

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 3, 2013

**TO:** Ashley Brillante, Tom Stokes, and Mark Grueskin

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #14, concerning funding for public schools

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2013-2014 #13 to #28. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2013-2014 #13 to #28, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## Purposes

The major purposes of the proposed amendment to the Colorado constitution and Colorado Revised Statutes appear to be:

1. To impose income tax rate increases on federal taxable income of individuals, estates, and trusts, referred to in the proposed initiative as the income tax increment for public school funding (income tax increment), at the rates of:
  - a. Thirty-seven one-hundredths percent on federal taxable income up to and including seventy-five thousand dollars; and
  - b. One and twenty-seven one-hundredths percent on federal taxable income over seventy-five thousand dollars.
2. To allow the general assembly to annually adjust the income thresholds for the income tax increment for inflation from the previous year.
3. To eliminate the requirement that the statewide base per pupil funding for public education from preschool through twelfth grade and total state funding for all categorical programs grow annually by at least the rate of inflation, as set by the general assembly.
4. Beginning July 1, 2014, to eliminate the requirement that all state revenues collected from a tax of one-third of one percent on federal taxable income of every individual, estate, trust, and corporation be deposited in the state education fund.
5. To require the state education fund to receive at least forty-three percent of sales, excise, and income tax revenue collected in the state general fund in a manner that equals such percentage in relation to the revenue generated by the tax rates in effect on December 31, 2012, net of any refunds required by section 20 (3) (c) of article X of the Colorado constitution.
6. When there is a change in the actual value of residential real property that would otherwise warrant a reduction in the ratio of valuation for assessment for residential real property, to require the general assembly, notwithstanding any other provision of law, to reduce the residential assessment rate that is applicable to public school funding annually until the rate that applies to public school funding is seven and nine-tenths percent, and to require the general assembly to maintain the rate at such percentage thereafter.
7. To create a state educational achievement fund (achievement fund) in the state treasury, and in connection to the fund to specify that:
  - a. The department of revenue is required to determine the amount of the income tax increment and that such amount shall be deposited in the achievement fund;
  - b. The moneys in the achievement fund shall be used for the education of students in preschool through the twelfth grade by implementing educational reforms and programmatic enhancements enacted by the general assembly;
  - c. The state auditor's office shall audit the achievement fund on an annual basis and that the audit shall be distributed to specified members of the general assembly and

- posted on specified web sites; and
- d. Interest earned on moneys in the achievement fund shall remain in the fund and shall be used before the principal of the fund is used, and that moneys remaining in the fund at the end of any fiscal year shall remain in the fund;
8. To require revenues collected from the income tax increment to be used to supplement, not supplant, revenues that were appropriated by the general assembly in the previous fiscal year for education from preschool through the twelfth grade.
  9. To specify that all revenues attributable to the income tax increment or revenues otherwise addressed in the proposed initiative shall be collected and spent as voter-approved revenue changes without regard to any limitation on revenue, spending, or appropriations contained in section 20 of article X of the Colorado constitution (TABOR) or any other law; and to specify that spending such revenue consistent with the expressed intent of the voters at the 2013 statewide election does not require additional voter approval at any statewide or local election.
  10. To allow multiple rates to apply to taxable net income of individuals, trusts, and estates if specific rate increases in excess of the tax rate in effect on an election day are approved by voters for the purpose of providing an income tax increment for public school funding.

### Technical Comments

The technical comments set forth in the review and comment memorandum on proposed initiative 2013-2014 #13 are applicable to proposed initiative 2013-2014 #14 and, as such, will not be repeated. However, the following new technical comments have arisen:

1. The amending clause for the constitutional provision in section 2 should read as follows:  
  
In the constitution of the state of Colorado, section 20 of article X, **amend** (8) as follows:
2. Note that although the text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The first letter of the first word of each entry of an enumeration paragraphed after a colon should be capitalized.
3. It is standard drafting practice to assign a number (subsection, paragraph, etc.) to every segment of language. In section 3 of the proposed initiative amending section 39-22-104 (1.7), Colorado Revised Statutes, there is an introductory portion and then paragraphs underneath. After the paragraphs, there is more language that does not belong with either the introductory portion or the paragraphs. Consider renumbering so that there is a (1.7) (a), then sub-paragraphs (I), (II), etc., and then the remaining language is paragraph (b).

### Substantive Comments and Questions

The substantive comments and questions set forth in the review and comment memorandum on proposed initiatives 2013-2014 #13 to #28 are applicable to proposed initiative 2013-2014 #14 and, as such, will not be repeated. However, the following new substantive comments and questions have arisen:

1. Section 2 of the proposed initiative amends subsection (8) of section 20 of article X of the state constitution (TABOR). Is it your intent to allow multiple income tax rates only for the purposes of creating the income tax increment in the proposed initiative and for no other purpose?
2. Section 3 of the proposed initiative amends the Colorado Revised Statutes to create the income tax increment, which is a graduated increase in the income tax rate for individuals, estates, and trusts. This section raises the following questions:
  - a. Is it your intent that for taxpayers with a federal taxable income of \$75,000 or less, the proposed initiative would increase the income tax rate to 5% of federal taxable income?
  - b. Is it your intent that for taxpayers with a federal taxable income of more than \$75,000, the proposed initiative would increase the income tax rate to 5% of federal taxable income on the first \$75,000 of income and to 5.9% of federal taxable income for all additional income?
3. The proposed initiative allows the General Assembly to make annual adjustments to the income thresholds for the income tax increment based on inflation for the previous year. Will the general assembly determine what inflation means for the purposes of this provision?