

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

To: Lea Steed and Donald Anderson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 16, 2021
SUBJECT: Proposed initiative measure 2021-2022 #53, concerning additional dedicated revenue to the state education fund.

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.

Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be:

1. To require an additional defined percentage of state revenue to be appropriated to the state education fund for education-related purposes.

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. Subsection (3) of Section 1 of the proposed initiative states in part "Colorado has not been able to provide those resources, having fallen behind inflation and enrollment growth since 2009 by \$571 million in the 2021-22 school year alone." Will you clarify what this means? Would you consider revising this for clarity?
3. Section 22-55-102.3 (1) of the proposed initiative requires a deposit to commence on January 1, 2023.
 - a. Is your intent for this to be a one-time transfer? Alternatively, if the intent is for this to be a recurring transfer, how frequently and when are subsequent transfers to occur?
 - b. The state fiscal year is from July 1 through June 30. If the voters approve this measure on the ballot at the November 2022 election, and it takes effect on January 1, 2023, how does this affect the state budget for the 2022-23 fiscal year?
4. Section 22-55-102.3 (1) of the proposed initiative requires in part "...an additional amount of state revenue equal to one-third of one percent on all federal taxable income, as modified by law, of every individual, estate, trust, and corporation, as defined by law, shall be deposited in the state education fund."
 - a. Is your intent to create a new tax? If your intent is to create a new tax, when is the tax applicable and would you consider revising to clarify when the tax is applicable?
 - b. From where or what fund is this money sourced?
5. Section 22-55-102.3 (2) of the proposed initiative states "[t]he revenue deposited in the state education fund pursuant to subsection (1) of this section, to the extent not otherwise subject to the exemptions specified in section 22-55-103 (5), C.R.S., may be collected, retained, deposited in the state education fund, and appropriated and spent by the state government and local school districts

for the purposes specified in section 17(4)(b) of article IX of the state constitution as a voter-approved revenue change under section 20(7)(d) of article X of the state constitution."

- a. What is your intent concerning whether the revenue deposited into the state education fund pursuant to the proposed initiative is or is not subject to the exemptions in section 22-55-103 (5), C.R.S.?
- b. What is your intent by stating the revenue is a "voter-approved revenue change under section 20(7)(d) of article X of the state constitution"?
6. Section 22-55-102.3 (4) of the proposed initiative requires the Department of Education to make an annual report to the public with information relevant to this section. How should the report be completed and how should the department make the report public?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. The proponents will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Section 1 of the proposed initiative creates a legislative declaration. However, if this is approved by the voters, it would be pursuant to an initiative as opposed to legislation. Would you consider changing "legislative declaration"?
2. Have you considered potential conforming amendments that may be needed within your initiative?
3. Section 22-55-102 of the proposed initiative states, "'State education fund revenues' shall also include revenues collected and required to be deposited in the state education fund pursuant to section 22-55-102.3, C.R.S." It is standard drafting practice to state a term "means" rather than "shall also include."
4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language added to the Colorado Revised Statutes. Furthermore, it is standard drafting practice not to apply small capital numbers to numbers in a statutory section. For example, "...SPECIFIED IN SECTION 17 (4)(b) OF ARTICLE IX"

5. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
6. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names, but not a state agency.
7. It is standard drafting practice to only capitalize the first word of bolded headnotes and to use lowercase letters for the remaining words.
8. It is standard drafting practice to end all provisions of a legislative declaration that are longer than one sentence with a period.
9. It is standard drafting practice to use the full name of "COVID-19" when referring to the COVID-19 pandemic rather than the shorthand "COVID."
10. It is standard drafting practice to refer to the "Colorado constitution" rather than the "state constitution."
11. It is standard drafting practice to use the term "general assembly" rather than "state legislature."
12. It is standard drafting practice to use the term "money" rather than "monies."