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MEMORANDUM

January 14, 2004

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 #81, 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.

Special Note

Earlier versions of this initiative, Proposal Number 2003-04 #72 and Proposal Number 2003-04 #74 submitted by the same proponents, were the subject of memoranda dated November 26, and December 19, 2003, respectively. Hearings were held on December 2, and December 22, 2003, to address the earlier memoranda. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearings unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in

the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed initiative appear to be:

1. To repeal the following provisions of the Colorado Revised Statutes:
 - a. Part 4 of article 7 of title 22;
 - b. Part 3 of article 11 of title 22; and
 - c. Sections 22-7-603.5 (1) (a) (V), 22-7-604, 22-7-604.5 (3), 22-7-605 (2) (II) (b), (4) (b) (II) (C), (7), (8) (d), and (8) (e), 22-7-611 (1) (a), 22-11-104 (2) (a) (I), and 26-6.5-106 (2) (b);
2. To amend certain Colorado statutes to eliminate references to academic performance ratings;
3. To amend certain Colorado statutes to replace references to receiving unsatisfactory academic performance ratings with references to being below comparable neighborhood schools;
4. To change references in the statutes pertaining to the school readiness child care subsidization program to refer to schools whose demographics consist of at least 7-% students who are eligible for free or reduced-cost lunch rather than schools that receive unsatisfactory or low academic performance ratings;
5. To authorize the Revisor of Statutes to repeal and amend the sections of Colorado statutes specified in the measure.

Comments and Questions

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

Technical questions:

1. Generally, when a portion of the statutes is repealed, the amending clause reads as follows:

"SECTION 1. Repeal. Part 4 of article 7 of title 22, part 3 of article 11 of title 22, sections 22-7-603.5, . . . 22-7-605 (2) (II) (b), (4) (b) (II) (C), (7), (8) (d), (8) (e), . . ., Colorado Revised Statutes, are repealed.

Would the proponents consider using the standard amending clause?

2. Generally, a new section is used for each statutory section to be amended. Also, one amending clause may be used when multiple subsections within a section are amended. Also, the amending clause should only refer to the portion of statute being amended, such as "section 22-30.5-301 (1)" rather than part 3 of article 30.5 of title 22". Thus, the first two amending clauses in your proposal might look like:

"SECTION 2. 22-7-603 (1), Colorado Revised Statutes, is amended to read:

22-7-603. State data reporting system. (1) The department shall develop and implement a comprehensive data collection and reporting system

SECTION 3. 22-7-603.5 (1) (b) (II) and (d), Colorado Revised Statutes, are amended to read:

22-7-603.5. Legislative declaration - measurement of value added to academic progress. (1) (b) The general assembly further finds that:

(II) Among the areas that are to be given priority for state education funding are . . . ;

(d) The general assembly hereby finds and declares that, for purposes of section 17"

Would the proponents consider using the standard amending clause forms?

3. Generally, when sections of statutes are amended, the section number and headnotes are included such as:

22-7-603. State data reporting system. (1) The department shall develop and implement a comprehensive data collection and reporting system for collecting and reporting performance indicators from each public school. . . .

Would the proponents consider including the section numbers and headnotes?

4. Generally, when multiple sections of statutes are amended, the sections being amended are put in numeric order. Would the proponents consider putting the sections in numerical order?
5. In section 2, the eighth line down, "bedesigned" should have a space. Would the proponents consider changing it to "be designed"?

6. Generally, it is not necessary to specify when a section ends. However, the final punctuation generally appears prior to the start of the strike type. Thus, for the amendment to section 22-7-605 (4) (b), the section would end: "category. ~~calculated pursuant to section 22-7-604 for the public school~~". Would the proponents consider moving the punctuation and deleting the references to when the section ends?
7. Generally, new language appears in a measure exactly within the statute where it should appear, but following any language that appears in strike type. It appears that the proponents have placed the new language at the end of the section rather than where in the section the language should go. Would the proponents consider moving the new language to within the section?
8. Generally, the numbers for percentages are written out followed by the word "percent". In the proposed amendments to title 26, C.R.S., the proponents make reference to "70%". Would the proponents consider using the phrase "seventy percent" rather than the numerals and percent sign?

Substantive questions:

1. There do not appear to be any amendments to section 22-7-603.5 [1] (b) (II). Did the proponents intend that the word "state in the third line appear in strike type?
2. The proposed amendment to section 22-7-603.5 (2), C.R.S., keeps the definition of "longitudinal analysis" as measuring academic progress from one year to the next, but strikes the language explaining how the academic progress is measured. How will academic progress be measured for purposes of longitudinal analysis?
3. The proposal repeals section 22-7-604, C.R.S., that establishes a procedure for calculating the academic performance and academic improvement ratings, but maintains references to the ratings. How do the proponents intend that academic performance and academic improvement ratings be determined and by whom?
4. The proposal amends section 22-7-605 (1) and (4) (b) by striking references to calculating the academic performance rating pursuant to section 22-7-603, but does not state how the rating is to be calculated. How do the proponents intend the academic performance and academic improvement ratings to be calculated?
5. The proposed amendment to section 22-7-605 (4) (b) (II) (A) would have the school report have a place for the academic performance rating, but no rating. Is that the intent of the proponents?

6. The proposal includes new language concerning schools whose accountability reports "will be consistently (more than three consecutive years) below comparable neighborhood schools".
 - a. What is being measured to tell if a report is below other schools?
 - b. If the proponents intend "consistently" to mean "more than three consecutive years" is it necessary to include both phrases?
 - c. Who do the proponents intend to define a "comparable neighborhood school" and how do the proponents expect it to be defined?
7. The change to section 22-7-605 (8) (b), C.R.S., is to add " a brief narrative pursuant to 22-7-605 as amended".
 - a. It does not appear that there is a discussion of a brief narrative in section 22-7-605, C.R.S. What do the proponents intend to be in this narrative?
 - b. Who do the proponents intend to prepare the brief narrative?
8. Section 22-7-609 (2), C.R.S., as amended by the proposal does not appear to make sense. Would the proponents consider changing "what schools" to "of the schools"?
9. The proposal makes changes to sections "22-11-104 (2) (a) (II) (g)", "(2) (a) (II) (h)", and "(2) (a) (II) (j)". Did the proponents intend to amend section 22-11-104 (2) (f), (2) (g), and (2) (j), C.R.S.? Also, the proposed amendments maintain references to sections 22-7-407 and 22-7-409 (1) and (1.2) (d) (I) (C), C.R.S. Another provision of the proposal repeals those sections. Do the proponents want to strike references to those repealed sections.
10. If the measure is approved by the voters, the statutory sections will automatically be repealed or amended, as appropriate, without the necessity of giving the Revisor of Statutes authority to do so. However, the proponents may want to consider giving some authority to the Revisor of Statutes to amend or repeal other statutory sections not specifically referenced in the measure. Would the proponents consider striking section 3 of the measure or changing it to give the Revisor of Statutes the authority to amend or repeal provisions consistent with this measure.