property tax levies?
 - iv. Does the twenty-nine percent rate for real property apply to property exempt from property taxation?
 - v. Does this lower the assessment rate for oil and gas for school districts from 87.5% to 29%?
- d. It is possible that the residential assessment rate may decline again with the next reassessment cycle. Is it your intent to freeze the rate at 7.2% so that it cannot go below that percentage? Is it your intent to eliminate the possibility of future increases in the assessment rate?
 - e. For purposes of the property tax, tax years are referred to as "property tax years" and not "calendar years."

Technical Comments

The technical comments raised in the memorandum for proposed initiative #74 are incorporated by reference in this memorandum. There are no additional technical comments raised by the proposed initiative.