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MEMORANDUM

March 12, 2004

TO: Hugh Fowler and F. Parker Fowler

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #100, concerning the GI-Bill for Kids

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 direct the General Assembly to establish a voucher program, effective for the 2006-07 school year, for pre-kindergarten through twelfth-grade education, notwithstanding the provisions of: Section 25 of article V of the state constitution, prohibiting special legislation; section 34 of article V of the state constitution, prohibiting appropriations to private institutions; section 7 of article IX of the state constitution, prohibiting state aid to private schools and churches and for sectarian purposes; section 15 of article IX of the state constitution, requiring the election of school district boards of education and granting them control of instruction within their respective school districts;

- and section 2 of article XI of the state constitution, prohibiting aid to corporations; and
2. To require all state moneys appropriated for general support of pre-kindergarten, kindergarten, elementary, and secondary education to be apportioned among all Colorado students between the ages of four and twenty-one; and
 3. To require the value of each share of the apportioned moneys to be under the control of the parent or guardian of each student for which a voucher is requested, or under the control of the student if he or she is emancipated; and
 4. To establish the value of each voucher as at least ninety-five percent of the average statewide per-pupil revenue or its equivalent in any state education funding formula; and
 5. To allow the General Assembly to increase the value of the voucher by providing by law for the similar apportionment of local property taxes and other local taxes raised for educational purposes; and
 6. To allow the General Assembly to provide by law for the similar apportionment, in the form of a voucher, of funds appropriated for existing categorical services; and
 7. To establish that the purpose of the apportionments is to provide each parent, legal guardian, and emancipated minor a choice of appropriate pre-kindergarten, kindergarten, elementary, and secondary educational services from among the various sources available in Colorado, including but not limited to government schools, non-government schools, and home schools, as provided by law; and
 8. To allow school districts to be remunerated at the rate of two percent of the value of each voucher for administrative services in connection with the disbursement of vouchers; and
 9. To prohibit the redemption or exchange of vouchers for services provided by: Any institution operated, controlled or funded by an organization formed for political purposes as defined by law; any organization teaching or supporting terrorism, as defined by law; or any institution that discriminates in contravention of state or federal law; and
 10. To specify that the proposed measure does not create in any state agency any authority not existing prior to January 1, 2002, over the educational programs of non-government educational resources, except for provisions setting minimum student achievement or proficiency standards; and
 11. To specify that the minimum student achievement or proficiency standards may be no more stringent for non-government educational resources than for government schools; and
 12. To repeal section 17 of article IX of the state constitution.

Comments and Questions

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

Technical questions:

1. The measure appears to include a title, "GI-Bill for Kids". The actual ballot title for the measure will be set by the title board, pursuant to section 1-40-106, C.R.S. Would the proponents consider removing the title that is currently on the measure?
2. The sections in the state constitution include both a number and a head note that describes the contents of the section. Would the proponents consider including a head note for the new section 17 of article IX? If no head note is included, the head note will be added by the Revisor of Statutes at the time of publication if the measure is adopted.
3. It appears the word "voucher" and "choice" are each printed in bold type once in the measure. Is this the proponents' intent?
4. In identifying its purpose, the measure specifies that the "parent or guardian or emancipated minor" has a choice of appropriate schools. Later in that sentence, it refers to just the "parent's" choice of a government school, non-government school, or home school. Is it the proponents' intent to refer just to "parent" in the latter portion of the sentence, or should "parent or guardian or emancipated minor" continue to be referenced?
5. In the sentence that begins "No voucher shall be redeemable...", it appears the word "by" should follow "redeemable".
6. The measure appears to repeal the existing language in section 17 of article IX of the state constitution. It is the practice of the General Assembly, when a section of law is repealed, to identify the section as having been repealed by printing the section number followed by a notation of its repeal, including the date of the repeal. A new section would then receive the next number in sequence. It is also the usual practice that the repeal of the existing section 17 of article IX would occur in a separate section of the measure from that creating the new section, unless the amending clause of the measure specifically noted that section 17 of article IX is repealed and reenacted. Would the proponents like to apply the usual practice for repealing sections and numbering new sections?

Substantive questions:

1. The measure establishes the voucher program, "notwithstanding" the provisions of section 25 of article V of the state constitution, which prohibits the General Assembly from passing special

legislation, as listed in the section. It does not appear that any of the items would apply to the content of the proposed measure. Also, this section prohibits enactment of a special law where a general law may be made applicable. It appears that the proposed measure sets the parameters for a general law. Why is it necessary to state that the proposed measure would operate "notwithstanding" the provisions of section 25 of article V of the constitution?

