

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

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 #21, 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 an income tax rate increase of five and thirty-five one-hundredths percent 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).
2. 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.
3. 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.
4. 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.
5. 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;
6. 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.
7. 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.

Technical Comments

The technical comments set forth in the review and comment memorandum on proposed initiative 2013-2014 #13 and #14 are applicable to proposed initiative 2013-2014 #21 and, as such, will not be repeated.

Substantive Comments and Questions

The substantive comments and questions set forth in the review and comment memorandum on proposed initiative 2013-2014 #13 to #28 are applicable to proposed initiative 2013-2014 #21 and, as such, will not be repeated. However, the following new substantive comments and questions have arisen:

1. Subsection (8) of the proposed initiative specifies that revenues attributable to the income tax increment or otherwise addressed by subsection (4) or (6) shall be collected and spent as a voter-approved revenue change. These are cross-references to the state education fund portion and the state educational achievement fund portion of the proposal respectively. However, in other proposed initiatives that were submitted with this proposed initiative, the first cross-reference was to a provision addressing property taxes which does not exist in this proposal. Was it your intent to include a cross-reference to subsection (4), the state education fund provision? Or did you intend to only make a cross reference to subsection (6), the state educational achievement fund provision?
2. Section 2 of the proposed initiative amends the Colorado Revised Statutes to create the income tax increment, which is an increase in the income tax rate for individuals, estates, and trusts. Did you mean to make the income tax increment 5.35% of federal taxable income? Or, did you mean to make the income tax increment .72%, for a total income tax rate of 5.35%?