

**SUPREME COURT, STATE OF COLORADO**

2 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203

Original Proceeding  
Pursuant to §1-40-107(2), C.R.S. (2017)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative 2019-  
2020 #68 ("Establishment of Expanded Learning  
Opportunities Program")

**Petitioners:** JULIET SEBOLD and MONICA R.  
COLBERT

v.

**Respondents:** TITLE BOARD MEMBERS BEN  
SCHLER, LEEANN MORRILL, and JASON  
GELENDER.

**ATTORNEYS FOR PETITIONERS:**  
William A. Hobbs, #7753  
Benjamin J. Larson, #42540  
IRELAND STAPLETON PRYOR & PASCOE, PC  
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Supreme Court Case No.:

**PETITION FOR REVIEW OF FINAL ACTION OF TITLE BOARD ON  
PROPOSED INITIATIVE 2019-2020 #68 ("ESTABLISHMENT OF  
EXPANDED LEARNING OPPORTUNITIES PROGRAM")**

Juliet Sebold and Moncia R. Colbert ("Petitioners"), registered electors of the State of Colorado, through counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Board with respect to its decision to deny title setting for Initiative 2019-2020 #68 based on single subject grounds.

## **I. STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2019-2020 #68**

Juliet Sebold and Monica R. Colbert ("Proponents") proposed Initiative 2019-2020 #68 (the "Proposed Initiative"). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted amended and final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board.

A Title Board hearing was held on April 17, 2019, at which time the Title Board denied title setting because the Proposed Initiative purportedly does not constitute a single subject. On April 23, 2019, Petitioners filed a Motion for Rehearing, arguing, in pertinent part, that the Proposed Initiative has a single subject. The rehearing was held on April 26, 2019, at which time the Title Board denied the Motion for Rehearing on single subject grounds.

## **B. Jurisdiction**

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed their Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within seven days from the date of the hearing on Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of the filed text, initial fiscal impact statement and abstract, the Motion for Rehearing, and the ruling on the Motion for Rehearing. Petitioners believe the Title Board erred in denying the Motion for Rehearing as to the single subject issue, and therefore this matter is properly before the Court.

## **II. GROUNDS FOR APPEAL**

The Proposed Initiative complies with the single subject requirement set forth in article V, § 1(5.5) of the Colorado Constitution. The following is an advisory list of issues to be addressed on appeal.

1. Whether the Title Board erred when it found that the Proposed Initiative, which concerns the creation of an expanded learning opportunities program, violates the single subject requirement because it funds the program by

enacting a new tax credit that is offset by reductions in other tax credits in order to ensure the program is revenue-neutral to the state?

### **III. CONCLUSION**

WHEREFORE, Petitioners respectfully request that this Court reverse the Title Board's decision that the Proposed Initiative does not constitute a single subject and remand the Proposed Initiative to the Title Board with instructions that the Title Board set a title and submission clause.

Respectfully submitted this 3<sup>rd</sup> day of May, 2019.

IRELAND STAPLETON PRYOR & PASCOE, PC

/s/ Benjamin J. Larson

William A. Hobbs, #7753

Benjamin J. Larson, #42540

**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of May, 2019, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #68 ("ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM")** was duly filed with the Court and served U.S.

Mail, postage prepaid, and electronic mail upon the following:

Emily Buckley  
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*Attorney for Title Board*

*/s/ Carol Christman* \_\_\_\_\_  
Carol Christman

DATE FILED: May 3, 2019 2:56 PM



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, initial fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #68 'Establishment of Expanded Learning Opportunities Program With New Tax on Nicotine Products'".....

.....

**IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 30<sup>th</sup> day of April, 2019.

*Jena Griswold*

SECRETARY OF STATE



RECEIVED S.WARD  
APR 05 2019 1:20 P.M.

2019-2020 #68 - Final

Colorado Secretary of State

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** article 86.1 to title 22 as follows:

ARTICLE 86.1  
COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM

**22-86.1-101. Legislative declaration.** THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(1) EXPANDED LEARNING OPPORTUNITIES ARE CRITICAL FOR ALL COLORADO CHILDREN AND YOUTH. THESE OPPORTUNITIES, DURING PERIODS AND TIMEFRAMES OUTSIDE OF THEIR REGULAR SCHOOL SCHEDULES, PROVIDE ESSENTIAL ACADEMIC AND LIFE SKILLS FOR CHILDREN AND YOUTH TO THRIVE IN SCHOOL AND LIFE.

