

# STATE OF COLORADO

## Colorado General Assembly

Natalie Mullis, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

### MEMORANDUM

**TO:** Camille Howells and Chad Cookinham  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 3, 2021  
**SUBJECT:** Proposed initiative measure 2021-2022 #18, concerning the Learning Enrichment and Academic Progress (LEAP) Program

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.

### Purposes

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

1. To create a Learning Enrichment and Academic Progress (LEAP) Program that, among other purposes, will primarily distribute financial aid to eligible children for "out-of-school learning opportunities";

2. To establish the Colorado Learning Authority and its powers and duties to oversee the LEAP Program;
3. To establish a board of directors for the Colorado Learning Authority and its powers and duties;
4. To define general eligibility criteria for financial aid and other requirements for the general administration of the LEAP Program;
5. To increase the state sales tax imposed on retail marijuana by 5%;
6. To fund the LEAP Program with the revenue from the 5% sales tax on retail marijuana; money from the general fund; and gifts, grants, donations, and loans from public or private sources;
7. To repeal the state sales tax exemption on sales of retail marijuana;
8. To reallocate proceeds the state receives related to public school lands from the permanent school fund to the state public school fund; and
9. To seek a voter-approved exception to the state and Colorado Learning Authority's fiscal year spending limits for the money that the state gives to the Colorado Learning Authority.

## **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. What will be the effective date of the proposed initiative?
3. Proposed section 22-86.1-101 (2) states that the intent of the program is that it will allow for "access to additional learning supplies and materials, especially for rural students." What are "learning supplies and materials"? Would the proponents consider defining the phrase?
4. Proposed section 22-86.1-101 (3) states, "families will have the authority and responsibility to choose programs, experiences, and activities that they believe to be the best fit for their child or youth." Does "responsibility" mean that participation in the Learning Enrichment and Academic Progress (LEAP) Program is mandatory?

5. Proposed section 22-86.1-101 (6) states that the additional money to the state public school fund will ensure that the LEAP Program has minimal financial impact on the state general fund. How would it have an impact in the absence of the additional money to the state public school fund?
6. Does proposed section 22-86.1-101 (6) assume that the state will not have to use the general fund to backfill the revenue that was reallocated from its current use to the state public school fund?
7. Is it your intent that the Colorado Learning Authority be a district for purposes of article X, section 20 of the Colorado Constitution (TABOR) that has its own state fiscal year spending limit?
8. Do you intend for the measure be referred to the voters at the 2021 odd-numbered year election under TABOR?
9. Proposed section 22-86.1-102 (3) defines "eligible child or youth" as "a child or youth who turns five years of age in a qualifying year." What is a "qualifying year"?
10. Proposed section 22-86.1-103 (2), and elsewhere in the proposed initiative, refers to rulemaking authority by the Colorado Learning Authority. Will these rules be promulgated through the adoption of agency rules pursuant the "State Administrative Procedure Act", part 1 of article 4 of title 24, Colorado Revised Statutes?
11. Proposed section 22-86.1-103 (3)(a) requires the Colorado Learning Authority to "[s]eek to increase access to learning opportunities for every eligible child or youth." Does "seek to increase" mean this new LEAP Program is intended to build upon past or current efforts that have already been completed to this goal?
12. Proposed section 22-86.1-103 (3)(b) requires the Colorado Learning Authority to "[c]reate and develop criteria for the provision and selection of learning opportunities for distribution of funds, consistent with and in furtherance of the goals and purposes stated in proposed section 22-86.1-101, to be provided within the state of Colorado for eligible children or youth." Does this mean that the Colorado Learning Authority has the ability to define additional learning opportunities beyond what is defined as "learning opportunities" in proposed section 22-86.1-102 (4)?
13. Proposed section 22-86.1-103 (3)(b) states "[i]t is the intent of the people that the financial aid distributed will be new dollars to spend on new services and must not supplant existing public or charitable funding for programs available

