

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: Jon Caldara and Tim Geitner

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 15, 2022

SUBJECT: Proposed initiative measure 2021-2022 #81, concerning educational materials under the Colorado Open Records Act.

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 the Colorado 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.

Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be:

1. To define "educational materials" and include them in the definition of a "public record" for purposes of the Colorado Open Records Act.

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. Proposed section 24-72-202 (9) broadly defines "educational materials." Under the proposed definition, is the proponents' intent that an assignment or test that an educator has prepared but has not yet distributed to students be open to inspection? Would the proponents consider clarifying the intent?
3. The effective date clause states, "This act shall take effect upon proclamation by the governor and shall be self-executing."
 - a. This clause does not specify that the result of the vote must be approved by the people for it to be effective and proclaimed by the governor. Would the proponents consider clarifying this clause?
 - b. What does it mean that it is "self-executing"?

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. The proponents 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. It is standard drafting practice to alphabetize the definitions in the definitions section. Would the proponents consider amending the placement of the definitions within the existing definitions in section 24-72-202, Colorado Revised Statutes, accordingly, including and renumbering the existing definitions and searching for conforming amendments as needed?
2. Because the proposed initiative defines "educational materials," the reference at the end of proposed section 24-72-202 (6)(a)(I) that says "as used in this part 2" is not needed. Would the proponents consider deleting this phrase?
3. In proposed section 24-72-202 (9.2), "a board of cooperatives" is included in the definition of "local education provider." The entity created in article 5 of title 22, Colorado Revised Statutes, is "board of cooperative services." If that is the

entity intended to be referenced, would the proponents consider changing this phrase?

4. The language in the effective date section should be in regular type, not small capitals.