2. What is the proponents' intent in specifying that the proposed measure would operate "notwithstanding" the provisions of:
 - a. Section 34 of article V of the state constitution, prohibiting appropriations to private institutions?
 - b. Section 7 of article IX of the state constitution, prohibiting state aid to private schools and churches and for sectarian purposes?
 - c. Section 15 of article IX of the state constitution, requiring the election of school district boards of education and granting them control of instruction within their respective school districts?
 - d. Section 2 of article XI of the state constitution, prohibiting aid to corporations?
3. The proposed measure refers to apportioning "all state monies appropriated for general support of pre-kindergarten, kindergarten, elementary, and secondary education". What do the proponents intend this phrase to include? Does it refer to monies that are currently appropriated as the state's share of school districts' total program funding under the "Public School Finance Act of 1994", article 54 of title 22, C.R.S.? Does it include monies that are currently appropriated for capital construction for school districts and charter schools? Does it include monies that are currently appropriated for the Colorado school for the deaf and the blind? Does it include monies that are currently appropriated as grant programs or award programs such as the read-to-achieve grant program (section 22-7-506, C.R.S.), the learning improvement grants program (section 22-7-507, C.R.S.), the Colorado school awards program (part 3 of article 11 of title 22, C.R.S.), and the Colorado information technology education grant program (article 81.5 of title 22, C.R.S.)? Under the proposed measure, would the General Assembly be able to appropriate monies other than through the voucher to fund pre-kindergarten through twelfth grade education?
4. How does the requirement placed on the General Assembly by the proposed measure to fund education solely through vouchers interact with the requirement placed on the General Assembly in section 2 of article IX of the state constitution to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state..."?
5. The measure instructs the General Assembly to apportion the monies among all Colorado students between the ages of four and twenty-one.

- a. What do the proponents intend the reference to students "between the ages of four and twenty-one" to include? Does it include students who are four years old and twenty-one years old or just students who are at least five years old but younger than twenty-one? Would the proponents consider clarifying this provision?
- b. Under section 2 of article IX of the state constitution, the General Assembly is required to establish a thorough and uniform system of free public schools wherein all residents between the ages of six and twenty-one may be educated gratuitously. What is the effect of apportioning a voucher amount to children who are four and five years old? Does this extend the right to a free public education to these children?
- c. Currently, there are several children in this state between the ages of four and twenty-one who are not enrolled in a public school and therefore are not included in the calculations for determining the appropriation for the state's share of school funding. The measure appears to require that the monies currently appropriated by the state be divided among all children between the ages of four and twenty-one years. Does this include those children who currently are not enrolled in a public school and therefore are not included in the calculation? What effect does this have on the amount of the voucher? How does the state know how many students between the ages of four and twenty-one are residing in the state?
- d. Currently, the state does not fund all four and five year old children for preschool. The General Assembly annually appropriates monies to fund a certain number of preschool "slots" that are distributed among the school districts by the department of education. To date, the cost of funding preschool for all four and five year old children has been prohibitive. It appears the proposed measure would make a preschool voucher available to all four and five year old children. Is this the proponents' intent? Do the proponents anticipate that the provisions of the measure will increase the amount required to fund education?
- e. Although the measure requires apportionment of the monies among all students between the ages of four and twenty-one years, it appears to grant a voucher only to those students "for which a voucher is requested". How are these provisions reconciled? Are the monies only apportioned among those students ages four to twenty-one for which a voucher is requested, or are the apportioned amounts only paid to those students for which a voucher is requested? If the latter is the proponents' intent, what happens to the monies that are apportioned but not paid?
- f. What if the parent, guardian, or student does not request a voucher and the student enrolls in a public school? Would the public school receive any state funding for the student?
- g. Although the measure refers only to funding pre-kindergarten through secondary education, in specifying how the monies are apportioned, the measure does not appear to exclude

persons who have already received a high school diploma. What is the proponents' intent with regard to this issue?