- to eligible children or youth." If a school expanded an existing program, would that program be an eligible or acceptable use of financial aid?
14. Proposed section 22-86.1-103 (3)(c) and (3)(d) describes the Colorado Learning Authority's application and certification process for learning opportunity providers. Does the Colorado Learning Authority contract and pay learning opportunity providers? Alternatively, are learning opportunity providers only paid through financial aid funds from eligible children or youth?
  15. Proposed section 22-86.1-103 (3)(d) mentions the prioritization of academic interventions for students who are behind in their grade level. How does this prioritization harmonize with the other prioritizations described in proposed section 22-86.1-103 (3)(f)?
  16. Proposed section 22-86.1-103 (3)(d) states that the Colorado Learning Authority may "provide reasonable support to providers to ensure a broad representation of providers can meet the requirements of this subsection." What is "reasonable support"?
  17. Proposed section 22-86.1-103 (3)(f)(II), (3)(f)(III), and (3)(f)(IV) creates distinct financial aid distribution requirements based on "calendar years." How does this harmonize with the other requirements throughout the proposed initiative based on "fiscal years"?
  18. Proposed section 22-86.1-103 (3)(f)(III)(B) and (3)(f)(III)(C) uses a range as "between one hundred and two hundred percent of the federal poverty level." Do you intend for this tier to be greater than one hundred percent but less than two hundred percent? Or, inclusive of one hundred percent and two hundred percent?
  19. Proposed section 22-86.1-103 (3)(f)(IV) states that the Colorado Learning Authority "shall determine the financial aid award amounts to be provided to priority and non-priority eligible children and the method and timing of distribution." Is "non-priority eligible children" a different class of eligible children or youth beyond those previously described in proposed section 22-86.1-103 (3)(f)(III)?
  20. Proposed section 22-86.1-103 (3)(g) states that the Colorado Learning Authority shall "[c]reate multiple-year financial aid as practicable for children or youth with unique learning needs and low-income eligible children or youth." What does "unique learning needs" and "low-income eligible children or youth" mean? Would the proponents consider defining the phrases?

21. Proposed section 22-86.1-103 (3)(i) requires an annual independent audit of the Colorado Learning Authority. As a part of that independent audit, you give the Colorado Learning Authority the authority to select a sample of providers evaluated pursuant to the independent audit. Do you want the Colorado Learning Authority to select the providers for the independent audit? Alternatively, do you want the third party conducting the audit to have the authority to select the providers for the independent audit?
22. Proposed section 22-86.1-103 (3)(i) gives the Colorado Learning Authority discretion to contract with a third-party evaluator to evaluate the efficacy of providers. Is this intended to be under the scope of the independent audit described and conducted under this proposed subsection (3)(i)? Alternatively, is this a distinct evaluation?
23. Proposed section 22-86.1-103 (4) authorizes the Colorado Learning Authority to delegate "some or all" enumerated duties. Furthermore, proposed section 22-86.1-103 (4)(b) specifically states that the Colorado Learning Authority may "[e]nter into agreements and contracts as necessary with approved providers of learning opportunities under the program." Is the intention that the Colorado Learning Authority may delegate authority to an entity by contract to then enter into an agreement and contract with approved providers of learning opportunities?
24. Proposed section 22-86.1-103 (5) states that "[n]o more than ten percent of moneys from the learning enrichment and academic progress fund may be spent on administrative expenses in any fiscal year after the end of fiscal year 2025." How will administrative expenses be paid prior to this time? Do you intend for there to be any limitation on administrative expenses prior to this time?
25. Proposed section 22-86.1-103 (7)(a)(I) uses the word "institution." What is an "institution"? Would the proponents consider defining the term?
26. Proposed section 22-86.1-103 (7)(a)(II) and (7)(a)(IV) uses the word "recipient." Who is a "recipient"? Would the proponents consider defining the term?
27. Proposed section 22-86.1-103 (7)(a)(II) states that the Colorado Learning Authority shall ensure that the LEAP Program "[d]oes not discriminate against any recipient, recipient's family's, or provider's religious affiliation." Proposed section 22-86.1-103 (7)(a)(IV) states the Colorado Learning Authority shall ensure that the LEAP Program "[d]oes not deny any recipient the program's benefits based on the religious character of the provider." Are these two provisions substantively distinct?

