

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, 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



Charles W. Pike, 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 28, 2008

TO: Wilhelm O. Estes and Ralphelea Joy Estes

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #100, concerning public school attendance

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.

Purpose

The major purpose of the proposed amendment appears to be:

1. To allow a parent or guardian of a child to excuse the child from attending a public school so long as the child has a grade point average of 2.0 or higher during the preceding two years and has no criminal record.

Comments and Questions

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

Technical questions:

1. Subsection (8) of section 1 of article V of the state constitution requires that all laws adopted by the people through the initiative process shall include the phrase, "Be it Enacted by the People of the State of Colorado". Will the proponents consider redrafting the proposed initiative to include this phrase?
2. The proposed initiative proposes "to amend C.R.S. 22-33-104 to include the following language", but the proposed initiative does not specify how, exactly, section 22-33-104, Colorado Revised Statutes, should be amended to include the proposed new language. It appears that the proposed initiative would require the addition of a new paragraph to subsection (2) of that section and possibly a new paragraph to subsection (5) of section 22-33-104, Colorado Revised Statutes, as well as amending clauses that reflect such additions. For example, the proposed initiative could include two amending clauses such as the following:

SECTION 1. 22-33-104 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

22-33-104. Compulsory school attendance. (2) The provisions of subsection (1) of this section shall not apply to a child:

(k) WHO HAS MAINTAINED A GRADE POINT AVERAGE OF 2.0 OR HIGHER DURING THE PRECEDING TWO YEARS OF SCHOOL AND HAS NO CRIMINAL RECORD, AND WHOSE PARENT OR GUARDIAN HAS NOTIFIED THE CHILD'S SCHOOL THAT THE PARENT OR GUARDIAN WANTS THE CHILD TO BE EXCUSED FROM THE ATTENDANCE REQUIREMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

SECTION 2. 22-33-104 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

22-33-104. Compulsory school attendance. (5) (c) A PARENT OF A CHILD WHO HAS MAINTAINED A GRADE POINT AVERAGE OF 2.0 OR HIGHER DURING THE PRECEDING TWO YEARS OF SCHOOL AND HAS NO CRIMINAL RECORD, AND WHOSE PARENT OR GUARDIAN HAS NOTIFIED THE CHILD'S SCHOOL THAT THE PARENT OR GUARDIAN WANTS THE CHILD TO BE EXCUSED FROM THE ATTENDANCE REQUIREMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION, SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS SUBSECTION (5).

3. The language of the proposed initiative includes the word "excuses". It appears that this word should be "excuse". Will the proponents consider redrafting this language accordingly?
4. The language of the proposed initiative includes the word "their". It appears that this word should be replaced by the singular "his or her". Will the proponents consider redrafting this language accordingly?

5. The language of the proposed initiative includes an unnecessary comma after the word "school". Will the proponents consider redrafting this language without this comma?
6. It is common drafting practice to spell out numerals that do not include a decimal. Will the proponents consider redrafting the proposed initiative to spell out the "2" in "2 years" (i.e., "two years")?

Substantive questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires each proposed initiative to have a single subject. What is the single subject of the proposed initiative?
2. The proposed initiative would allow a "parent or guardian" to excuse a child from public school attendance. Because many (if not most) children have more than one parent or guardian, it is possible that a parent or guardian of a child may wish to excuse a child from school attendance, and the other parent or guardian of the same child may object to the child being excused from school attendance. Do the proponents wish to include language to address such a situation?
3. The proposed initiative includes a requirement that a child whose parent or guardian wishes to excuse the child from school attendance must have "a 2.0 or higher grade point average". Do the proponents intend this figure (2.0) to be based upon a traditional 4.0 grade point scale? In recent years, many schools have begun to employ weighted grade point scales that award additional points to students for their successful completion of courses that are regarded as relatively difficult. Will the proponents consider adding language to address weighted grade point scales? For example, will the proponents consider adding language such as, ". . . or the equivalent thereof"?
4. The proposed initiative doesn't specify any ages or grade levels. What is the minimum age or grade level of a child at which the proposed provision would apply?
5. In the language of the proposed initiative, does the phrase "last 2 years" mean the two years preceding the parent or guardian's decision to excuse the child from attendance? Does it mean something else?
6. The proposed initiative requires a child whose parent or guardian wishes to excuse the child from school attendance to have a 2.0 or higher grade point average during "the last 2 years of school". How often, if ever, would the grade point average of a child be recalculated for the purposes of excusing him or her from public school attendance? For example, if a child were excused from attendance during the child's ninth-grade year based on the child having achieved a grade point average of 2.0 or higher for the previous two years, will the child's grade point average be recalculated after the child's ninth grade year for purposes of excusing the child from attendance during his or her tenth-grade year? If so, how will the child avoid having a grade point average of 0.0 for his or her ninth-grade year for the purpose of this calculation?

7. What process do the proponents intend a parent or guardian to be required to follow to excuse his or her child from school attendance?
8. Do the proponents intend that a parent or guardian of a child shall be able to withdraw his or her excusal of the child from school attendance?
9. The language of the proposed initiative requires that a child who is excused from school attendance pursuant to the new provision must have "no criminal record". Technically, a person under eighteen years of age cannot have a "criminal record" but merely a record as a "juvenile delinquent", as this term is defined in section 19-1-103 (71), Colorado Revised Statutes. Will the proponents consider redrafting the proposed initiative accordingly?
10. How do the proponents anticipate that the proposed initiative may affect a child's ability to advance to new grade levels? How do the proponents anticipate that the proposed initiative may affect a school district's process for advancing students to new grade levels?