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Colorado General Assembly

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MEMORANDUM

To: Rich Guggenheim and Michele Austin

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 17, 2025

Subject: Proposed initiative measure 2025-2026 #70, concerning male and female participation in school sports

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

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

1. To require an interscholastic or intramural athletic team or sport that is sponsored by a school or athletic association to designate whether each team or sport is for:
 - a. Males, men, or boys;
 - b. Females, women, or girls; or
 - c. Coeducational or mixed participants;
2. To require that an interscholastic or intramural athletic team or sport that is sponsored by a school or athletic association that is designated for females, women, or girls not be open to a male student or participant;
3. To require that an interscholastic or intramural athletic team or sport that is sponsored by a school or athletic association that is designated for males, men, or boys not be open to a female student or participant unless there is no female team offered or available for such sport for a female student or participant; and
4. To require the governing board of each school to adopt a policy implementing the proposed initiative and to give the commissioner of education the authority to enforce the requirement on a governing board.

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. The following comments and questions relate to proposed section 25-60-104 in the proposed initiative:

- a. The proposed initiative applies to an athletic team or sport that is sponsored by a school or athletic association. What constitutes sponsoring? Would the proponents consider defining the term?
 - b. The proposed initiative requires that athletic teams or sports be designated as based on biological sex. Who or what entity is responsible for making the designation?
 - c. The proposed initiative requires that a team or sport designated for males not be open to females unless there is no female team offered for the sport. What constitutes not having a female team for a sport? If there is a female team at some levels but not all levels how would the provision be applied?
3. The following comment and question relate to proposed section 25-60-105 in the proposed initiative:
 - a. The proposed initiative requires the commissioner of education to notify a school that has intentionally refused to comply with the proposed initiative. How will the commissioner determine that a school has intentionally refused to comply with the proposed initiative?

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 hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. A bold-face type headnote should appear after Section 1 indicating the section is a legislative declaration.
2. The amending clause for Section 2 of the proposed initiative should appear as follows: In Colorado Revised Statutes, **add** article 60 to title 25 as follows:
3. The statutory sub-parts should appear in bold-face type.
4. The short title should appear in quotations.

5. For a definitions section, the standard drafting practice is to include the following language after the headnote: “As used in this article 60, unless the context otherwise requires:”
6. Each definition should end with a period rather than a semi-colon.
7. In the definition of school, it includes an (A) and (B); those should either be removed or they should be shown as offset.
8. The term “Article” should not be capitalized.
9. The phrase “Commissioner of Education” should not be capitalized.
10. An internal reference to another section of statute should not include “C.R.S.”
11. 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."
12. For purposes of this statutory initiative, statutory sub-parts created in a new part are conventionally numbered in sequence. For example, 25-60-101, 25-60-102, etc. The proposed initiative skips from 25-60-105 to 25-60-108. Please consider renumbering.
13. The headnote for Section 3 of the proposed initiative states “applicability”; however, the language of the section only includes an effective date clause and does not indicate that the proposed initiative applies to any action on or after the effective date. Consider removing “applicability” from the headnote or adding an applicability clause.