28. Proposed section 22-86.1-103 (7)(b) states "[n]othing in this subsection (7) gives any person a private cause of action." Does that mean a person does not have a cause of action if the Colorado Learning Authority does not provide assistance to an eligible child or youth, discriminates based on religious affiliation, requires a course in religion or theology, or denies benefits based on the religious character of the institution?
29. Proposed section 22-86.1-104 (1)(g) states that the transactions described in this proposed subsection (1)(g) must not "interfere with the mission of the authority as specified in proposed section 22-86.1-103." Where is the referenced mission in proposed section 22-86.1-103?
30. Proposed section 22-86.1-105 (1)(a)(III) and (1)(b)(III) concerns appointments of person who are "[a] parent whose child would qualify as a prioritized eligible child or youth for the program." What type of priority does this refer?
31. Proposed section 22-86.1-105 (2) requires appointments to the initial board of directors to be completed by January 15, 2022, and that these members serve a single term of three years. What is the composition of the board of directors if the initial members' three-year term overlaps with the ongoing board of directors appointed by January 1, 2025 in proposed section 22-86.1-105 (4)?
32. Proposed section 22-86.1-105 (2) states that "they may be reappointed for one subsequent term of three years in an ex officio capacity at the discretion of the appointing authority." Does "they" mean that either all initial board members or none may serve a subsequent term? Also, what is within the scope of an "ex officio" capacity? Are the initial appointments also in an ex officio capacity?
33. Proposed section 22-86.1-105 (3) requires the initial board of directors to "establish a learning opportunities parent advisory council and a learning opportunities provider advisory council." By when must the initial board of directors appoint these councils? Do you intend to put parameters on eligible members and how many must be on these councils?
34. Proposed section 22-86.1-105 (3)(a) permits the learning opportunities parent advisory council and learning opportunities provider advisory council to "[p]rovide input to the board concerning the program, eligibility of children and youth," among other items. Is your intent to give the board of director's authority to establish eligibility criteria for eligible children or youth beyond what is statutorily proposed?
35. Proposed section 22-86.1-105 (3)(b) permits the learning opportunities parent advisory council and learning opportunities provider advisory council to

- "[p]rovide recommendations to the appointing bodies for parent representation on the board." If the board of directors establishes the learning opportunities parent advisory council and learning opportunities provider advisory council, how can the members of the learning opportunities parent advisory council and learning opportunities provider advisory council recommend parent representation on the board of directors? Or, do you intend their input to be limited to advisement for appointments to the ongoing board of directors?
36. Proposed section 22-86.1-105 (5) states that members of the ongoing board are "subject to removal as provided in article IV, section 6 of the Colorado constitution." Article IV, section 6 of the Colorado Constitution only applies to appointments made by the governor, whereas the ongoing board of directors to which this proposed subsection (5) applies includes appointments made by the president or minority leader of the Senate. Furthermore, is your intent that replacements after removal are confirmed by the consent of the Senate?
37. Proposed section 22-86.1-105 (8)(c) states that "two nonvoting members initially appointed to the board will serve for one year." Who decides, or how is it decided, which two members serve for one year?
- Questions and comments 38 through 50 relate to proposed section 22-86.1-106.*
38. Proposed section 22-86.1-106 (2) permits the Colorado Learning Authority to accept property and requires it to be credited to the fund. How are nonmonetary donations credited to the fund?
39. Proposed section 22-86.1-106 (2) states "the authority may accept any gifts, grants, donations." It is standard drafting practice to authorize a state agency to "seek, accept, and expend," not just to accept them.
40. Do you intend for the Colorado Learning Authority to be able to accept gifts, grants, or donations, along with loan proceeds, from any public or private source?
41. If the loans are multiple years, will the authority need prior voter approval under subsection (4)(b) of TABOR? Does the current law authorize the authority to seek that voter approval?
42. Would the Colorado Learning Authority deposit the gifts, grants, or donations or loans in the Learning Enrichment and Academic Progress Fund?
43. The state treasurer has the ability to transfer money between state funds in the state treasury. If the Colorado Learning Authority is a body corporate and a political subdivision of the state and if the Learning Enrichment and Academic

Progress Fund is not created within the state treasury, can the state treasurer transfer money from the general fund or any other fund to the fund? (See sections 24-51-414 (1)(a) and 29-4-719.1 (4)(b), C.R.S., for examples of how the state currently gives money to a special purpose authority.)

