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Colorado General Assembly

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MEMORANDUM

To: Michele Austin and Erin Lee

From: Legislative Council Staff and Office of Legislative Legal Services

Date: July 10, 2025

Subject: Proposed initiative measure 2025-2026 #109, 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 team or sport that is sponsored by a school or athletic association to designate whether the team or sport is for:
 - a. Males, men, or boys;
 - b. Females, women, or girls; or
 - c. Coeducational or mixed participants;
2. To prohibit a male student or participant from participating in an interscholastic or intramural athletic team or sport that is designated for females;
3. To prohibit a female student from participating in an interscholastic or intramural athletic team or sport that is designated for males, unless there is no female team offered or available for such sport for a female student or participant; and
4. To require the governing body of each school to adopt a policy implementing the proposed initiative and authorizing the commissioner of education to enforce noncompliance with the proposed initiative.

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 the proposed initiative's section 25-60-104:

- 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 an athletic team or sport be designated based on biological sex. Who, or what entity, is responsible for making that designation? Would the proponents consider specifying the requirement?
 - 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 or available for such sport for such female student or participant. What constitutes not having a female team offered or available? Would the proponents consider specifying the requirement?
 - d. The proposed initiative prohibits a government entity, licensing or accrediting organization, or athletic association from investigating or taking an adverse action against a school for maintaining a separate interscholastic or intramural athletic team or sport for female students or participants. However, the proposed initiative's language does not extend this prohibition to maintaining a separate interscholastic or intramural athletic team or sport for male students. Furthermore, the proposed initiative's language does not extend this to a governing body of a school or athletic association, which may be the entity responsible for the designation and compliance with the requirement. Is that the proponents' intent, and if not, would the proponents consider clarifying their intent?
3. The following comments and questions relate to the proposed initiative's section 25-60-105:
- a. The proposed initiative generally concerns schools and interscholastic athletic contests, and the commissioner of education's duties. The proposed initiative places these requirements in title 25 of the Colorado Revised Statutes, which is the title generally concerning the Department of Public Health and Environment. Why place this proposed initiative's provisions under the Department of Public Health and Environment's title, even though there are no proposed duties related to the Colorado Department of Public Health and Environment?

- b. The proposed initiative requires the commissioner of education to notify a school district that has intentionally refused to comply with the proposed initiative. How will the commissioner determine that a school district has intentionally refused to comply with the proposed initiative? Would the proponents consider specifying the requirement?
- c. The proposed initiative only considers enforcement for school districts. However, the proposed initiative applies to any public, charter, private or denominational school offering instruction in elementary or secondary grades, or postsecondary educational institutions. Is it the proponents' intent that an athletic association or any school that is not under the jurisdiction of a school district is exempt from enforcement, and if not, would the proponents consider clarifying their intent?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. 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. The end of subsection (3) of Section 1 of the proposed initiative should have a conjunction. For example: "...reducing the risk of physical injury; and".
- 2. The end of subsection (4) of Section 1 of the proposed initiative should have a period instead of a semi-colon.
- 3. The amending clause for Section 2 of the proposed initiative should be written as: "In Colorado Revised Statutes, **add** article 60 to title 25 as follows:".
- 4. The parenthetical headings for paragraphs (a) and (b) under subsection (8) of section 25-60-102 within Section 2 of the proposed initiative should not be in small capital letters.
- 5. "Agency" in subsection (9) of section 25-60-102 within Section 2 of the proposed initiative should not be capitalized.
- 6. "Commissioner" in subsection (2) of section 25-60-105 of the proposed initiative should not be capitalized.

7. Proposed initiative Section 2 would add article 60 to title 25. The individual Colorado Revised Statutes sections the initiative proposes include 25-60-101, 25-60-102, 25-60-104, 25-60-105, 25-60-106, and 25-60-107. A section 25-60-103 is not included. Please renumber the proposed initiative sections so that the section numbers are continuous.