

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Carol Hedges and Steve Briggs

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 17, 2019

SUBJECT: Proposed initiative measure 2019-2020 #185, concerning Policy Changes Pertaining to State Income Taxes

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 #179 to #184 and #186 to #195. 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 #179 to #184 and #186 to #195, 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 Constitution and the Colorado Revised Statutes appear to be:

1. To repeal the constitutional requirement that the income tax have a single rate;
2. To establish a graduated individual income tax that increases the tax rate for individuals with higher incomes;
3. To allow the state to retain and spend the additional tax revenue from the graduated income tax notwithstanding any constitutional limits; and
4. To require this additional tax revenue to be used as follows:
 - a. At least 25% for pre-primary-12 public education; and
 - b. The remainder to address the impacts of a growing population and a changing economy.

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. Section 4 requires at least 25% of the additional tax from the graduated individual income tax to be appropriated and expended for "pre-primary-12 education to recruit, retain, and pay teachers and student services providers, pursuant to the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes."
 - a. Is "pre-primary-12 education" the same as "pre-primary through twelfth grade education"?
 - b. What is pre-primary education? Does it extend to birth?
 - c. Is the recruitment, retention, and payment of teachers and student services providers a separate component of the school finance act?

- d. If not, then how will the General Assembly, the Department of Education, or the citizen's oversight committee know whether the 25% that must be used for that purpose is actually being used as such?
 - e. To fulfill this purpose, is it your intent that the General Assembly should consider adding a separate component for paying for teachers and student service providers?
 - f. Could the General Assembly appropriate all of the 25% for categorical programs? Must it appropriate at least \$1 for each of the specified education purposes?
 - g. What is the definition of "student service providers"? Is a "student service provider" a person who holds a "special services" license as described in section 22-60.5-210, C.R.S.? Does the phrase "teachers and student service providers" exclude principals and school administrators?
 - h. The provision refers to revenue generated in "any calendar year" and then requires at least 25% of "such revenue" to be used for the specified education purposes. Is it your intent that the 25% minimum apply on a calendar year basis, as opposed to a fiscal year basis, which is how schools are funded?
3. The following questions and comments relate to the requirement that the additional funding for schools "supplement and not supplant general fund and state education fund appropriations" for public school funding:
- a. Does "existing on the effective date" mean the general fund appropriations for the fiscal year 2020-21, if the initiative becomes effective in January 1, 2021?
 - b. There is no time specified in the sentence. Do you intend for the requirement to only apply for the fiscal year as of the effective date? Do you intend for this to be an ongoing requirement that applies for all fiscal years beginning on or after July 1, 2021?
 - c. Could the revenue be used to supplant funding from another fund, such as the state public school fund?
 - d. As a statute, could the General Assembly create an exception to this requirement? Could it repeal it?
 - e. To truly limit the General Assembly's plenary power, you would need to include this provision as an amendment to the constitution.

4. The measure states "the remainder of such revenue shall be appropriated and expended to address the impacts of a growing population and a changing economy. The funds shall be appropriated and expended through current funding distributions." These sentences appear to require that appropriations and expenditures to address the impacts of a growing population and a changing economy be made through current funding distributions. Is this your intent?
5. What is a "funding distribution"?
6. Does "current funding distributions" mean the same thing as "funding distributions that existed on the effective date of this subsection"?
7. How much does the state currently spend on administrative expenses?
8. If the money is distributed through the current school finance funding, will it be possible to know whether this additional revenue is used for administrative expenses or not?
9. If the answer to the prior question is no, then would this provision essentially create a 10% administrative cap for all public school funding?
10. Could the General Assembly appropriate additional money from other sources in the general fund for administrative expenses?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. In section 4 of the proposed initiative, the word "the" begins the third sentence of proposed subsection 24-77-103.3 (1) and should be capitalized.