44. Similarly, will the state treasurer or the Department of Revenue be able to deposit sales tax revenue into the Learning Enrichment and Academic Progress Fund? Do you intend to authorize the state treasurer or department to transmit the money to the authority?
45. The transfers required by proposed section 22-86.1-106 (3) and (4) are the same amounts of income from public school lands that is transferred to the state public school fund. Is this just to establish a funding amount or is there some other connection between the two transfers?
46. In proposed sections 22-86.1-106 and 36-1-116 (1)(a)(II)(D), is the end of the third and fourth quarters March 31, 2022 and June 30, 2022? Likewise, is the end of the fiscal year June 30, 2022, or is it the date the state controller issues the comprehensive annual financial report, which may not be until December 2022?
47. Is the purpose of subsections (3) and (4) in proposed section 22-86.1-106 to seek voter approval for the state to retain and spend revenue as a voter-approved revenue change to the fiscal year spending limit in TABOR? If not, what do you intend the legal effect to be?
48. Is the purpose of proposed section 22-86.1-106 (5) to seek voter approval for the authority to retain and spend revenue as a voter-approved revenue change to the fiscal year spending limit in TABOR? If not, what do you intend the legal effect to be?
49. The voter approval sought under proposed section 22-86.1-106 includes gifts and federal funds, which both are excluded from the definition of fiscal year spending. And the tax increase set forth in proposed section 39-26-106 (1)(a)(III) would be a voter-approved tax increase under subsection (4)(a) of TABOR. So are the voter-approved revenue changes that are set forth in subsections (3), (4), and (5) of proposed section 22-86.1-106 really just for the general fund revenue that the state gives to the Colorado Learning Authority?
50. The state appropriates money to state departments. Can the state give spending authority to a political subdivision? To the extent this language is intended to comply with article V, section 33 of the Colorado Constitution, you might



consider making the disbursement as "otherwise authorized by law" instead of appropriated.

51. Is the purpose of section 2 of the proposed initiative to exclude the authority from the state for purposes of the state's TABOR fiscal year spending limit?

*Questions and comments 52 through 56 relate to section 3 of the proposed initiative.*

52. Is the purpose of section 3 of the proposed initiative to allocate the specified proceeds to the state public school fund instead of the permanent school fund? If not, what is the purpose?

53. Do you intend for the allocation to the state public school fund to be permanent? If so, could the provisions creating the existing allocations to the permanent school fund be repealed?

54. Will the allocation to the state public school fund reduce the amount of money that is credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S.?

55. The transfers required in section 3 of the proposed initiative are required at a specified time, but it does not describe the period for which the money is collected. For what period are the transfers to be made? For example, section 36-1-116 (1)(b)(II)(D), C.R.S., requires transfers "[f]or the 2011-12 state fiscal year and each state fiscal year thereafter...." (Emphasis added.) Clarification for the transfer required for the third quarter of the state fiscal year 2021-22 seems most important.

56. Other than setting the amount of transfers required by proposed section 22-86.1-106 (3) and (4), what is the connection between the increased allocation to the state public school fund and the LEAP program?

*Questions and comments 57 through 70 relate to the new retail marijuana sales tax.*

57. The general state sales tax is imposed upon all sales of commodities and services under article 26 of title 39, C.R.S. The retail marijuana tax is imposed on retail marijuana and retail marijuana products under article 28.8 of title 39, C.R.S. Why include the tax increase in the general sales tax instead of simply raising the current retail marijuana sales tax from 15% to 20%?

58. While the tax rate has been increased, there was no change to section 39-26-105 (1), C.R.S., which makes the vendor "liable and responsible for" the payment of an amount equal to 2.9% of the vendors sales, minus a vendor fee. An amendment seems necessary to make ensure that the state collects the revenue from the increased tax.

59. There is no vendor fee on the current retail marijuana sales tax. If this tax is part of the general sales tax, do you intend the retailer to be able to retain a vendor fee associated with these sales as set forth in section 39-26-105 (1)(d), C.R.S.?
60. The tax increase is imposed on "all retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202." That same phrase is used in section 39-26-729 (1)(a), C.R.S., and has been interpreted by the Department of Revenue to include both sales of retail marijuana and retail marijuana products. Do you intend for the same meaning in proposed section 39-26-106 (1)(a)(III)?
61. Must a retailer report and submit the revenue from the sales tax increase on marijuana separately from its general sales tax and retail marijuana sales tax receipts?
62. Understanding that the language is copied from an existing statutory provision, are there sales of marijuana for 17 cents or less? If not, the second sentence in proposed section 39-26-106 (1)(a)(III) does not seem necessary.
63. Do you intend for the allocation in proposed section 39-26-106 (1)(a)(III) to supersede the distribution set forth in section 39-26-123, C.R.S.?
64. Sections 39-26-123 and 39-28.8-203, C.R.S., require sales tax receipts to be deposited into the old age pension fund as required by article XXIV of the Colorado Constitution. Do you intend the transfer described in proposed section 39-26-106 (1)(a)(III) to occur from the general fund after the revenue has been credited there as set forth in article XXIV?
65. Who is required to do the transfer?
66. Is it a transfer between funds or is the state transmitting the money to the authority?
67. What is the purpose of section 5 of the proposed initiative? What does it add to proposed section 39-26-106 (1)(a)(I)?
68. The proposed amendment to section 39-26-729 (1)(a) appears to eliminate the sales tax exemption on retail sales of marijuana for both the 2.9% state sales tax and the additional 5% marijuana tax. Is that your intent? If not, a change to that section seems necessary.
69. The state would likely need voter approval under subsection (4)(a) of TABOR to repeal the exemption for retail sales of marijuana from the 2.9% state sales

