

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

May 7, 2008

TO: Nicole Hanlen and Lynda Neff

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #125, concerning Education 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.

### Purposes

The major purposes of the proposed amendment appear to be:

1. To amend section 17 of article IX and section 20 of article X of the Colorado constitution, as specified below.
2. To modify the requirement of section 17 (1) of article IX of the Colorado constitution (article IX) that, for the 2011-12 state fiscal year and each state fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs grow annually by at least the rate of inflation, by stating that such requirement applies only prior to January 1, 2009.

3. To specify that, effective January 1, 2009, in state fiscal year 2001-02 through state fiscal year 2010-11, the statewide base per pupil funding, as defined as of the effective date of the proposed initiative, by the "Public School Finance Act of 1994", article 54 of title 22, Colorado Revised Statutes, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually by at least the rate of inflation plus an additional one percentage point.
4. To modify the provisions of section 17 (4) (b) of article IX by specifying that the stated purposes for which the moneys in the state education fund created in section 17 (4) (a) of article IX (state education fund), may be used are applicable only prior to January 1, 2009. Pursuant to section 17 (4) (b) the stated purposes for which moneys in the state education fund may be used are to comply with the provisions of section 17 (1) of article IX, for: Accountable education reform, accountable programs to meet state academic standards, class size reduction, expanding technology education, improving student safety, expanding the availability of preschool and kindergarten programs, performance incentives for teachers, accountability reporting, or public school building capital construction.
5. To specify that effective January 1, 2009, moneys in the state education fund may only be used for: Public education from preschool through the twelfth grade, categorical programs, accountable education reform, accountable programs to meet state academic standards, class size reduction, expanding technology education, improving student safety, expanding the availability of preschool and kindergarten programs, performance incentives for teachers, accountability reporting, or public school building capital construction.
6. To modify the provisions of section 17 of article IX to require that, for the 2010-11 state fiscal year and each state fiscal year thereafter, in addition to the state revenues collected from a tax on one-third of one percent on federal taxable income of every individual, estate, trust, and corporation, the state education fund shall consist of the revenues specified in section 20 (10) of article X of the Colorado constitution.
7. To create the state education fund savings account (account) in the state education fund, and to specify that the account shall consist of certain moneys credited to the account pursuant to the proposed initiative.
8. To state that the moneys in the account shall be used only as specified in the proposed initiative.
9. To specify that all interest earned on moneys in the account shall be deposited in the account and that moneys remaining in the account at the end of any state fiscal year shall remain in the account and shall not revert to the general fund or any other fund.
10. To require that, for the 2009-10 state fiscal year and each state fiscal year thereafter, unless certain circumstances exist, ten percent of the total amount that is deposited in the state education fund from the tax of one-third of one percent on federal taxable income shall be credited to the account.

11. To specify that if the moneys that would otherwise be credited to the account would cause the balance of moneys in the account to exceed an amount equal to eight percent of the total amount appropriated in the previous state fiscal year by the general assembly from the general fund and from the state education fund, the moneys shall not be credited to the account, and that the moneys that would otherwise be credited to the account from the state education fund shall remain in the state education fund.
12. To authorize the general assembly to appropriate moneys from the account by the enactment of a bill approved by a two-thirds majority vote of all the members elected to each house of the general assembly, to specify that the moneys in the account may be appropriated for the same purposes for which the moneys in the state education fund may be appropriated, and to specify that such moneys shall not be appropriated for any other purpose.
13. For the 2009-10 state fiscal year and each state fiscal year thereafter, to allow the general assembly, subject to certain limitations specified in the proposed initiative, to transfer moneys from the general fund to the state education fund and to specify that the transfers of such moneys shall not be subject to any statutory limitation on general fund appropriations growth or otherwise affect such limitation.
14. To allow the general assembly to make a transfer from the general fund to the state education fund only if, for the applicable state fiscal year, the maximum percentage of state sales and use taxes constituting sales and use taxes attributable to sales or use of vehicles and related items that is required, pursuant to law, to be transferred annually to the highway users tax fund, credited to the state highway fund, and expended by the department of transportation for the implementation of the strategic transportation project investment program is so transferred, credited, and expended.
15. To amend section 20 of article X of the Colorado constitution (TABOR) to state that, notwithstanding any other provision of TABOR, for the 2010-11 state fiscal year and each state fiscal year thereafter, any revenue that the state would otherwise be required to refund pursuant to the provisions of TABOR shall instead be transferred to the state education fund, and to specify that such transfers shall be from any funds specified by law.