6. The measure gives control of the voucher to the "parent or guardian" of each student. The term "guardian" may be interpreted many ways. Is it the proponents' intent to refer only to persons who are identified as the legal guardian of a child by the courts or to include persons who may be acting as guardians in the absence of a child's parent, such as a grandparent or close friend? Would the proponents consider clarifying this term? Would it be the proponents' intent that the General Assembly would have authority to clarify this term, including limiting it to legal guardians, in implementing legislation?
7. The measure gives control of the voucher amount to students who are "emancipated minors". How do the proponents intend the phrase "emancipated minors" to be defined? Currently, there is no statutory procedure for emancipation of a minor in Colorado. "Emancipated minor" is defined in section 23-7-102 (3), C.R.S., for purposes of determining in-statute tuition status.
8. The proposed measure states that the value of the voucher shall be no less than ninety-five percent of the average statewide per-pupil revenue or its equivalent in any state education funding formula.
 - a. The "Public School Finance Act of 1994" does not actually use the term "average statewide per-pupil revenue". It does define "state average per pupil operating revenues" in section 22-54-103 (12), C.R.S., as the total program of all districts for any budget year divided by the total funded pupil count of all districts for said budget year, minus the minimum amount per pupil required by section 22-54-105 to be budgeted for the capital reserve fund, the insurance reserve fund, or any other fund for the management of risk-related activities. Is it the proponents' intent to use this definition? If so, would the General Assembly have the ability to amend the definition after the proposed measure passes? Would the proponents consider using the term "state average per-pupil operating revenue" and adding the phrase, "as defined in by law"?
 - b. It appears this statement of the amount of the voucher conflicts with the previous sentence in the proposed measure which states how the monies are to be apportioned. The first sentence of the proposed measure appears to required the General Assembly to determine how much will be appropriated for the general support of pre-kindergarten through twelfth grade education and divide that among all students residing in the state who are between the ages of four and twenty-one years. Under this sentence, the amount of the voucher will always vary depending on how much money is appropriated to support education and how many students are residing in the state. How does this provision relate to the second sentence that sets the value of the voucher? Is it the proponents' intent that the General Assembly first determine how much it will appropriate for the general support of education and then divide that amount into vouchers? Or that the General Assembly first determine how many students of the appropriate ages are residing in the state and then appropriate an amount for the general support of education that will fund the vouchers in the amount

required in the measure?

- c. The measure does not appear to set any specific minimum or maximum funding levels for public education. Does the measure in any way limit the plenary power of the General Assembly to appropriate moneys for pre-kindergarten through secondary education? Does the measure limit the General Assembly's plenary power to determine the amount to be appropriated for education? If so, in what ways?
 - d. Does the voucher amount have to be the same for each student? Can the General Assembly, in adopting implementing legislation, recognize the differing costs in educating preschool, elementary, and secondary school students by establishing differing voucher amounts?
 - e. Some students, most notably preschool and kindergarten students, attend school for only half the day. Would the General Assembly have authority to provide for half-time student vouchers?
 - f. Under the "Public School Finance Act of 1994", the department of education ("department") applies the statutory funding formula to calculate each school district's total program. Each school district's total program is funded from state and local shares. The department calculates how much the school district will receive in property tax and specific ownership tax, subtracts that amount from the school district's total program, and the remainder is the state's share.¹ As noted above, the voucher amount is to be at least ninety-five percent of the statewide average per pupil revenues, which appears to include both the state and local share of education funding. If the voucher amount is not limited ninety-five percent of the state share of the average per pupil funding, arguably, this provision would greatly increase the amount of funding provided by the state for education. Is this the proponents' intent? How is the local share of total program funding supposed to be taken into account under the proposed measure?
 - g. The proposed measure refers to the average statewide per-pupil revenue "or its equivalent in any state education funding formula." By including this statement, is it the proponents' intent to preserve the authority of the General Assembly to rewrite the statutory provisions for funding education, including rewriting the methodology for the funding and for calculating the funding?
9. The measure provides that "To increase the value of the voucher the General Assembly may provide by law for the similar apportionment of local property taxes, and other local taxes, raised for educational purposes." What does this mean? Is it the proponents' intent that the General Assembly may redistribute locally collected taxes among students residing throughout the state or

¹ The state share ranges from ___ percent for the districts that are poorest in local taxes monies to ___ percent for those that are richest.

only that the General Assembly may require a school district to distribute the amount it receives in local taxes as vouchers to students residing within the school district?

