

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Juliet Sebold and Monica Colbert  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 2, 2019  
**SUBJECT:** Proposed initiative measure 2019-2020 #69, concerning expanded learning opportunities and a tax on nicotine products

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 directors of 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 proposed initiatives 2019-2020 #68 through #75. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #68 and #70 through #75, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To create the "Colorado Expanded Learning Opportunities Program", (program) to be administered by a newly created Expanded Learning Opportunities Agency (agency) within the Colorado Department of Education.
2. To create the board of directors for the agency.
3. To create or contract with a Colorado nonprofit organization to administer the program, and to create a volunteer board of directors for the administering nonprofit organization.
4. To provide money to eligible students in individual learning accounts controlled by eligible students' parents pursuant to rules created by the agency.
5. To allow eligible students to use the financial aid for out-of-school learning experiences that take place outside of normal school hours for programs, materials, activities, and other pursuits or purchases which may include, in part, tutoring, supplemental academic instruction in core subject areas, targeted support for special needs and learning disabilities and outdoor activities that teach youth new skills.
6. To create and develop criteria for the selection of allowable uses for the financial aid and for certifying providers of out-of-school learning experiences.
7. To allow a credit against any state income tax imposed on monetary and in-kind contributions to a nonprofit organization selected to administer the "Colorado Expanded Learning Opportunities Program".
8. To implement a cap on the total amount of income tax credits allowed in any state fiscal year for contributions to a nonprofit organization selected to administer the "Colorado Expanded Learning Opportunities Program" and to specify the circumstances under which the cap may increase in any state fiscal year until a maximum cap is reached.
9. To require the General Assembly to reduce the total amount of other income tax credits allowed to taxpayers by an amount at least equal to the credits claimed and allowed by the measure.

10. To authorize a tax on the sale of nicotine products, the revenue from which is credited to the Expanded Learning Opportunities Agency for administrative and operational costs of the agency.
11. To allow the state to retain and spend any revenue collected from the tax on the sale of nicotine products, together with earnings on such revenue, and to exempt such revenue from the provisions of section 20 of article X of the state constitution.

## **Substantive Comments and Questions**

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

1. 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?
2. This proposed initiative #69 differs from proposed initiative #68 in only two instances. The first is the "fiscal year credit cap" established in section 2 is changed from "three hundred million dollars" to "one percent of the total combined revenue appropriated to the general fund and state cash fund for the immediately preceding completed state fiscal year." In connection with that provision:
  - a. Do you mean that the cap is an amount equal to one percent of the total combined revenue appropriated?
  - b. What is the total combined revenue? What is the revenue from? What is it combined with?
  - c. What do you mean by "appropriated to the general fund"? The General Assembly appropriates money from the general fund but does not appropriate money to the general fund.
  - d. What is the "state cash fund"? Do you mean to reference one specific cash fund to which the General Assembly appropriates money or a combination of cash funds? If it is one cash fund, which one?
  - e. If the maximum fiscal year credit cap is based on a percentage of the amount appropriated in the preceding fiscal year, does this mean that the maximum cap can continue to increase as long as the amount appropriated from one fiscal year to the next continues to increase?

3. The only other way in which proposed initiative #69 differs from proposed initiative #68, is that subsection (2) of section 39-22-121.5, does not specify which department is required to publish on its website information identifying the applicable fiscal year credit cap. Is it your intent that this would be a requirement of the department of revenue or some other department?

## **Technical Comments**

There are no new technical comments.