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MEMORANDUM

April 3, 2013

TO: Tamra Ward and Kelly Brough

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-14 #29, concerning the Public School Finance Act

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 to the **Colorado Revised Statutes** appear to be:

1. To create new statutory provisions and formulas relating to the financing of public schools, including school districts, district charter schools, and institute charter schools, that take effect only if an initiative that increases state tax revenues is approved by the voters in the 2013 election. Some provisions will take effect during the first budget year commencing after the election, and other provisions will not take effect until the second budget year.
2. To calculate each district's and each institute charter school's operational funding (total program) for each budget year by starting with a statewide base per pupil funding amount,

applying a formula to calculate a district's per pupil funding, increasing each district's funding based on the number of at-risk pupils and English language learners enrolled in the district and multiplying the per pupil funding amount by the number of pupils enrolled in the district.

3. To use the statewide base amount to fund pupils who are enrolled in multi-district on-line schools and pupils who are enrolled in the ASCENT program, which amounts are also included in a district's total program.
4. To calculate the number of pupils funded by using a system of average daily enrollment.
5. To fund preschool pupils at half-time and kindergarten pupils at full-time for all students who apply to the programs and meet the eligibility requirements.
6. To amend the definition of at-risk pupils to include pupils eligible for free or reduced-price meals under federal law and to create separate formula weights for at-risk and English language learners (ELL), increasing the weight of both factors, starting at 20% and increasing to as much as 40% of statewide per pupil base funding, with a pupil able to be counted in both categories.
7. To calculate total program for and payment of state moneys to institute charter schools using the institute charter school funded membership and the average daily membership of at-risk, ELL, on-line, and ASCENT pupils, including a mill levy equalization per pupil amount, and paying the institute charter school's total program directly from the state public school fund.
8. To calculate each district's total program mill levy using statewide state and local shares of 60% and 40%, and applying these percentages in a formula for each district's local share that takes into account the district's real property assessed valuation, median family income, and at-risk pupil percentage, and then to calculate the local share into a number of mills to be levied, and to recalculate each district's total program mill levy after a certain number of years.
9. To require a district to seek voter approval for a mill levy increase at least once during the calculation period if the district's total program mill levy is greater than the number of mills assessed in the preceding budget year and the district is receiving certain state funding that is less than the district previously received, and to provide hold-harmless moneys to the district in the event the district does not assess the full total program mill levy.
10. To authorize a district to collect any mill levy override that it has prior authority to collect and to allow a district to seek additional mill levy overrides for specific purposes if the district is levying the required number of mills for total program.
11. To allow a district and institute charter school to receive teaching and leadership investment moneys in the amount of \$600 per pupil for the 2015-16 budget year and the per pupil amount of 50% of the new revenues generated for the 2016-17 budget year and budget years thereafter.

12. To provide annual per pupil supplemental payments to ensure that each school district's per pupil revenue and each institute charter school's per pupil revenue is at least equal to 94% of the statewide average per pupil revenue.
13. To allow for a mill levy equalization payment for a qualifying school district in an amount equal to the per pupil amount that would be generated by a levy of 2.5 mills on the statewide assessed valuation for the budget year in which the district receives voter approval for a property tax increase.
14. To create an education and innovation grant program to provide moneys to teachers, principals, district administrators, public schools, school districts, and boards of cooperative services to implement innovations in the delivery of public education.
15. To provide for mid-year recalculation of total program for certain districts and institute charter schools whose average daily membership increases more than the state average increase in enrollment and for new and expanding charter schools, and to allow state moneys for mid-year recalculation of funding for new and expanding district charter schools.
16. To require a district to allocate a district's at-risk and ELL funding to charter schools and other schools of the district based upon the district's at-risk and ELL per pupil funding multiplied by the average daily membership of the school's at-risk and ELL pupils.
17. To require reports reviewing the return on the investment of funding and cost studies, commencing in January 2016, to be completed every 4 years.
18. To revise public financial reporting by districts and institute charter schools to require the reporting of certain expenditures at the school-site level.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It appears that the following internal references are incorrect:
 - a. Page 4, reference in (2) (a) should be §22-54.5-311 (9).
 - b. Page 48, reference in (1) (b) should be §22-54.5-306.
 - c. Page 49, reference in (2) should be §22-54.5-306.
 - d. Page 57, there is a tab missing before section 22-54.5-207.
 - e. Page 65, reference in (1) (c) should be §22-54.5-310.
 - f. Page 132, reference in (1) (h) should be §22-54.5-309 (1) (c).
 - g. Page 133, reference in (1) (s) should be §22-54.5-309 (1) (e).
 - h. Page 142, all three references in (7) (a) (I) should be §22-54.5-309.
 - i. Page 143, reference at the top of the page should be §22-54.5-306.

- j. Page 143, reference in (7) (c) (I) should be §22-54.5-306.
 - k. Page 144, reference in (7) (e) should be §22-54.5-306.
 - l. Page 155, reference in (1) (o) should be §22-54.5-309.
 - m. Page 158, all three references in (5) (a) (I) should be §22-54.5-309.
- 2. Page 71, quotation marks at the beginning of §22-54.5-302 should be removed.
 - 3. Page 73, the section reference should be bolded.
 - 4. Page 74, the words "INSTITUTE" and "MULTIPLYING" should be in small caps.
 - 5. The word "People" would not ordinarily be capitalized in the Colorado Revised Statutes. For example, it is capitalized on page 100 and elsewhere in the proposed initiative.
 - 6. The formula at the bottom of page 36 of the proposed initiative is incomplete. Is the ")" supposed to be a division symbol?
 - 7. On page 110 of the proposed initiative, last line, the word "HALF" does not make sense in the context of the sentence. Should the word be "QUARTER"?
 - 8. On page 136 of the proposed initiative, last line, the reference to "THE PUPIL AVERAGE DAILY MEMBERSHIP" does not make sense in the context of the sentence. Should the reference be "AT-RISK PUPIL AVERAGE DAILY MEMBERSHIP"?