(2) PROVIDING CONSISTENT AND RELIABLE ACCESS TO OUT-OF-SCHOOL LEARNING EXPERIENCES TO ALL OF COLORADO'S CHILDREN WILL ALLOW THEM TO RECEIVE TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION, RECEIVE TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING DISABILITIES, ATTEND IN-DEPTH YOUTH PROGRAMS WHERE THEY LEARN NEW SKILLS AND PARTICIPATE IN OUTDOOR ACTIVITIES, BE EXPOSED TO NEW AND CHALLENGING REAL WORLD EXPERIENCES THAT BROADEN THEIR HORIZON AND BUILD ESSENTIAL SKILL SETS AND RECEIVE EXPOSURE TO MUSIC, DANCE, ARTS AND CAREER AND TECHNICAL EDUCATION PROGRAMS NO LONGER OFFERED IN MANY SCHOOLS.

(3) CREATING THE EXPANDED LEARNING OPPORTUNITIES PROGRAM WILL ENSURE THAT THESE LEARNING EXPERIENCES ARE EQUALLY AVAILABLE TO ALL COLORADO STUDENTS AND THAT FAMILIES WILL HAVE THE AUTHORITY AND RESPONSIBILITY TO DIRECT THOSE FUNDS TO THE EXPERIENCES AND ACTIVITIES THEY BELIEVE TO BE THE BEST FIT FOR THEIR CHILD OR YOUTH.

(4) ENCOURAGING INNOVATION IN THE CREATION AND PROVISION OF EXPANDED LEARNING OPPORTUNITIES WILL BENEFIT COLORADO'S CHILDREN AND YOUTH.

**22-86.1-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTERING NON-PROFIT" MEANS THE ORGANIZATION SELECTED BY THE AGENCY PURSUANT TO SECTION 22-86.1-103(2)(j).

(2) "AGENCY" MEANS THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED BY SECTION 22-86.1-103.

(3) "ELIGIBLE CONTRIBUTION" MEANS ANY MONETARY OR IN-KIND CONTRIBUTION FOR WHICH AN INCOME TAX CREDIT IS AUTHORIZED PURSUANT TO SECTION 39-22-121.5.

(4) "ELIGIBLE STUDENT" MEANS A CHILD OR YOUTH WHO IS AT LEAST THREE YEARS OF AGE BUT WHO HAS NOT ATTAINED NINETEEN YEARS OF AGE, RESIDING IN COLORADO OR OTHERWISE ELIGIBLE FOR ADMISSION TO PUBLIC SCHOOL WITHIN THE STATE.

(5) "ELIGIBLE TAXPAYER" MEANS AN INDIVIDUAL, ESTATE, TRUST, OR CORPORATION FOR WHOM A CREDIT IS AUTHORIZED FOR ELIGIBLE CONTRIBUTIONS UNDER SECTION 39-22-121.5.

(6) "OUT-OF-SCHOOL LEARNING EXPERIENCES" MEANS ANY PROGRAM, SERVICE, MATERIAL, SYSTEM, CURRICULUM, ACTIVITY, OR OTHER PURSUIT OR PURCHASE THAT PROVIDES SUPPLEMENTAL EDUCATIONAL OR DEVELOPMENTAL SUPPORT TO ELIGIBLE STUDENTS OUTSIDE OF NORMAL SCHOOL OPERATIONS. OUT-OF-SCHOOL LEARNING EXPERIENCES SHALL NOT INCLUDE INSTRUCTION, SERVICES, MATERIALS, CURRICULA, OR PROGRAMS PROVIDED AS PART OF A NORMAL COURSE OF STUDY CONDUCTED IN ACCORDANCE WITH A PUBLIC OR PRIVATE SCHOOL STUDENT'S COMPULSORY ATTENDANCE REQUIREMENTS UNDER SECTION 22-33-104 OR A HOME SCHOOL STUDENT'S COMPULSORY INSTRUCTION REQUIREMENTS UNDER SECTION 22-33-104.5.

(7) "PARENT" MEANS A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE STUDENT.