### **Comments and Questions**

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

#### **Technical questions:**

1. The following comments are technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices:
  - a. In the amending clause of the proposed initiative, change "is" to "are" and insert "the said" before the second reference to "section 17" so that the clause reads: "Section

17 (1) and (4) of article IX of the constitution of the state of Colorado are amended, and the said section 17 is further amended . . ."

- b. References to the "Public School Finance Act of 1994," in the new language in the proposed initiative should be in quotes.
  - c. The spelling "moneys" should be used rather than "monies" in section 17 (4) (b.5) of article IX and elsewhere in the text of the proposed initiative.
  - d. Fiscal years in the new language in the proposed initiative should be reflected as follows: 2001-02, rather than 2001-2002. This change should be made to all fiscal years referenced in the new language of the proposed initiative.
2. Section 17 (1) of article IX, as amended by the proposed initiative specifies that the requirement that the statewide base per pupil funding and total state funding for categorical programs increase by at least the rate of inflation for the 2011-12 state fiscal year and each fiscal year thereafter only applies prior to January 1, 2009. It seems that the dates specified in this section could cause confusion, as the provision requiring the increase by at least the rate of inflation will never have taken effect prior to January 1, 2009. Is there a reason why the proponents did not amend section 17 (1) of article IX to strike the language requiring the increase by at least the rate of inflation? Would the proponents consider showing the provision that requires the increase by at least the rate of inflation ~~in strike type~~ to indicate that the provision will not be effective if the proposed initiative becomes law, and eliminating the "Prior to January 1, 2009," language?
  3. It appears that section 17 (1.5) of article IX, as added by the proposed initiative, restates the requirements of section 17 (1) of article IX. Specifically, the proposed initiative states that in state fiscal years 2001-02 through 2010-11, the statewide base per pupil funding for public education for preschool through the twelfth grade and total state funding for all categorical programs shall increase by at least the rate of inflation plus an addition one percentage point. Is there a reason why the proponents specify in the proposed initiative that current constitutional requirements that have been in effect since 2001 will take effect on January 1, 2009? As the provisions of section 17 (1.5) will already be law on January 1, 2009, pursuant to section 17 (1) of article IX, would the proponents consider eliminating the new subsection (1.5), while keeping the inflation plus one percent requirement specified in section 17 (1) intact?

Substantive questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Regarding the amendments to section 17 (1) and the new section 17 (1.5) of article IX that are included in the proposed initiative, is it the proponents' intent to eliminate the current constitutional requirement that for the 2011-12 state fiscal year and each fiscal year thereafter, the base per pupil funding for preschool through the twelfth grade and the total

state funding for all categorical programs increase by at least the rate of inflation? If not, what is the intended purpose of these amendments? If so, why do the proponents wish to eliminate this future requirement?

3. If the proponents choose to keep the references to January 1, 2009, in the proposed initiative, rather than make the technical changes suggested in the discussion of technical questions above, how do the proponents anticipate that the January 1, 2009, date will interact with the fiscal years specified in the existing constitutional provisions? For example, January 1, 2009 falls in the middle of the 2008-09 state fiscal year. The proposed amendments to section 17 (4) (b) of article IX affect the use of the moneys in the state education fund prior to January 1, 2009. Do the proponents envision that this will cause any problem in the expenditure of moneys in the state education fund for the 2008-09 state fiscal year given that January 1, 2009, is in the middle of that fiscal year?
4. Similar to the question discussed above, if the proponents maintain the references to January 1, 2009, in the proposed initiative, what is the proponents' intent regarding how the provisions will apply to the 2008-09 state fiscal year, for which the general assembly has already determined the level of state funding for public education from preschool through the twelfth grade and for categorical programs?
5. Section 17 (4) (b) of article IX, as amended by the proposed initiative specifies the purposes for which the moneys in the state education fund may be used prior to January 1, 2009. The proposed section 17 (4) (b.5) of article IX specifies the purposes for which the moneys in the state education fund may be used on and after January 1, 2009.
  - a. It appears that the only difference between the two provisions is that paragraph (b) specifies that the moneys in the state education fund may be used to comply with the provisions of section 17 (1) of article IX (that requires base per pupil funding for public education from preschool through the twelfth grade and statewide funding for categorical programs to increase in certain state fiscal years by certain amounts), while the proposed paragraph (b.5) specifies instead that the moneys may be used for public education from preschool through the twelfth grade and for categorical programs. Do the proponents intend that there be a difference between these two requirements? Would the provision that allows the moneys in the state education fund to be used for preschool through the twelfth grade and for categorical programs encompass the requirements of section 17 (1)?
  - b. Is it the proponents' intent that, while the inflation plus one percent requirement of section 17 (1) is still in place during the 2008-09, 2009-10, and 2010-11 state fiscal years, the moneys in the state education fund may be used to fund the required increases in base per pupil funding and categorical programs by at least the rate of inflation plus one percentage point?
  - c. If the proponents intend that the provisions of the proposed paragraph (b.5) would allow the use of moneys in the state education fund to comply with the requirements of section 17 (1) of article IX, is there a reason why the proponents stated this in two

