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MEMORANDUM

May 3, 2006

TO: Liane Morrison and Bruce Broderius

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #133, concerning Federal Mineral Lease Money and K-12 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 proposals 2005-2006 #111 to 117 and 2005-2006 #132 to 134. These proposed initiatives are similar to a series of initiatives that were previously submitted and included proposals 2005-2006 #87 and 2005-2006 #97 to #101. The current proposal seems to be most similar to proposal 2005-2006 #101. Proposal 2005-2006 #101, was the subject of a memorandum dated April 5, 2006, and it was discussed at a hearing on April 7, 2006. 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 hearing unless it is necessary to fully address the issues in the revised measure. Comments and questions addressed in the memoranda for the other proposals may also be relevant. All comments and questions from the earlier memoranda and hearings are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed initiative appear to be:

1. To modify the current distribution of the moneys that the state receives from the federal government pursuant to the federal "Mineral Lands Leasing Act" (federal mineral moneys), as amended;
2. To require certain moneys in the state public school fund that are received from the federal government to be transferred to the public school improvement fund;
3. To require the moneys in the public school improvement fund to be used to provide opportunities to low income children and to provide funding for preschool through twelfth grade public school buildings; and
4. To require interest generated from the permanent school fund be used to fund preschool through twelfth grade educational programs.

Comments and Questions

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

Technical questions:

The following comments are technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices.

1. The preposition "to" would be more appropriate than the preposition "into" in the phrase "transferred to".
2. There should be a comma before the nonrestrictive clause "which is hereby created in the state treasury".
3. Was there a reason that you removed the quotation marks from the federal "Mineral Lands Leasing Act"? It is in quotation marks elsewhere in the Colorado Revised Statutes.
4. "State" is misspelled in the second and third sentence of subsection (1).
5. There should be a comma after "C.R.S." in the introductory portion of subsection (2).
6. In subsection (2), when you reference funds that are created in other sections of law, it is helpful to identify where the fund is created. For example, "the Colorado water conservation board construction fund created by section 37-60-121, C.R.S."

Substantive questions:

1. What "reallocation" are you referring to in the first sentence of subsection (1) of the proposed initiative? Does this relate to subsection (2) of the proposed initiative? How is the amount of moneys deposited from the reallocation calculated?
2. When are the federal mineral moneys required to be transferred to the public school improvement fund?
3. Why deposit any moneys to the state public school fund, if the moneys are then immediately transferred out of the fund? Would the proponents consider depositing the moneys directly in the public school improvement fund?
4. For state fiscal years 2006-07 and 2007-08, is \$40 million the maximum amount that may be used to provide low income children the opportunity to attend voluntary quality preschool programs and is \$120 million the maximum amount that must be used for school renovations or construction?
5. What does "up to one hundred twenty million dollars" mean? Is the \$120 million a total limit or is it just related to the renovations or construction? Stated differently, would the combination of the use related to voluntary quality preschool programs and school renovations and construction add up to a total of \$120 million or \$160 million, adjusted for inflation?
6. What happens if an existing education spending requirement is expanded after the effective date of the proposed initiative? Could the moneys in the public school improvement fund be used to fund the expansion to the existing requirement?
7. Are the allowable administrative costs that are paid out of the public school improvement fund based on preschool through twelfth grade capital construction and renovation that is paid for from the public school improvement fund only or does it include capital construction and renovation that is paid for from any fund?
8. In the statutes it is more common to use the phrase "unexpended and unencumbered" to refer to the unused balance remaining in a fund.
9. Will the interest from the permanent school fund be used in the year that it is earned?
10. Subsection (2) of the proposed initiative directly conflicts with the distributions required by section 34-63-102 (1) (a), Colorado Revised Statutes. Is it your intention to repeal the current distributions required by such section? If so, would you consider making an amendment to the section?
11. Would any of section 34-63-102 (1) (a), Colorado Revised Statutes, still apply to the distribution of the federal mineral moneys?
12. How is the money supposed to be distributed pursuant to paragraph (d) of subsection (2) of

the proposed initiative? Are the municipal and school districts' shares to be the same as the counties'? If each entity is to receive one third of the moneys, what is left for the general assembly to determine?