(8) "PROGRAM" MEANS THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM CREATED AND ADMINISTERED UNDER THIS ARTICLE.

**22-86.1-103. Expanded learning opportunities agency – establishment – purposes – powers.**

(1) THERE IS ESTABLISHED, AS AN INDEPENDENT AGENCY IN THE DEPARTMENT OF EDUCATION, THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY. THE AGENCY SHALL BE GOVERNED AND ADMINISTERED BY A BOARD OF DIRECTORS AND SHALL EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED TO THE DEPARTMENT BY A TYPE I TRANSFER UNDER THE PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(2) THE PURPOSES AND POWERS OF THE AGENCY SHALL BE TO:

(a) ESTABLISH AND OVERSEE THE ADMINISTRATION OF THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM CREATED BY THIS ARTICLE;

(b) CREATE AND DEVELOP CRITERIA FOR THE PROVISION AND SELECTION OF ALLOWABLE USES FOR FUNDS DISTRIBUTED BY THE ADMINISTERING NON-PROFIT, CONSISTENT WITH AND IN FURTHERANCE OF THE GOALS AND PURPOSES STATED IN SECTION 22-86.1-101, TO BE PROVIDED WITHIN THE STATE OF COLORADO FOR ELIGIBLE STUDENTS. AT A MINIMUM THESE ALLOWABLE USES SHALL INCLUDE, TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION IN CORE SUBJECT AREAS, INCLUDING READING, MATHEMATICS, SCIENCE, AND WRITING; TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING DISABILITIES, ENGLISH LANGUAGE AND FOREIGN LANGUAGE ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH YOUTH NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES, CHALLENGING REAL WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS, AND



OTHER PROGRAMS THAT PROVIDE MUSIC, DANCE, ARTS OR CAREER AND TECHNICAL EDUCATION TRAINING. IT IS THE INTENT OF THE PEOPLE THAT THE FINANCIAL AID DISTRIBUTED BY THE ADMINISTERING NON-PROFIT WILL BE NEW DOLLARS TO SPEND ON NEW SERVICES AND SHALL NOT SUPPLANT EXISTING FUNDING FOR PROGRAMS AVAILABLE TO ELIGIBLE STUDENTS.

(c) CREATE AND DEVELOP CRITERIA FOR PUBLICATION, SOLICITATION, RECEIPT, AND EVALUATION BY THE ADMINISTERING NON-PROFIT OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM. SUCH CRITERIA SHALL MAXIMIZE THE NUMBER AND DIVERSITY OF PROVIDERS THAT PARENTS AND ELIGIBLE STUDENTS CAN CHOOSE AND SHALL ALSO ENSURE THAT SMALL COMMUNITY-BASED PROVIDERS ARE ELIGIBLE AND ABLE TO PARTICIPATE IN THE PROGRAM.

(d) CREATE AND DEVELOP CRITERIA UNDER WHICH THE ADMINISTERING NON-PROFIT SHALL CERTIFY PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM, TO INCLUDE PRE-CERTIFICATION OF LOCAL SCHOOL DISTRICTS, LOCAL EDUCATION PROVIDERS, AND BOARDS OF COOPERATIVE EDUCATIONAL SERVICES. NEITHER THE ADMINISTERING NON-PROFIT NOR ANY SUBSIDIARY THEREOF SHALL BE ELIGIBLE FOR CERTIFICATION AS A PROVIDER.

(e) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NON-PROFIT TO ESTABLISH PROCEDURES TO ENSURE STUDENT SAFETY, INCLUDING THE PROVISION OF RECENT BACKGROUND CHECKS FOR PROVIDERS WHO COME IN CONTACT WITH STUDENTS.

