

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Martha Olson and Donald Anderson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 28, 2019

SUBJECT: Proposed initiative measure 2019-2020 #56, concerning funding for public schools

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.

Earlier versions of these proposed initiatives, proposed initiatives #24 to #29, were the subject of memoranda dated February 19, 2019, which were discussed at a public meeting on February 21, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, questions and comments that are not restated here may continue to be relevant and are hereby incorporated by reference into this memorandum.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #55 to #57. The comments and questions raised in this memorandum will not include comments and questions addressed in the memoranda for proposed initiatives 2019-2020 #55 and #57, except as necessary to fully understand the issues raised by the 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

1. The major purposes of the proposed amendments to the Colorado constitution appear to be:
 - a. To create a more sustainable, fair, and adequate system for financing public schools to meet the needs of every student and prepare every student for success in career, college, and life;
 - b. To create the quality public education fund (fund) in the state treasury to receive all revenues collected through an income tax increment for public school funding approved by voters at the 2019 general election and to allow the general assembly to annually appropriate money from the fund for purposes specified in law;
 - c. To require money appropriated from the fund to supplement, not replace, the level of general fund appropriations for pre-primary, primary, and secondary public education existing on the effective date of the initiative; and
 - d. To create an exception to the single-rate state income tax for revenue that is dedicated to the funding of public schools.
2. The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:
 - a. To express the goals of the initiative and the intention of the people that a more sustainable, fair, and adequate system for financing public schools is necessary to achieve the goals of the proposed initiative;
 - b. To express the intention of the people that the general assembly enact a new public school finance law that substantially meets the requirements set forth in the proposed initiative;

- c. To require appropriations from the fund for specific purposes until the enactment of a new school finance law that complies with the provisions of the proposed initiative;
- d. To require money appropriated from the fund to supplement, not replace, the level of general fund appropriations for public education funding existing on the effective date of the initiative, with an annual inflation adjustment;
- e. To require each school district receiving money from the fund to make publicly available certain financial and student performance information;
- f. To require the review and study of a successor public school finance act within specific time frames;
- g. To reduce the income tax rate on the first \$50,000 of income by .13% for individuals, trusts, and estates;
- h. To increase income tax rates incrementally for individuals, trusts, and estates using four tax brackets starting at .37% for income above \$150,000 and increasing to 3.12% for income above \$400,000;
- i. To increase the corporate income tax rate by 1.37%; and
- j. To allow the revenue collected to be retained and spent as voter-approved revenue changes.

Substantive Comments and Questions

The substance of the proposed initiative raises the following additional 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. Would the proposed exception to article X, section 20 (8) permit a future voter-approved, statutory measure to create additional negative income tax increments? Must the negative rates be accompanied by an increase? Must there be a net increase in income tax revenues for this provision to apply?
3. What is a "negative increment" as used in proposed section 39-22-104 (1.7)(a)? Is it the same thing as a rate reduction?

4. Does the negative increment in proposed section 39-22-104 (1.7)(a) satisfy the proposed exception to article X, section 20 (8) of the Colorado constitution, which allows multiple income tax rates "for the purpose of providing sustainable, fair, and adequate income tax increments dedicated to the funding of pre-primary through secondary public schools"? If not, is it valid?
5. How does an income tax rate reduction create a more sustainable, fair, and adequate system for financing public schools?
6. Is it your intent that the income tax increments and the negative increment should not impact the income tax revenue that is credited to the general fund?
7. Is money "derived" from the negative income tax increment?
8. In proposed section 39-22-623 (1)(b)(I), does "all moneys derived from the income tax increments..." include the reduction in revenue as a result of the rate reduction in 39-22-104 (1.7)(a)? If so, is it really the net revenue that is equal to the revenue gained through the increased tax rates imposed in proposed subsections (1.7)(b), (1.7)(c), (1.7)(d), and (1.7)(e), minus the revenue lost as a result of the rate reduction in section 39-22-104 (1.7)(a)?
9. If proposed section 39-22-623 (1)(b)(I) does not include a negative tax increment, then general fund revenue will be reduced and the revenue in the quality public education fund will be increased. The proponents may consider clarifying the disposition to be clear that it is the net revenue derived from all of the tax increments in section 39-22-104 (1.7)(a), (1.7)(b), (1.7)(c), (1.7)(d), and (1.7)(e).
10. What happens if the amount of the revenue reduction attributable to the negative increment in proposed section 39-22-104 (1.7)(a) exceeds the amount of the revenue increase attributable to the positive increments in proposed subsections (1.7)(b), (1.7)(c), (1.7)(d), and (1.7)(e)?
11. Will the department of revenue be able to determine the tax revenue and tax reduction from the income tax increments?
12. While only the revenue that will be deposited in the quality public education fund from the tax increments is identified as a voter-approved revenue change, it appears that a portion of the voter-approved tax increment revenue, which is equal to the negative tax increment, will be deposited in the general fund under proposed section 39-22-623. How will this affect the amount of revenue that the state retains and spends under the voter-approved revenue change known as Referendum C?

Technical Comments

There are no additional technical comments.