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MEMORANDUM

March 2, 2004

TO: Jon Caldera
Randal De Hoof

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #93, concerning amending Amendment 23

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 purposes of the proposed amendment appear to be:

1. To amend section 17 (1) of article IX of the Colorado constitution, also known as "Amendment 23," as follows:
 - a. To repeal the requirement that, through state fiscal year 2010-11, the statewide base per pupil funding, as defined by the "Public School Finance Act of 1994," article 54 of title 22, C.R.S., as of December 28, 2000, for public education from preschool through the twelfth grade and total state funding for all categorical programs are to grow annually at least by

the rate of inflation plus an additional one percentage point;

- b. To specify that for the 2004-05 state fiscal year and each fiscal year thereafter, the statewide base per pupil funding for public education from preschool through twelfth grade shall grow annually by a rate set by the General Assembly that is at least equal to the rate of inflation;
- c. To repeal the requirement that the total state funding for all categorical programs grow annually.

Comments and Questions

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

Technical questions:

1. It appears that the measure only proposes amendments to subsection (1) of section 17 of article IX of the Colorado constitution. Additionally, while the measure proposes to strike language in subsection 17 (1), the proposal is not repealing subsection 17 (1) in its entirety. Rather, the measure proposes to amend the language in subsection (1). Would the proponents consider modifying the amending clause to more precisely indicate the provision being amended and more accurately reflect what the proposal is doing? Specifically, would the proponents consider modifying the amending clause to read: "Section 17 (1) of article IX of the constitution of the state of Colorado is amended to read:"? Additionally, since only subsection (1) is being amended in this measure, if the proponents make the suggested change to the amending clause, would the proponents also consider deleting the remaining provisions of section 17 (subsections (2) through (5)) from the measure since the measure does not propose any modifications to those provisions?
2. When numerals or years are being amended, the practice is to strike one or two words preceding the number or year to make it easier for the reader to see the change. For example, in the proposed changes in subsection (1), the change to the 2011-2012 state fiscal year should appear as follows: "state ~~fiscal year 2011-2012~~ FISCAL YEAR 2004-05". Would the proponents consider making this change?

Substantive questions:

1. It appears that the proposed measure would repeal the requirement that the statewide base per pupil funding for public education for preschool through twelfth grade annually be increased by the rate of inflation plus one percentage point for state fiscal years 2001-02 through 2010-11 and would instead require the statewide base per pupil funding to be increased at least by inflation for

the 2004-05 state fiscal year and each state fiscal year thereafter. Assuming this measure appears on the November 2004 statewide ballot, is approved by the voters, and takes effect upon proclamation of the Governor sometime after the election and during the 2004-05 state fiscal year, this proposed modification prompts the following questions:

- a. By the time the measure appears on the ballot, the General Assembly will have set the level for the statewide base per pupil funding for the 2004-05 state fiscal year, which presumably will be based on the current requirement in section 17 (1) of article IX of the Colorado constitution to increase the statewide base per pupil funding by inflation plus one percentage point, and will have appropriated general fund and state education fund moneys for the state's share of districts' total program based on the statewide base per pupil funding level. School districts throughout the state will have prepared and based their budgets on the assumption that they will receive state aid in an amount based on the inflation plus 1% increase in the statewide base per pupil funding. How do the proponents intend the provision to be implemented in the middle of the 2004-05 state fiscal year?
 - b. Would the General Assembly be required to enact a supplemental appropriation to reduce the level of the statewide base per pupil funding in the middle of the fiscal and school year and effectuate a rescission across all districts? Would the measure allow the General Assembly to reduce the 2004-05 funding level? How do the proponents intend a reduction to be implemented?
 - c. Would the proponents consider establishing the 2005-06 state fiscal year as the first year of implementation of the measure to avoid an in-year reduction for school districts?
2. In Section 17 (1) of the proposed initiative, the reference to the "statewide base per pupil funding, as defined by the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes" is stricken.
- a. Is it the proponents intent to delete the reference to the definition of "statewide base per pupil funding"?
 - b. If the reference to the definition of statewide base per pupil funding is stricken, how is statewide base per pupil funding defined?
3. The proposed initiative removes the reference in Section 17 (1) to categorical programs.
- a. Section 17 (4) (b) states that the General Assembly may appropriate moneys from the State Education Fund to comply with Section 17 (1) and for accountable education reform, for accountable programs, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, for public school capital

construction. Is it the proponents intent that moneys for the State Education Fund could no longer be appropriated for categorical programs?

- b. Since the reference to categorical programs in Section 17 (1) is deleted, does the definition of "categorical programs" in Section 17 (2) (a) need to be repealed? Is the definition retained since the term is used in section 17 (5)?
4. With regard to eliminating the required increases in total state funding for all categorical programs, do the proponents intend the measure to allow or require a reduction in categorical program funding in the 2004-05 state fiscal year? How would a reduction be implemented? Would the proponents consider establishing the 2005-06 state fiscal year as the first year of implementation to avoid an in-year reduction in categorical program funding?