(f) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NON-PROFIT TO ESTABLISH AND MANAGE PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS AND OTHER GIFTS, GRANTS, AND DONATIONS TO THE ADMINISTERING NON-PROFIT, TO COMPENSATE APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES. THE INDIVIDUAL LEARNING ACCOUNT FUNDS, ALSO REFERRED TO IN THIS ARTICLE 86.1 AS "FINANCIAL AID," SHALL BE PROVIDED AND ADMINISTERED BY THE ADMINISTERING NON-PROFIT ON A SLIDING SCALE, WITH THE AMOUNT OF A FINANCIAL AID BEING INVERSELY RELATED TO THE FAMILY INCOME AND FINANCIAL MEANS OF AN ELIGIBLE STUDENT, WITH SUCH SLIDING SCALE TO BE DETERMINED AT LEAST ONCE PER CALENDAR YEAR BY THE AGENCY AND SUBJECT TO THE MAXIMUM FINANCIAL AID AMOUNT PER ELIGIBLE STUDENT AS DETERMINED BY THE AGENCY. SUCH FINANCIAL AID SHALL INCLUDE EXPENSES FOR TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM OUT-OF-SCHOOL LEARNING EXPERIENCES. THE ADMINISTERING NON-PROFIT, SHALL HAVE CONTROL OVER WHEN AND HOW FINANCIAL AID IS DISTRIBUTED TO APPROVED PROVIDERS THAT THE PARENTS CHOOSE, SUBJECT TO ADMINISTRATIVE RULES CREATED BY THE AGENCY. SUCH FINANCIAL AID SHALL FURTHER BE PROVIDED AND ADMINISTERED IN A MANNER THAT SHALL NOT DISCRIMINATE AGAINST ANY RECIPIENT, RECIPIENT'S FAMILY, PROVIDER, OR OUT-OF-SCHOOL LEARNING EXPERIENCE ON THE BASIS OF RACE, COLOR, RELIGIOUS AFFILIATION, NATIONAL ORIGIN, GENDER, MILITARY STATUS, SEXUAL ORIENTATION, GENDER VARIANCE, MARITAL STATUS, OR PHYSICAL OR MENTAL DISABILITY. THE AGENCY SHALL ENSURE THAT FINANCIAL AID IS UTILIZED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AND THE COLORADO CONSTITUTION.

(g) CREATE AND DEVELOP CRITERIA AND PROTOCOLS FOR ROLLOVER OF UNUSED FUNDS IN A LEARNING ACCOUNT FOR USE BY THE RECIPIENT IN ADDITIONAL OUT-OF-SCHOOL LEARNING

EXPERIENCES UNDER THE PROGRAM. ANY FUNDS IN THE INDIVIDUAL LEARNING ACCOUNT WHEN THE STUDENT NO LONGER QUALIFIES AS AN ELIGIBLE STUDENT SHALL REVERT BACK TO THE ADMINISTERING NON-PROFIT.

(h) ESTABLISH A PROCESS TO SELECT OR CREATE NO LATER THAN AUGUST 1, 2020, THE NON-PROFIT ORGANIZATION TO BE DESIGNATED PURSUANT TO PARAGRAPH (j) OF THIS SUBSECTION. THE AGENCY SHALL CREATE A NEW NON-PROFIT ONLY IF THE AGENCY DETERMINES NO EXISTING NON-PROFITS MEET THE QUALIFICATIONS NECESSARY TO SUCCESSFULLY ADMINISTER THE PROGRAM.

(i) ANNUALLY COLLECT, AND MAKE PUBLICLY AVAILABLE, FINANCIAL AUDITS OF THE ADMINISTERING NON-PROFIT. SUCH AUDITS SHALL BE CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTANT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING STANDARDS IN THE UNITED STATES AND SHALL BE FILED WITH THE AGENCY BY THE ADMINISTERING NON-PROFIT NO LATER THAN JULY 1 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR. THE AGENCY SHALL REDACT ALL NAMES OF TAXPAYERS AND SOCIAL SECURITY NUMBERS OR TAX IDENTIFICATION NUMBERS BEFORE PUBLICLY RELEASING ANY AUDIT OR OTHER FINANCIAL REPORT.

