

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Steven Ward
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 20, 2023
SUBJECT: Proposed initiative measure 2023-2024 #23, concerning charter school approval.

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 purpose of the proposed amendment to the Colorado constitution appears to be to:

1. Establish a right to school choice for children; and
2. Permit a new charter school to apply to a charter school institute for approval.

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. What constitutes "school choice"?
4. Subsection (1) of the proposed initiative is prefaced as "purpose and findings." It appears this is a legislative declaration, but subsection (1) may also be interpreted to create substantive rights. Is the proponents' intent to create substantive law under subsection (1)? If so, the proposed initiative should more clearly separate the declaration from substantive law.
5. Subsection (1) of the proposed initiative states that "all children have the right to equal opportunity to access a quality education."
 - a. What constitutes an "equal opportunity"? Is it the proponents' intent that a child who does not reside in a school district must be provided enrollment in a district's schools as readily as a child who does reside in the school district? Is it the proponents' intent that all children must be provided enrollment in a private school, notwithstanding the private school's eligibility or cost requirements?
 - b. What constitutes "access"? Is it the proponents' intent that a child who wants to attend a school must be enrolled, notwithstanding the school's resources or capacity?
 - c. What constitutes "quality education"?
6. Subsection (1) of the proposed initiative states that "parents have the right to direct the education of their children; and that school choice includes ...".
 - a. Are "direct the education of their children" and "school choice" intended to be synonymous? If so, the proposed initiative should use identical language. If not, what is the distinction between these two phrases?
 - b. What constitutes "direct the education of their children"? Is it the proponents' intent that parents have discretion to direct all matters concerning their child's education, including, but not limited to, deciding

what curriculum, assignments, and assessments their child receives or completes, notwithstanding the school or educational program the child is enrolled in?

- c. Is it the proponents' intent to limit this right to parents only, or is the intent to extend the right to legal guardians or persons having legal custody of or responsibility for a child? If the intent is to extend the right, would you consider revising the language for clarity?
7. Subsection (1) of the proposed initiative states that "school choice includes ... open enrollment options." What constitutes "open enrollment options"?
8. Subsection (2) of the proposed initiative states that "every k-12 child has the right to school choice."
 - a. Subsection (2) of the proposed initiative assigns the right to school choice to a K-12 child, but subsection (1) of the proposed initiative states parents have the right to direct the education of their children, which could include school choice. What is the intent of the proposed initiative regarding who holds the right to school choice?
 - b. Is the proponents' intent to limit this right to children only, so that a K-12 student who is eighteen years of age or older does not have the right to school choice?
 - c. Is the proponents' intent that by assigning the right to school choice to the child, parental consent to the child's choice is eliminated?
9. Subsection (2) of the proposed initiative states "... new charter schools may apply directly to the statewide charter school authorizer(s) for approval." The proposed initiative seems to only provide an option for a new charter school to apply to a statewide charter school authorizing entity. Furthermore, the proposed initiative seems to neither create a statewide charter school authorizing entity, nor make a statewide charter school authorizing entity the exclusive authorizing authority. Is the proponents' intent to require the General Assembly to create, or sustain an existing, statewide charter school authorizing entity, even though the proposed initiative uses permissive language, does not require the creation of a statewide charter school authorizing entity, or does not make a statewide charter school authorizing entity the exclusive authority?
10. Subsection (2) states that "[t]o provide additional quality options, new charter schools may apply directly to the statewide charter school authorizer(s) for approval."

- a. What is the proponents' intent concerning the relationship between constitutionally codifying permission to apply to a statewide authorizer for approval, and that permission's relation to the provision of quality educational options?
 - b. Is the proponents' intent that the statewide charter school authorizer could establish certain quality standards that a new charter school applicant must exhibit for approval?
11. Subsection (2) of the proposed initiative refers to "k-12," which is a colloquial abbreviation used to describe elementary and secondary education. The proposed initiative should be revised to clearly articulate the students who are considered in the proposed initiative.

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. It is standard drafting practice to avoid using archaic terms. In subsection (1), instead of using "hereby find and declare," simply use "find and declare."
2. It is standard drafting practice to express nouns in the singular whenever possible.
 - a. In subsection (2), consider amending the proposed initiative to say "a charter school" rather than "charter schools."
 - b. In subsection (2), consider amending the proposed initiative to say "a statewide charter school authorizer" rather than "the statewide charter school authorizer(s)."
3. It is standard drafting practice to use the following amending clause format to amend constitutional provisions:

"In the constitution of the state of Colorado, **add** section 18 to article IX as follows:"