

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Jon Caldara and Nash Herman

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 27, 2026

Subject: Proposed Initiative Measure 2025-2026 #282, Concerning retaining and spending K-12 education revenue

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

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

1. Make findings and declaration of the people of the state of Colorado;
2. Create a voter-approved revenue change that allows the state to retain and spend an amount of state revenue equal to the amount of state public K-12 education funding in excess of the limitation on state fiscal year spending and to increase state public K-12 education funding by up to 2% for 10 years;
3. Require legislative council staff to determine the amount of state public K-12 education funding and describe how legislative council staff will make that determination;
4. Create positive factor funding to provide additional funding for each school district for the 2027-2028 through 2036-2037 budget years and to specify a formula for calculating a district's positive factor funding;
5. Specify that a district may only use its positive factor funding for increasing teacher pay, improving teacher retention, lowering class sizes, and increasing access to career and technical courses;
6. Create the excess state revenues account (account) within the general fund, which consists of an amount of money equal to the amount of state revenues in excess of the excess state revenues cap that the state retains for a given fiscal year pursuant to the proposed initiative;
7. Require the General Assembly to first appropriate money in the account to the department of education to pay school districts' positive factor funding and after that to allow the General Assembly to appropriate money in the account for any other purpose;
8. Direct the state auditor to conduct and publish, for each state fiscal year that the state retains and spends state revenues in excess of the limitation on state fiscal year spending, a legislative report that includes descriptions of:

- a. The amount of state revenues that the state retained and spent that would otherwise have been in excess of the limitation on state fiscal year spending; and
 - b. How the state revenues that the state retained and spent that would otherwise have been in excess of the limitation on state fiscal year spending were expended; and
9. Make conforming amendments to ensure that voter approval of the proposed initiative does not impact the expanded earned income tax credit, the family affordability tax credit, or the affordable housing financing fund.

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. The following comments and questions relate to section 3 of the proposed initiative, which creates a voter-approved revenue change in an amount equal to the state public education funding for the state fiscal year and defines "state public education funding":
 - a. Proposed section 24-77-303 (1), specifies that "state public education funding" is the total amount appropriated for categorical programs and the state share of total program funding that is subject to the state spending limit for the preceding fiscal year. This amount historically represents billions of dollars. For example, the state is estimated to spend approximately \$4.8 billion on state public education funding in the 2026-2027 state fiscal year. Proposed section 24-77-302 (1) authorizes the state to retain and spend revenues that would otherwise have been refunded to the taxpayers pursuant to article X, section (2)(7)(d) of the Colorado Constitution (TABOR) in an amount equal to the entire "state public education funding" amount. Is it the proponents' intent to authorize the state to retain several billion dollars of excess state revenues annually?

- b. Proposed section 24-77-302 (2)(a) creates an excess state revenues account in the general fund, which consists of the amount that the state retains from the voter-approved revenue change. Proposed section 24-77-302 (2)(b) requires the General Assembly, in each state fiscal year, to transfer or appropriate from the account to the department of education an amount necessary to pay each school district's positive factor funding pursuant to the proposed initiative. Proposed section 24-77-302 (2)(c) allows the general assembly to appropriate any remaining money in the excess state revenues account for "any other purpose." Is it the proponents' intent to require an amount equal to the lesser of 2% of statewide total program funding in the 2026-27 budget year or the amount that would otherwise be refunded to taxpayers pursuant to TABOR, to be used to increase funding for schools and to allow the rest of the money retained to be spent for any purpose without restriction?
3. Sections 6 and 7 of the proposed initiative amend the earned income tax credit and the family affordability tax credit. Both sections add "state public education funding" to the definition of "nonexempt revenue" for the applicable state fiscal year, in alignment with current law. The availability and funding levels of these specific tax credits are dependent upon the amount of nonexempt revenue collected by the state. Is it your intent that this measure does not impact the availability and funding levels of these credits? Is it your intent that this measure also does not impact the availability and amounts of other credits that are dependent on nonexempt state revenue, such as the innovative truck credit and the electric bicycle credit?
4. What fiscal or other impacts may result from the enactment of the proposed initiative on the state, school districts, and individual taxpayers in Colorado? To the extent that the enactment of the proposed initiative leads to the retention of significant excess state revenues, how do the proponents anticipate the general assembly will use the remaining money permitted for "any other purpose"?
5. Under current law, certain seniors, veterans with a disability, and Gold Star spouses are eligible for property tax exemptions. The state is required to reimburse local governments for lost property tax revenue due to the exemptions. In years where revenue exceeds the Referendum C cap, reimbursements to local governments are considered a TABOR refund mechanism. In years where revenue falls below the Referendum C cap, the state must pay the reimbursements from

another source. What priority do the proponents intend that the reimbursements to local governments will have under the proposed initiative?

6. The proposed initiative appears to be substantively the same as the introduced version of Senate Bill 26-135, which is currently being considered by the General Assembly. What happens if both the bill and the proposed initiative appear on the ballot? What happens if voters approve both the bill and the proposed initiative?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. Headnotes should be in bold type and use dashes instead of em-dashes.
2. In subsection (1)(j) of the legislative declaration of the proposed initiative, “Pailaich” is spelled incorrectly. The correct spelling is “Palaich.”
3. It is standard drafting practice to use small capital letters, rather than lowercase letters or all capital letters, to show the language being added to the C.R.S. The headnote should remain in lowercase letters. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
4. In 22-54-103.7 of the proposed initiative:
 - a. In subsection (1)(b), a quotation mark should precede “New formula statewide total program calculation”.
 - b. In subsection (1)(c), a quotation mark should precede “Two percent K-12 public education increase”.

5. It is standard to follow specific drafting practices when referring to the Colorado Revised Statutes:
 - a. Do not capitalize “article” or “title.”
 - b. It is not necessary to include “Colorado Revised Statutes” after each statutory section number or reference.
 - c. There is a standard format when referring to an article within the same provision:
 - i. For example, in 22-54-103.7 (1)(c) of the proposed initiative, the internal reference should read, “... to this article 54 or the amount ...”.
6. It is standard drafting practice to not capitalize titles of government agencies, such as “department of education” and “legislative council.”
7. It is standard drafting practice to not capitalize common nouns, such as “staff” or “department.”
8. Section 24-77-302 is missing a section number and a headnote that briefly describes the content of the section.
9. When including internal references in new language that uses small capital letters, ensure that the letters that refer to specific paragraphs are not also capitalized. For example:
 - a. In 24-77-302 (1) of the proposed initiative, the reference to the state constitution should read, “SECTION 20 (7)(d) OF ARTICLE X ...”.
 - b. In 24-77-302 (2)(c) of the proposed initiative, the reference to the subsection should read, “SUBSECTION (2)(b) OF THIS SECTION ...”.
 - c. In 24-77-302 (3)(b) of the proposed initiative, the reference to the section should read, “SECTION 24-77-106.5 (1)(b) ...”.
10. The following is the standard drafting language used for creating a definitions section when referring to the “same meaning:”
 - (1) “[The term]” has the meaning set forth in section XX-XX-XXX (X).

11. For clarity, references to the Colorado Constitution are written in a standard format. For example, section 8 of the proposed initiative should read:
 - a. “This act shall take effect upon proclamation by the governor pursuant to section 1 (4) of article V of the state constitution.”