(j) DESIGNATE AND ENTER INTO AN AGREEMENT WITH A COLORADO NON-PROFIT CORPORATION MEETING THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH. SUCH AGREEMENT SHALL DEFINE THE RESPONSIBILITIES AND OBLIGATIONS OF THE ADMINISTERING NON-PROFIT TO OPERATE AND ADMINISTER THE PROGRAM CREATED BY THIS ARTICLE UTILIZING ELIGIBLE CONTRIBUTIONS. ANY NON-PROFIT CORPORATION WITH WHICH THE AGENCY MAY CONTRACT PURSUANT TO THIS SECTION SHALL MEET THE FOLLOWING CRITERIA AND REQUIREMENTS:

(I) THE ADMINISTERING NON-PROFIT SHALL BE DULY INCORPORATED AND IN GOOD STANDING UNDER THE COLORADO REVISED NON-PROFIT CORPORATION ACT, ARTICLES 121 THROUGH 137 OF TITLE 7, C.R.S., OR ANY SUCCESSOR STATUTE, SHALL HAVE ITS PRINCIPAL PLACE OF BUSINESS LOCATED IN THE STATE OF COLORADO, SHALL BE A SEPARATE AND DISTINCT LEGAL ENTITY AND NEITHER AN AGENCY NOR SUBDIVISION OF THE STATE, AND SHALL BE DEEMED AN INDEPENDENT CONTRACTOR WITH THE AGENCY.

(II) THE ADMINISTERING NON-PROFIT SHALL BE EXEMPT FROM FEDERAL INCOME TAX UNDER 26 U.S.C. § 501(c)(3) OF THE INTERNAL REVENUE CODE.

(III) THE ADMINISTERING NON-PROFIT SHALL BE DEEMED BY THE AGENCY TO BE CAPABLE OF EFFECTIVELY ADMINISTERING THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM SUBJECT TO CRITERIA ESTABLISHED AND DETERMINED BY THE AGENCY. IN THE EVENT THE ADMINISTERING NON-PROFIT CEASES TO BE PARTY TO AN AGREEMENT FOR THIS PURPOSE WITH THE AGENCY, OR UPON TERMINATION OF SUCH AGREEMENT, THE ADMINISTERING NON-PROFIT SHALL IMMEDIATELY CEASE ANY REFERENCES OR REPRESENTATION OF ASSOCIATION WITH THE PROGRAM OR THE AGENCY. UPON TERMINATION OF ANY AGREEMENT WITH THE AGENCY, THE ADMINISTERING NON-PROFIT SHALL REMIT ALL ELIGIBLE CONTRIBUTIONS IN ITS POSSESSION OR CONTROL, LESS SUCH AMOUNT AS MAY BE RETAINED PURSUANT TO SUBPARAGRAPH (IX) OF THIS PARAGRAPH OR AS MAY OTHERWISE BE SPECIFIED BY THE AGENCY IN ITS AGREEMENT WITH THE ORGANIZATION, TO THE AGENCY.

(IV) THE ADMINISTERING NON-PROFIT SHALL BE GOVERNED BY A VOLUNTEER BOARD OF DIRECTORS. MEMBERS OF THE BOARD OF DIRECTORS SHALL NOT BE ENTITLED TO COMPENSATION, BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR REASONABLE OUT-OF-POCKET EXPENSES INCURRED IN THE PERFORMANCE OF THEIR BOARD DUTIES.

(V) (A) ANY RECORDS OF THE ADMINISTERING NON-PROFIT RELATED TO THE ADMINISTRATION OF THE PROGRAM SHALL BE AVAILABLE AT ALL TIMES TO THE AGENCY AND SHALL BE TREATED AS PUBLIC RECORDS SUBJECT TO PRODUCTION UNDER THE COLORADO OPEN RECORDS ACT, SECTION 24-72-201, ET SEQ., UPON REQUEST MADE TO THE AGENCY.

(B) THE ADMINISTERING NON-PROFIT SHALL FILE PERIODIC REPORTS DETAILING THE CONTRIBUTIONS RECEIVED AND FINANCIAL AID PROVIDED THROUGHOUT EACH CALENDAR YEAR. SUCH REPORTS SHALL BE FILED ON A TIMELINE TO BE DETERMINED BY THE AGENCY, EXCEPT THAT THE AGENCY SHALL NOT REQUIRE THE ADMINISTERING NON-PROFIT TO FILE SUCH REPORTS MORE THAN FOUR TIMES PER CALENDAR YEAR.

(C) THE ADMINISTERING NON-PROFIT SHALL SUBMIT IN A TIMELY MANNER ANY INFORMATION REQUESTED BY THE AGENCY THAT RELATES TO THE PROGRAM, INCLUDING WITHOUT LIMITATION INFORMATION THAT IS REQUESTED IN SUPPORT OF ANY EVALUATION THE PROGRAM OR ITS ADMINISTRATION.