10. The proposed measure provides that "The General Assembly may also provide by law for the similar apportionment, in the form of a voucher, of funds appropriated for categorical services such as transportation and special education."
 - a. The statutes currently do not define or use the term "categorical services". Section 22-55-102 (4), C.R.S., defines "categorical programs". Is it the proponents' intent to refer to categorical programs as defined in this section? If so, would the proponents consider changing the term to categorical programs? If not, would the proponents consider defining "categorical services"?
 - b. If the proposed measure is adopted, would the General Assembly retain the authority to create categorical programs or services in addition to those currently in statute and to provide for apportionment of the funds for these new categorical programs by a voucher?
 - c. Is it the proponents' intent that the General Assembly could create a separate voucher for each categorical program? How would the proponents foresee such a voucher program operating?
 - d. Under current federal law, the state must provide a free, appropriate public education to a child with a disability, unless the child's parent or legal guardian chooses to enroll the child in a private school. What would be the effect if the General Assembly were to create a voucher program for special education? If a parent used a voucher to enroll his or her child with a disability in a private school, would the state no longer be responsible for the child's education?
11. The measure states the purpose of vouchers is to give parents, guardians, and emancipated minors a choice of "appropriate" pre-kindergarten, kindergarten, elementary, and secondary educational services from among the various resources in Colorado. What does the term "appropriate" mean in this context? Who determines what is appropriate?
12. The proposed measure specifies that a parent may choose among "government (public) schools, or non-government schools (which may accept the voucher and redeem its value from the state), or home schools (which may exchange the value of the voucher for educational services and materials in-kind), as provided by law."
 - a. Is it the proponents' intent that the term "non-government school" have the same meaning as the term "nonpublic school", defined in section 22-2-102 (3), C.R.S.?² If so, would the

²Section 22-2-102 (3), C.R.S., provides:

22-2-102. Definitions. As used in this part 1, unless the context otherwise requires:

proponents consider using the statutory term?

- b. Is it the proponents' intent that the term "home school" have the same meaning as "non-public home-based educational program" as defined in section 22-33-104.5 (2) (a), C.R.S.?³ If so, would the proponents consider using the statutory term? Is it the proponents' intent that a "home school" would meet all of the requirements for a non-public home-based educational program specified in section 22-33-104.5, C.R.S.?
 - c. With whom and how would a home school exchange the value of a voucher? Is it the proponents' expectation that a home school would exchange the voucher for educational services from another provider, such as a charter school or a private school of some form, and that the charter school or the private school would redeem the voucher with the state? How would this work if the home school were exchanging the voucher for "materials in-kind"? What are materials in-kind?
 - d. What does the phrase "as provided by law" refer to in this context? What is the extent of the General Assembly's authority to affect this provision by statute?
13. Under the proposed measure, a school district may be remunerated at the rate of two percent of the value of each voucher for administrative services in connection with the disbursement of vouchers. How do the proponents foresee this provision being implemented? What role is a school district taking that would generate administrative services and the need for remuneration? How do the proponents foresee implementing the distribution of the vouchers? How do the proponents foresee the implementing procedures for the redemption of vouchers?
14. The proposed measure provides that "No voucher shall be redeemable nor exchangeable for services from any institution operated controlled or funded by an organization formed for political purposes as defined in law, nor from any organization teaching or supporting terrorism as defined by law, nor from any institution which discriminates in contravention of state or federal law."
- a. What do the proponents intend by the phrase "institution operated controlled or funded by an organization formed for political purposes"?

(3) "Nonpublic school" means a school organized and maintained by a recognized religious or independent association performing an academic function.

³Section 22-33-104.5 (2) (a), C.R.S., provides:

22-33-104.5. Home-based education - legislative declaration - definitions - guidelines.

(2) As used in this section:

(a) "Nonpublic home-based educational program" means the sequential program of instruction for the education of a child which takes place in a home, which is provided by the child's parent or by an adult relative of the child designated by the parent, and which is not under the supervision and control of a school district. This educational program is not intended to be and does not qualify as a private and nonprofit school.

- b. How will a parent, guardian, or emancipated minor know whether he or she can use a voucher at a specific institution? Who is responsible for determining whether an institution falls within one of the excluded categories? At what point is this determination made? Is it the proponents' expectation that the General Assembly would adopt a program for screening and registering institutions to ensure they do not fall within one of the excluded categories?
15. The proposed measure states, "Nothing in this section shall create in any state agency any authority not existing prior to January 1, 2002, over the educational programs of non-government educational resources, except for provisions in law setting minimum student achievement or proficiency standards, which may be no more stringent for non-government educational resources than for government (public) schools."
- a. What does the phrase "non-government educational resources" mean? Is it different from a non-government school, as referred to earlier in the measure? Does it include home schools?
 - b. Why did the proponents select January 1, 2002, as the controlling date for this provision? Are there specific statutory provisions adopted after January 1, 2002, that extended the authority of a state agency over the educational programs of non-government educational resources that the proponents want to ensure do not apply? Are there specific statutory provisions in existence as of January 1, 2002, that the proponents believe extend the authority of a state agency over the educational programs of non-government educational resources?
 - c. What does the phrase "provisions in law setting minimum student achievement or proficiency standards" refer to? Is it the proponents' intent that students enrolled in non-government educational resources will participate in the Colorado student assessment program pursuant to section 22-7-409, C.R.S.? Will non-government educational resources be subject to the requirements of the "Colorado Basic Literacy Act", part 5 of article 7 of title 22, C.R.S.? Will the accountability provisions of part 6 of article 7 of title 22, C.R.S., including calculation of academic performance and academic improvement ratings, the annual preparation of a school accountability report, and the requirement of school improvement plans for low-performing schools apply to non-government educational resources? Are there other statutory provisions concerning student achievement or proficiency standards that the proponents intend to apply to non-government educational resources?
 - d. If a non-government educational resource that is eligible to redeem vouchers does not meet the statutory student achievement or proficiency standards that are applicable to it, will the non-government educational resource no longer be eligible to redeem vouchers? Is it the proponents' intent that the department of education will oversee the performance of non-government educational resources in these areas?