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

- 1. On page 1 of the proposed initiative and elsewhere in the proposed initiative, the bolded headnotes include the language "**legislative declaration**". Since this is a citizen-initiated statutory change, it is not appropriate to caption the declaration as a "legislative" declaration. A reader of the Colorado Revised Statutes may incorrectly infer from that language that the General Assembly is making the declaration.
- 2. The proponents reference Senate Bill 13-213 in the cover letter for the proposed initiative. Assuming that the proposed initiative is based on Senate Bill 13-213, in what way is the language of the proposed initiative different from the introduced version of Senate Bill 13-213?
- 3. The proposed initiative appears to include amendments that were passed in the Senate Education Committee hearing on Senate Bill 13-213. However, the proposed initiative does not include language from Senator Kerr's amendments L.032 and L.033, relating to additional reporting requirements, that also passed in the Senate Education Committee. Additionally, the provision in the proposed initiative relating to the per pupil supplemental payment refers to 94% of per pupil revenue, not 100%, as in the Senator Todd's amendment

L.034 adopted in the Senate Education Committee. Did the proponents intend the language in the proposed initiative to differ from the adopted committee amendments?

4. Senate Bill 13-213 is currently moving through the legislative process and is likely to be amended. If Senate Bill 13-213 passes, it may be substantially different from the proposed initiative. If Senate Bill 13-213 passes and the proposed initiative passes in 2013, they will have the same effective date. Is it the proponents' intent that the initiative would supercede Senate Bill 13-213?
5. Are there provisions in the proposed initiative that are not contingent upon receipt of additional property tax revenues?
6. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments in the state?
 - a. What are the projected fiscal impacts of the proposed initiative if enacted?
 - b. The proposed initiative becomes effective upon the passage of an initiative in 2013 that increases state tax revenues for the purpose of funding public education. What if a measure passes in 2013 that raises only a fraction of the projected costs of the proposed initiative?
7. Section 1 (4) of Article V of the Colorado constitution allows initiatives to be placed on the ballot during a biennial regular general election. The next general election will occur in November of 2014. In addition, section 20 (3) of article X of the Colorado constitution, the "Taxpayer's Bill of Rights"(TABOR), allows ballot issues for matters arising under TABOR to be decided at biennial local district elections and on the first Tuesday in November of odd-numbered years.
 - a. Is it the proponents' position that the proposed initiative is a matter arising under TABOR that would be placed on the statewide ballot in November of 2013? If so, what is the basis for this position?
 - b. Do the proponents believe that there are issues that require local district approval? If so, do the proponents believe that the voters must approve the issues twice, once in a statewide election based on the proposed initiative and then again when each local district votes on a mill levy increase, as is anticipated for some local districts in the proposed initiative?
8. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
9. If the proposed initiative passes, when it takes effect, it will conflict with the existing "Public School Finance Act of 1994", article 54 of title 22, C.R.S. Is it the proponents' intent that the General Assembly would repeal article 54 of title 22, C.R.S., and make other necessary conforming amendments?

10. The state is currently involved in a lawsuit commonly referred to as the "*Lobato*" lawsuit. The trial court has held the existing "Public School Finance Act of 1994" unconstitutional on the basis that it is not rationally related to providing a thorough and uniform education because it is not based on a determination of what it costs to educate a student. Does the proposed initiative address the constitutional concerns raised by the court in the *Lobato* lawsuit, and, if so, how?
11. Section 2 of article IX of the Colorado constitution requires the state to establish and maintain a thorough and uniform statewide public education system. In *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982), the Colorado Supreme Court held that this provision requires the state to provide a degree of equity in funding for public education across the state. Does the proposed initiative meet the requirements of the *Lujan* decision, and, if so, how?
12. How does the level of funding for each school district, each institute charter school, and each district charter school under the existing law compare to the funding levels under the proposed initiative?
13. Under section 15 of article IX of the Colorado constitution, each school district has control of instruction in the public schools of the school district. The Colorado courts have interpreted the "local control" provision as including control over the funding received by the district. Section 22-54.5-410 created in the proposed initiative requires each district to give the principal of each non-charter school of the district control over spending the state share portion of the district's per pupil at-risk and English language learner funding. Do the proponents consider this section to be a violation of section 15 of article IX of the Colorado constitution? Why or why not?
14. Several provisions of the proposed initiative direct the General Assembly to appropriate moneys in specific amounts in future years. If the proposed initiative passes, is the General Assembly bound by these requirements or can the General Assembly amend these requirements?
15. Do the mill levy override provisions that allow a district to seek voter approval for local property tax revenues in addition to the revenues received for total program violate the requirement for equity in funding public education since wealthy districts are more likely to obtain voter approval for mill levy overrides and the state does not provide money to equalize this funding for poor districts?
16. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?