(VI) THE ADMINISTERING NON-PROFIT MAY SOLICIT AND RECEIVE ELIGIBLE CONTRIBUTIONS. THE ADMINISTERING NON-PROFIT MAY ALSO SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS FOR PURPOSES OF ADMINISTERING AND FUNDING THE PROGRAM. THE SOURCES AND AMOUNTS OF ALL ELIGIBLE CONTRIBUTIONS SHALL BE REPORTED IMMEDIATELY TO THE AGENCY. NO ELIGIBLE CONTRIBUTIONS MAY BE EARMARKED OR RESTRICTED IN ANY MANNER BY AN ELIGIBLE TAXPAYER FOR THE BENEFIT OF OR TO EXCLUDE ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR ANY INDIVIDUAL OR CLASS OF PROVIDERS.

(VII) SUBJECT TO CRITERIA DETERMINED AND ESTABLISHED BY THE AGENCY, THE ADMINISTERING NON-PROFIT SHALL DEVELOP, ESTABLISH, AND MANAGE SYSTEMS AND PROCEDURES FOR PUBLICATION, SOLICITATION, RECEIPT, EVALUATION, AND SELECTION OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM TO WHICH PARENTS MAY DIRECT FINANCIAL AID; ENTER INTO AGREEMENTS AND CONTRACTS AS NECESSARY WITH APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM; DEVELOP, ESTABLISH, AND MANAGE A SYSTEM FOR RECEIPT, PROCESSING, AND EVALUATION OF APPLICATIONS FROM ELIGIBLE STUDENTS; PROVIDE SERVICES DIRECTLY OR THROUGH THIRD-PARTY CONTRACT TO ASSIST ELIGIBLE STUDENTS, PARENTS, AND THEIR FAMILIES IN NAVIGATING AND SELECTING AMONG AVAILABLE OUT-OF-SCHOOL LEARNING EXPERIENCES; ESTABLISH AND MANAGE INDIVIDUAL LEARNING ACCOUNTS, TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS TO THE ADMINISTERING NON-PROFIT, TO PAY APPROVED PROVIDERS OF APPROVED OUT-OF-SCHOOL LEARNING EXPERIENCES; AND PROVIDE, DIRECTLY OR BY CONTRACT, TECHNOLOGY SERVICES, SUBJECT TO CRITERIA ESTABLISHED AND DETERMINED BY THE AGENCY, FOR PURPOSES OF MONITORING AND TRACKING THE USE OF INDIVIDUAL LEARNING ACCOUNTS BY ELIGIBLE STUDENTS AND APPROVED PROVIDER PERFORMANCE AND PAYMENTS;

(VIII) EXCEPT AS PROVIDED IN SUB-PARAGRAPH (IX) OF THIS PARAGRAPH, NO MORE THAN TEN PERCENT OF THE ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ADMINISTERING NON-PROFIT IN ANY CALENDAR YEAR MAY BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES. ON OR AFTER JANUARY 1, 2023, THE AGENCY SHALL, IN CONSULTATION WITH THE ADMINISTERING NON-PROFIT, REVIEW THE PERCENTAGE OF ELIGIBLE CONTRIBUTIONS THAT CAN BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING ANY APPROPRIATE CHANGES TO SUCH PERCENTAGE; AND

(IX) ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ORGANIZATION PRIOR TO JANUARY 1, 2021, MAY BE RETAINED BY THE ADMINISTERING NON-PROFIT FOR ADMINISTRATIVE AND ORGANIZATIONAL START-UP PURPOSES.

(3) THE AGENCY SHALL BE SUBJECT TO ALL REQUIREMENTS OF THE COLORADO OPEN RECORDS ACT, SECTION 24-72-201, ET SEQ.

(4) THE AGENCY SHALL HAVE THE AUTHORITY TO PROMULGATE RULES AND REGULATIONS AS ARE NECESSARY OR EXPEDIENT FOR THE CONDUCT OF ITS AFFAIRS PURSUANT TO PART 1 OF ARTICLE 4 OF TITLE 24, C.R.S.