16. The proposed measure repeals section 17 of article IX of the state constitution, referred to as "Amendment 23". Section 17(4) of Amendment 23 establishes the state education fund and exempts moneys diverted to or appropriated or expended from the fund from the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution, referred to as "TABOR".
- a. If the proposed measure is approved by the voters and takes effect in the 2004-05 state fiscal year, and the General Assembly has already appropriated moneys to fund increases in the statewide base per pupil funding and total state funding for all categorical programs, as required by section 17(1) Amendment 23, would the repeal of section 17 (1) allow or require th General Assembly to rescind the increases in the statewide base per pupil funding and categorical program funding in the 2004-05 fiscal year?
 - b. If Amendment 23 is repealed, what is the proponents' intent with regard to any revenue remaining in the state education fund at the time of repeal? Without specific instruction, the monies would revert to the state general fund. Would the proponents intend that the General Assembly transfer the monies to another fund? Is it the proponents' intent that the monies would retain their status as exempt from the state fiscal year spending limit set forth in TABOR?
 - c. Could the General Assembly expend the moneys in the fund for any purpose? Would the expenditures be exempt from TABOR and the statutory limitation on general fund appropriations growth? Do the proponents intend the moneys in the fund to be included in state fiscal year spending and refunded if required under TABOR? Would the proponents consider specifying their intent with regard to the moneys in the state education fund?
 - d. Amendment 23 exempts a portion of income tax revenue from TABOR state fiscal year spending. By repealing Amendment 23, it appears that these revenues are again included in state fiscal year spending. Is it the proponents' intent that the portion of income tax revenues collected are again included in state fiscal year spending? Is it the proponents' intent that revenue collected on or after the effective date of this proposal be included in state fiscal year spending? Could the General Assembly define how those revenues are calculated? If the money currently diverted to the state education fund reverts to the state general fund during a year in which state fiscal year spending would have been at its maximum, all of the money would be refunded to taxpayers in accordance with TABOR. For example, the state is currently projected to reach its maximum state fiscal year spending in the 2004-05 fiscal year, which is the fiscal year in which this proposal would become effective. Therefore, the income tax revenue that becomes subject to the state fiscal year spending limit would be refunded. Is this the proponents' intent?
 - e. By enacting implementing legislation in the 2001 legislative session, the General Assembly essentially included the requirements of Amendment 23 in article 55 of title 22 of the

Colorado Revised Statutes. By repealing section 17, do the proponents intend to also repeal article 55 of title 22, C.R.S.? Could article 55 of title 22 remain in effect if this measure passes? Would the state education fund still exist? Would a portion of federal taxable income still be diverted to the fund? If any new revenues are diverted to the fund, would the revenues be subject to the limitation on state fiscal year spending?

- f. Education programs currently receive approximately \$350 million from the state education fund. Assuming that state revenues do not increase as a result of this proposal or that general fund revenues within the statutory six percent general fund appropriations limit increase by less than the amount currently provided by the state education fund (or do not increase at all), this proposal could result in a reduction of funding for education or a reduction in funding for other state programs and services to maintain current education funding levels. Is this the proponents' intent?
 - g. If the proposed measure becomes effective in December 2004, is it the proponents' intent that the first state fiscal year that the repeal of Amendment 23 would impact is the 2004-05 fiscal year? Would the proponents consider including an effective date clause in the proposal to specify when the proposal is to take effect?
17. It appears that the proposed measure has two primary subjects: The establishment of a voucher system for students between the ages of four and twenty-one years; and the repeal of section 17 of article IX of the constitution. Under section 1(5.5) of article V of the constitution, each proposed initiative may contain only one subject. What do the proponents identify as the single subject of this proposed measure?