

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 3, 2013

**TO:** Bruce Broderius, Kate Pettersen, and Casey Shea

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

**SUBJECT:** Proposed initiative measure 2013-2014 #31, concerning Public School Funding

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 #30 to #37. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiative 2013-2014 #30, 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 section 17 of article IX of the Colorado constitution appear to be:

1. To specify that personal net income shall be taxed at voter-approved rates based on taxable net income, without regard to any elements of subsection (8) (a) of section 20 of article X of the Colorado constitution;
2. To specify the rate at which personal taxable net income is taxed on or after January 1, 2014, for individuals filing a joint federal return;
3. To specify the rate at which personal taxable net income is taxed on or after January 1, 2014, for individuals who file as head of household;
4. To specify that the tax rate tiers specified in the initiative may be annually adjusted for inflation from the previous year by the general assembly;
5. To require the department of revenue to annually determine the amount of tax revenue collected that is attributable to voter-approved tax rate changes above the income tax rate of 4.63% and to require such amount to be deposited in the state education fund;
6. To require all revenues collected pursuant to the proposed initiative to be collected and spent as a voter-approved revenue change without regard to any limitations on revenue, spending, or appropriations contained in section 20 of article X of the Colorado constitution;
7. To require all revenues deposited in the state education fund pursuant to the proposed initiative to be appropriated by the general assembly only for the costs of public education from preschool through twelfth grade;
8. To specify that revenues realized from the proposed initiative that are appropriated by the general assembly for public education are in addition to and not a substitute for moneys otherwise appropriated by the general assembly for the costs of preschool through twelfth grade public education;
9. To require the amount of the appropriation by the general assembly for public education to be not less than the amount appropriated for such purposes for fiscal year 2012-13, adjusted by the aggregate annual percentage change in student enrollment, as described in section 20 of article X of the Colorado constitution, as determined for all school districts in the state; and
10. To require any revenue that the state would be required to refund pursuant to section 20 (7) of article X of the Colorado constitution to be instead transferred to the state education fund for the 2013-14 state fiscal year and fiscal years thereafter.

## Technical Comments

The technical comments set forth in the review and comment memorandum on proposed initiative 2013-2014 #30 are applicable to proposed initiative 2013-2014 #31 and, as such, will not be repeated. However, the following new technical comments have arisen:

1. The amending clause for sections 1 and 2 of the proposed initiative should be combined into one amending clause, and then the provisions should be placed in numeric order so that subsection (5) appears before (6) and (7). The amending clause should read as follows:

In the constitution of the state of Colorado, section 17 of article IX, **add** (6) and (7); and **repeal and reenact, with amendments**, (5) as follows:

2. It is standard drafting practice to use the word "that" instead of "which" when indicating a restrictive clause, meaning the word, clause, or phrase following the word "that" is necessary to the meaning of the sentence and is not simply additional or descriptive information.
3. It is standard drafting practice to use small capital letters, rather than ALL CAPS, to show the language being added to the Colorado constitution (see subsection (7) of the proposed initiative).

## Substantive Comments and Questions

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2013-2014 #30 are applicable to proposed initiative 2013-2014 #31 and, as such, will not be repeated. However, the following new substantive comments and questions have arisen:

1. Why is subsection (7) of the proposed initiative necessary if, under paragraph (f) of subsection (6), you have specified that all revenues collected pursuant to subsection (6) are collected and spent as a voter-approved revenue change without regard to section 20 of article X of the Colorado constitution?
2. What do you consider to be "any revenues which the state would otherwise be required to refund" under subsection (7) of the proposed initiative? Is it your intention to repeal all current refund mechanisms in the state and replace them with one that transfers all such refunds to the state education fund? If so, how is this a true refund mechanism as envisioned by section 20 of article X of the Colorado constitution when only those people who have children in public school benefit from the refund?
3. Are you making a distinction between current revenues received by the state and any new revenues that may result from the enactment of the proposed initiative? Is it your intention that such distinction between "current revenues" and "new revenues as a result of this initiative" be kept clear?

4. The state is currently allowed to keep certain revenues that it would otherwise be required to refund pursuant to section 20 (7) of article X of the Colorado constitution. For example, the passage of Amendment 35 allows the state to increase the excise tax on cigarettes and keep the revenues from the increase that would exceed the state's TABOR limit. Similarly, the passage of Referendum C allows the state to keep and spend excess revenues up to a calculated cap amount. Is it the proponents' intent that these amounts must now be transferred to the state education fund?
  
5. Is the effect of subsection (7) of the proposed initiative to allow the state to retain and spend all excess revenues and no longer be limited by the provisions of section 20 (7) (a) of article X of the Colorado constitution?