tax. Do you intend for an estimate of that revenue to be included in the total amount specified for the ballot title required by TABOR?

70. Prior to the exemption created in section 39-29-729, C.R.S., the revenue from 2.9% state sales tax was allocated to the marijuana tax cash fund created in section 39-28.8-501, C.R.S. The revenue from the 2.9% state sales tax on retail sales of marijuana will now be allocated under section 39-26-123, C.R.S. Is that your intent?

## 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. **Guidelines for statutory citations.** The number or letter of what you're referencing needs to be specified for every other level of reference, even when you're referring to a provision within the same. For example:
  - a. Title: "this title 1"
  - b. Article: "this article 1"
  - c. Part: "this part 1"
  - d. Subsection: "this subsection (2)"
  - e. Paragraph: "this subsection (2)(a)"
  - f. Subparagraph: "this subsection (2)(a)(I)"
  - g. Sub-subparagraph: "this subsection (2)(a)(I)(b)"
2. It is standard drafting practice to use "money" instead of "moneys".
3. Proposed section 22-86.1-102 (3) defines the term "eligible child or youth." The term should be used consistently, where appropriate, elsewhere in the document where the defined term is intended.
4. When expressing a lower and upper age limit, standard drafting practice is to state, for example, "persons who are eighteen years of age or older but under twenty-one years of age." This example includes people who are eighteen but not people who are twenty-one and over.

- a. Proposed section 22-86.1-102 (3) states "who turns five years of age in a qualifying year but who has not attained eighteen years of age".
  - b. Proposed section 22-86.1-105 (4)(a) states "child age five to seventeen".
  - c. Proposed section 22-86.1-105 (4)(b) states "child age five to seventeen".
  - d. Proposed section 22-86.1-105 (8)(b)(I) states "at least fourteen years of age but not older than nineteen years of age".
5. The definitions should be in alphabetical order. Please consider moving "out-of-school learning opportunity."
  6. Proposed section 22-86.1-102 (4)(b) includes a semicolon in "but is not limited to; tutoring." This semicolon should be a colon.
  7. Proposed section 22-86.1-102 (4)(b), (4)(c), and (4)(d) uses "includes" and "does not include" as applicable where defining the term. Standard drafting practice would use "means" or "does not mean" instead.
  8. Proposed section 22-86.1-102 (8) uses "the," which is not a part of the term defined in this definitions section. Standard drafting practice would not use "the" before the defined term.
  9. The word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "must does not mean that a person has a duty." Please see the following proposed subsections:
    - a. Proposed section 22-86.1-103 (3)(f)(III)(A) states "[f]inancial aid shall."
    - b. Proposed section 22-86.1-105 (7) states "[a] member...shall be reimbursed for actual and necessary expenses."
    - c. Proposed section 22-86.1-105 (8)(b) states "nonvoting members shall" "[b]e at least fourteen years of age..." and "be enrolled in and attending...."
    - d. Proposed section 22-86.1-106 (3) states "transfers shall be exempt."
    - e. Proposed section 22-86.1-106 (4) states "the total amount of such transfers shall be exempt."
  10. Please use the singular form of a noun whenever possible. Proposed section 22-86.1-105 (1)(a)(IV) and (1)(b)(IV) states "educators or administrators." As these

refer to one singular person, they should be changed to the singular form as well.

11. Proposed section 22-86.1-105 (8) references the "Colorado commission on Indian affairs." The name of the commission is the "Colorado commission *of* Indian Affairs," article 44 of title 24, C.R.S. (Emphasis added.)