

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Jennifer Gregg and Marla Benavides
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 2, 2022
SUBJECT: Proposed initiative measure #60, concerning a Tax Credit for Non-public and Home-based Education

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. Beginning in 2023, create a tax credit of \$1,000 per year, per student for Colorado residents who have a student enrolled in a non-public home-based education program; and

2. Beginning in 2023, create a tax credit of \$3,000 per year, per student for Colorado residents who have a student enrolled in a non-public school.

Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. You have submitted an idea, rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes.
 - a. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
 - b. Pursuant to article V, section 1 (2) of the Colorado constitution, proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). In the revised initiative, please indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and show where in the constitution or statutes the text should be inserted.
3. 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?
4. The submitted language describes an amendment to the Colorado constitution, but also states that the General Assembly "will implement" the tax credit with specific requirements.
 - a. Is it the proponents' intent to amend the state constitution to direct the General Assembly to pass implementing legislation?
 - b. If so, can the General Assembly include additional eligibility and implementing requirements in that legislation?

- c. If the proposed initiative is approved by the voters at the November 2022 election, will there be sufficient time for the General Assembly to adopt implementing legislation and for the Department of Revenue to take the steps necessary to administer the program for the income tax year beginning January 1, 2023?
5. What is the purpose of providing a tax credit to parents or legal guardians who have children enrolled in non-public schools and non-public home based educational programs? Will any metrics be required to evaluate the effectiveness of the income tax credit in meeting its purpose?
6. The proposed initiative states that the credit extends to "all subsequent tax years." Does this mean that the tax credit can only be repealed if the voters of Colorado approve a constitutional amendment to repeal it?
7. What is the definition of a "non-public home-based educational program"? Does it have the same meaning as set forth in section 22-33-104.5 (2)(a), Colorado Revised Statutes?
8. What is the definition of a "non-public school"?
9. What does it mean to be a "full-time resident of Colorado"?
10. Is a parent or legal guardian claiming the tax credit for a student in a non-public home-based educational program required to prove compliance with state law concerning non-public home-based educational programs to be eligible to claim the credit?
11. What does it mean for a student to be enrolled full time in a non-public home-based educational program or non-public school? For example, if a student is enrolled full time for part of the school year, can the parent claim the full amount of the income tax credit?
12. If a student in a non-public home-based educational program attends a home school program through a local public school district, or enrolls in a public school for a specific course or subject, is the parent or legal guardian still eligible for the tax credit? Are there limits on how much a student can participate in public school programs while remaining eligible?
13. How would enrollment in a non-public home-based educational program or non-public school be verified? Would the Department of Revenue be responsible for verifying the information?

14. If a parent or guardian has more than one child enrolled in a non-public home-based educational program or non-public school, can the parent or guardian claim the full amount of the applicable credit for each student?
15. Can parents that file separate income tax returns each claim the state income tax credit or is the credit available only to taxpayers that meet the Internal Revenue Service requirements for claiming the student as a dependent?
16. Is the income tax credit refundable?
 - a. If not, can the credit be carried forward into future tax years?
 - b. If the credit can be carried forward, how long is the carry-forward period?
17. The proposed initiative allows the general assembly to increase the amount of the tax credit in the future to account for inflation. How should inflation be calculated for this purpose? Would the General Assembly be prohibited from increasing the amount of the tax credit by more than inflation?
18. The proposed initiative states that the "state shall be prohibited from using this section to increase its regulatory role over the education of children in home-based and non-public schools beyond that exercised and existent on January 1, 2022."
 - a. What does it mean for the state to increase its regulatory role? Does this requirement mean the state cannot change or update existing laws or rules at all, or that they cannot adopt laws or rules of a different type than what is currently in place? How would this be determined?
 - b. How would it be determined whether a new law or rule was adopted on the basis of the new tax credit or had another basis?
 - c. If the state established a scholarship program for students in nonpublic schools that required an application or limited how the scholarship could be used, would that be considered an increased regulatory role?
19. The proposed initiative states that parents and guardians "retain the right to decline to apply for the tax credit." Applying for tax credits is generally a choice made by the taxpayer. Is there a reason this statement is necessary? Is there an aspect of the credit that would otherwise be mandatory or automatic?

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.).
For example:
SECTION 1. In Colorado Revised Statutes, **add** 39-22-543 as follows:
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example "In Colorado Revised Statutes, **add** 39-22-543 as follows:".
3. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "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."