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MEMORANDUM

November 26, 2003

TO: Donald A. Perl, Andres Guerreri, and Christina Kauffman

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2003-2004 #72, Concerning the Colorado Student Assessment Program

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 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.

Purposes

The major purpose of the proposed initiative appears to be:

1. To eliminate all testing under the Colorado student assessment program.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:
Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

To comply with Colorado's constitutional requirement, the proponents should include the enacting clause above in its entirety at the beginning of the proposed measure. Would the proponents consider including the phrase above at the beginning of the proposed measure?

2. To provide notice to the public of the proposed changes to the law and to identify whether the proponents intend to amend or add to the state constitution or the Colorado Revised Statutes, and specifically what provisions, an initiative, similar to a bill or referendum, generally refers to the specific constitutional or statutory section that is to be amended or repealed. An initiative usually goes further to provide the specific language within the statutory section that will be amended or repealed. Arguably, the language of the proposed initiative does not provide adequate notice to the public of the changes to the law proposed by the initiative. Would the proponents consider specifying the constitutional or statutory sections that are to be amended or repealed in the proposed measure and set forth the exact language to be added, amended, or repealed?
3. In Colorado, when a proposed measure adds new language or repeals existing language in the state constitution or the Colorado Revised Statutes, the proposed measure includes an amending clause indicating the specific section of the state constitution or the statutes where new language will be added, where existing language will be amended, or where existing language will be deleted. [For example, "**SECTION 1. Repeal.** 22-7-409, Colorado Revised Statutes, is repealed. " or "**SECTION 1. Repeal.** Part 4 of article 7 of title 22, Colorado Revised Statutes, is repealed. "]
 - a. Would the proponents consider adding an appropriate amending clause to the proposed measure to indicate a section number, part, or article to be repealed, and to conform the language of the repeal to standard drafting practices?
 - b. In addition, would the proponents consider clarifying whether this proposed measure is intended to be a statutory repeal, capable of being modified through a bill enacted by the General Assembly, or a constitutional amendment, which would be capable of modification through a new initiative or a concurrent resolution passed by the General Assembly and submitted to and approved by the people?

Substantive questions:

1. The language of the initiative indicates that the proponents propose the elimination of "CSAP testing". Section 22-7-409, C.R.S., establishes the schedule for when assessments under the Colorado student assessment program ("CSAP") are to be given. However, other sections in part 4 of article 7 of title 22, C.R.S., deal with other provisions of the CSAP program, such as the development of state standards and assessments and the adoption of model content standards, state assessments, and time-lines. Do the proponents merely want to repeal provisions concerning the giving of the assessments or do the proponents want to repeal all or some of the other provisions of the CSAP program?
2. In repealing existing law, it is necessary to repeal all the existing law on the subject and to eliminate from the law all references to the subject repealed and to all statutory provisions being repealed. There are references to the CSAP assessments in other portions of the Colorado Revised Statutes. Standard drafting practice requires a search of all the statutes to locate all other statutes that refer to the repealed section or sections so that appropriate conforming amendments can be made to those statutes. There are occasions, however, when conforming amendments would be so numerous as to unduly burden or disrupt the process, and on those occasions, a section that allows the Revisor of Statutes to prepare conforming amendments may be added to a measure. Another option would be to authorize the General Assembly to make all necessary conforming amendments to implement the measure.

Would the proponents consider performing a search of all of the statutes to locate all other statutes that refer to the repealed material and all statutory provisions being repealed to make appropriate conforming amendments, or, in the alternative, would the proponents consider a new section granting to the Revisor of Statutes or the General Assembly the authority to prepare such conforming amendments?

3. Currently, Colorado statutes require the state department of education to use the results from the CSAP assessments for various programs. For example, under section 22-7-604, C.R.S., CSAP scores are used to calculate a school's academic performance and improvement ratings, and in section 22-7-603.7, C.R.S., CSAP scores are used in the academic growth pilot program. Do the proponents intend to eliminate from statute all references to and uses of the results of the CSAP assessments, such as the school accountability reports and academic growth pilot program?