

STATE OF COLORADO

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: February 19, 2019

SUBJECT: Proposed initiative measure #27, 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 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 #24 to #29. 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 #24 to #26 and #28 and #29, 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.

Purposes

1. The major purpose of the proposed amendments to the Colorado constitution appears to be:
 - a. To eliminate the requirement that all income be taxed at one rate for income tax.
2. The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:
 - a. To express the goals of the initiative and the intention of the people that a more sustainable, fair, and adequate system for financing public schools is necessary to achieve the goals of the proposed initiative;
 - b. To create the quality public education account (account) in the state treasury, as an account within the state education fund, to receive all revenues collected through an income tax increment for public school funding, and to allow the general assembly to annually appropriate money from the account for purposes specified in law;
 - c. 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;
 - d. To require appropriations from the account for specific purposes until the enactment of a new school finance law that complies with the provisions of the proposed initiative;
 - e. To require money appropriated from the account to supplement, not replace, the level of general fund appropriations for public education existing on the effective date of the initiative, plus annual inflation adjustments;
 - f. To require each school district receiving money from the account to make publicly available certain financial and student performance information;
 - g. To require the review and study of a successor public school finance act within specific time frames;
 - h. To increase income tax rates incrementally for individuals, trusts, and estates using four tax brackets starting at .37% for income above \$150,000 and increasing to 3.12% for income above \$400,000;

- i. To increase the corporate income tax rate by 1.37%;
- j. To require revenue from the income tax increase to be deposited in a dedicated public education account; and
- k. To allow the revenue collected to be retained and spent as voter-approved revenue changes.

Substantive Comments and Questions

The substance of the proposed initiative raises the following additional 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. The following questions relate to proposed section 22-55-104.5 (2):
 - a. The new account is established within the state education fund (account) created in article IX, section 17 (4) of the Colorado constitution. With respect to the proposed location of the account:
 - i. What is the purpose in creating the new account within the state education fund as opposed to a separate fund, such as the quality public education fund created in other proposed initiatives in this series? Stated in other terms, what, if any, limitations or benefits are created by placing the account in the state education fund?
 - ii. Pursuant to article IX, section 17 (4)(b) of the Colorado constitution, money in the state education fund may only be used for specified purposes. Are the purposes for the use of the money in the new account the same as the purposes for the use of the money in the state education fund? If not, why place the money in the state education fund?
 - iii. If the statutory purposes for which money may be appropriated pursuant to proposed section 22-55-104.5 conflict with those of the state education fund, which purposes control?
3. There are several references in the Colorado Revised Statutes to section 17 of article IX of the Colorado constitution. Those references may no longer be accurate if the state education fund includes a new account.

4. Proposed section 22-55-104.5 (1)(d), (3)(b)(I), and (3)(b)(III) used the terms "quality early childhood education," "preschool," and "pre-school early education programs," respectively. Do these terms mean the same thing? Do they include programs for children at least three years of age or older, or do they include programs for younger children?
5. Proposed section 22-55-104.5 (3)(a) states that money in the account shall be appropriated for the purposes described in subsection (3). Until a new school finance law has been enacted, the purposes are limited to (3)(b). Could the general assembly amend the statutory purposes for the money prior to or after the enactment of a new school finance law?
6. Pursuant to proposed section 22-55-104.5 (4), the money appropriated from the account must supplement "the level of general fund appropriations existing on the effective date of this section, plus annual adjustments for inflation up to a maximum annual adjustment of five percent." How does this requirement work with the similar, existing requirements in article IX, section 17 of the Colorado constitution in which the account is created?
7. Pursuant to proposed section 22-55-104.5 (5), money in the account "shall be appropriated and expended to support public schools" This is very broad. Could the purposes of the account include postsecondary education? The only other reference to the level of public education is the requirement in (3)(b)(I), "to increase the annual statewide base per pupil funding for public education from preschool through twelfth grade."
8. In proposed initiatives #24 to #26 of this series, the proponents amend the Colorado constitution to add proposed article IX, section 17 (4.5), creating a quality public education fund, and amend the Colorado Revised Statutes, creating proposed section 22-55-109, which implements the constitutional fund. In initiatives #27 to #29, the proponents amend the Colorado Revised Statutes, creating proposed section 22-55-104.5, which creates a new statutory account within the state education fund and contains provisions implementing the account.
 - a. Although there are some missing provisions and numbers have been changed, the terms, phrases, and provisions contained in proposed section 22-55-104.5 appear to be identical to terms, phrases, and provisions contained in proposed article IX, section 17 (4.5) and proposed section 22-55-109. Is this correct?

- b. If the references were updated to reflect the new "account" and the correct placement in the proposed section 22-55-104.5 instead of proposed article IX, section 17 (4.5) or proposed section 22-55-109, would the proponents answers to the following comments and questions contained in the memorandum for proposed initiative #24, relating to the identical terms, phrases, and provisions be the same?
 - i. Proposed initiative #24 comments and questions: 5 to 7, 8 (d), 8 (e), 9, 11, 16 to 21, 23, 24 (d), 24 (e), 25, and 27 to 31.
 - ii. If not, in what way are the terms, phrases, and provisions different?
- 9. Pursuant to article V, section 1 (4)(b) of the Colorado constitution, an initiated constitutional amendment must have the approval of at least 55% of votes cast, unless the amendment is limited to repealing, in whole or in part, any provision of the constitution. If the proposed measure also amends state law, is it limited to repealing any provision of the constitution? Will a majority of votes cast be required to pass the proposed initiative?
- 10. Is there any limit on the types of new tax rates that may be enacted after the repeal of the language in proposed section (8)(a)? For example, could a graduated rate be implemented regardless of whether the revenue is used for schools?

Technical Comments

There are no additional technical comments.