

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

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 #126, 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.

Proposed initiative 2007-2008 #126 was submitted along with proposed 2007-2008 #125, and the two proposed initiatives are substantially similar. Accordingly, the questions and comments set forth in the review and comment memorandum for proposed initiative 2007-2008 #125 also apply to this proposed initiative, unless the context otherwise requires, and are incorporated herein.

Purposes

In addition to the purposes identified in the review and comment memorandum for proposed initiative 2007-2008 #125, the major purposes of the proposed amendment appear to be:

1. To amend section 17 of article IX of the Colorado constitution to create the state education

fund savings account and to specify that the general assembly shall only appropriate moneys from the state education fund savings account if, at any time during a fiscal year, the most recent available quarterly revenue estimate prepared by the staff of the legislative council indicates that the amount of total general fund revenues for the fiscal year will not be sufficient to allow the state to maintain the four percent reserve required by Section 24-75-201.1 (1) (d) (III), Colorado Revised Statutes.

Comments and Questions

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

Technical questions:

1. Insofar as the technical questions set forth in the review and comment memorandum on proposed initiative 2007-2008 #125 are applicable to proposed initiative 2007-2008 #126, those questions will not be repeated. The following comments are additional technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices:
 - a. In the proposed section 17 (6) (c) of article IX of the state constitution (article IX), the references to a "fiscal year" should be references to a "state fiscal year".
 - b. Generally, references to the "C.R.S." in the state constitution should appear as Colorado Revised Statutes, rather than being abbreviated.

Substantive questions:

1. Regarding the requirement in proposed section 17 (6) (c) of article IX that the general assembly not appropriate moneys from the state education fund savings account if general fund revenues for the fiscal year are not sufficient to allow the state to maintain the four percent reserve required by section 24-75-201.1, Colorado Revised Statutes, in what circumstances would general fund revenues not be sufficient to maintain the reserve? If the general assembly reduces appropriations to maintain the reserve, is it then prohibited from appropriating moneys from the savings account?
2. Is it the proponents' intent that the provisions of section 17 (c) (c) implicate the statutory six percent limit? If so, how?
3. Regarding the proposed section 17 (6) (c) of article IX, do the proponents see any problem with referencing a statutory provision that is annually subject to change in the state constitution? What if the provisions of section 24-75-201.1 (d) (III), Colorado Revised Statutes, are amended to increase or decrease the required reserve amount? What if that section is repealed or otherwise amended in a manner that makes the statutory reference in

the proposed initiative obsolete? Would the proposed amendment have any effect on the authority of the general assembly to modify the amount of the statutory reserve? Would the proponents consider making the reference a more general statutory reference similar to the reference used in the proposed section 17 (7) (b) of article IX?

4. By what mechanism will the general assembly be allowed to appropriate moneys from the state education fund savings account when the provisions of the proposed section 17 (6) (c) of article IX are satisfied? Is a bill required? If so, does the bill have to be enacted by a two-thirds majority vote of all of the members elected to each house of the general assembly? Can the bill be enacted by a simple majority vote? To avoid ambiguity, would the proponents specify the intended mechanism by which the general assembly may appropriate moneys from the account?