separate paragraphs? For clarity, would the proponents instead amend section 17 (4) (b) of article IX by striking the provision that allows the moneys in the state education fund to be used to comply with the provisions of section 17 (1) and insert the authorization for the general assembly to use the moneys for public education from preschool through the twelfth grade? For example, paragraph (b) would read: "Monies in the state education fund may only be used to comply with subsection (1) ~~of this section and~~ FOR PUBLIC EDUCATION FROM PRESCHOOL THROUGH THE TWELFTH GRADE, FOR CATEGORICAL PROGRAMS, for accountable education reform . . ."

- d. If the proponents do not want to combine the provisions of paragraphs (b) and (b.5) of section 17 (4) of article IX, for clarity, will the proponents state the fiscal years for which paragraphs (b) and (b.5) apply in the first sentence rather than in the second sentence of the respective paragraphs? For example, the first sentence of paragraph (b) would read "In state fiscal year 2001-02 ~~and each fiscal year thereafter~~, THROUGH STATE FISCAL YEAR 2008-09, the general assembly may annually appropriate moneys from the state education fund." Said paragraph (b.5) would read "IN STATE FISCAL YEARS 2009-10 AND EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY MAY ANNUALLY APPROPRIATE MONEYS FROM THE STATE EDUCATION FUND."
6. What is the purpose for the new state education fund savings account that is created in the proposed initiative? The proponents have specified that the moneys in the account may be used for the same purposes for which the moneys in the state education fund may be used. If this is the case, why is it necessary to have an account within the state education fund?
  7. Why have the proponents required the enactment of a bill approved by a two-thirds majority vote of all of the members elected to each house of the general assembly to spend the moneys in the account? Do the proponents anticipate that the general assembly will ever have difficulty obtaining the votes needed for approval of a bill to spend the moneys in the account?
  8. The proposed section 17 (6) (d) of article IX in the proposed initiative specifies that moneys from the state education fund shall not be transferred into the account when the balance of moneys in the account exceeds eight percent of the amount appropriated in the previous state fiscal year by the general assembly from the general fund and the state education fund. Why have the proponents specified a cap on the amount of moneys that may be transferred to the account? How long do the proponents estimate it will take for the balance of the account to equal the cap established in the proposed initiative, assuming none of the moneys in the account are appropriated prior to reaching the cap? Have the proponents estimated the amount of the cap for the 2009-10 state fiscal year or any of the fiscal years thereafter?
  9. Regarding the proposed section 17 (7) of article IX:
    - a. Under what circumstances do the proponents anticipate the general assembly would transfer moneys from the general fund to the state education fund? Would this require a vote of two-thirds of the members elected to the general assembly or only a simple majority vote?

- b. The proposed section 17 (7) (a) of article IX specifies that transfers from the general fund to the state education fund shall not be subject to any statutory limitation on general fund appropriations growth. To what statutory limitation on general fund appropriations growth are the proponents referring? If it is the "6% limit" currently contained in section 24-75-201.1, Colorado Revised Statutes, could the general assembly reduce or eliminate the effect of the limit by transferring moneys to the state education fund rather than appropriating them from the general fund?
  - c. The proposed section 17 (7) (b) of article IX specifies that the general assembly may not make transfers from the general fund to the state education fund unless certain legal obligations regarding transportation are met. What are the legal obligations to which the proponents are referring in the proposed section 17 (7) (b) of article IX?
- 10. The proposed amendment to TABOR requires excess state revenues to be deposited into the state education fund. Is it the proponents' intention that the transfer to the state education fund under this provision come entirely from the general fund, even though a portion of the TABOR surplus is generated by revenue to fast-growing cash funds? For example, unemployment insurance taxes are designed to fluctuate in the opposite direction of the economy, and have risen at double-digit rates in the past, contributing significantly to the size of the TABOR surplus.
- 11. What, if any, interaction will the provisions of the proposed section 20 (10) of TABOR have on the provisions of "Referendum C" approved by the voters in 2005?