(5) THE AGENCY MAY SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS THAT MAY BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES, TO INCLUDE SALARIES AND OFFICE EXPENSE, REIMBURSEMENT TO MEMBERS OF THE AGENCY BOARD OF DIRECTORS APPOINTED IN ACCORDANCE WITH SECTION 22-86.1-104(1) (a), ROUTINE BUSINESS EXPENSES SUCH AS INSURANCE, ACCOUNTING, AND LEGAL EXPENSES, AND ANY SIMILAR OVERHEAD EXPENSES INCURRED BY THE AGENCY.

**22-86.1-104. Expanded learning opportunities agency -- board of directors -- powers and duties.** (1)(a) THE AGENCY SHALL BE OVERSEEN AND ADMINISTERED BY A BOARD OF DIRECTORS APPOINTED JOINTLY BY THE GOVERNOR AND EITHER THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES WHO SHALL NOT BE AFFILIATED WITH THE SAME POLITICAL PARTY AS THE GOVERNOR, WITH AT LEAST ONE DIRECTOR RESIDENT IN EACH OF THE STATE'S CONGRESSIONAL DISTRICTS. IF THE TOTAL NUMBER OF CONGRESSIONAL DISTRICTS IS AN EVEN NUMBER, ONE ADDITIONAL AT-LARGE MEMBER SHALL BE APPOINTED. DIRECTORS SHALL BE APPOINTED FOR TERMS OF FOUR YEARS, EXCEPT THAT AT LEAST ONE-HALF OF THE INITIALLY APPOINTED DIRECTORS SHALL BE APPOINTED FOR A TWO-YEAR TERM TO ASSURE STAGGERED TERMS. THE BOARD'S COMPOSITION SHALL, TO THE EXTENT PRACTICAL, REFLECT COLORADO'S GENDER, ETHNIC, RACIAL, AND POLITICAL DIVERSITY. MEMBERS OF THE BOARD MAY NOT DURING THEIR TERMS OF SERVICE BE EMPLOYED BY OR CONTRACT WITH ORGANIZATIONS, PUBLIC AGENCIES, OR INDIVIDUALS THAT PROVIDE OR OFFER TO PROVIDE OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM. MEMBERS OF THE BOARD MAY SERVE MORE THAN A SINGLE TERM, AND MEMBERS SHALL BE SUBJECT TO REMOVAL AS PROVIDED IN ARTICLE IV, SECTION 6, OF THE COLORADO CONSTITUTION.

(b) MEMBERS OF THE BOARD SHALL NOT BE ENTITLED TO COMPENSATION, BUT THEY SHALL BE PROVIDED REASONABLE PER DIEM AND REIMBURSEMENT FOR EXPENSES INCURRED IN FURTHERANCE OF THEIR RESPONSIBILITIES AS MEMBERS OF THE BOARD.

(2) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) TO HIRE AN EXECUTIVE DIRECTOR AND STAFF;

(b) TO ESTABLISH AND OVERSEE THE PROGRAM CREATED BY THIS ARTICLE, ASSURING THAT AS MUCH FUNDING AS PRACTICABLE IS DEDICATED TO THE PROVISION OF FINANCIAL AID AND ASSISTANCE TO ELIGIBLE STUDENTS AND THEIR FAMILIES IN FINDING AND SELECTING AVAILABLE OUT-OF-SCHOOL LEARNING EXPERIENCES;

(c) TO PERFORM ALL SUCH ACTIONS AS MAY BE NECESSARY AND APPROPRIATE TO CARRY OUT THE DUTIES AND RESPONSIBILITIES SPECIFIED IN SECTION 22-86.1-103 OF THIS ARTICLE;

(d) TO OBTAIN THE SERVICES OF EXPERT CONSULTANTS AS NECESSARY AND APPROPRIATE FOR THE PERFORMANCE OF ITS DUTIES AND RESPONSIBILITIES;

(e) TO PROMULGATE RULES AND REGULATIONS IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, AS ARE NECESSARY OR EXPEDIENT FOR THE CONDUCT OF ITS AFFAIRS AND GENERALLY FOR THE ADMINISTRATION OF THE PROGRAM ESTABLISHED BY THIS ARTICLE;

(f) TO SUE AND BE SUED IN ITS OWN NAME;

(g) TO INCUR DEBTS, LIABILITIES, AND OBLIGATIONS, SUBJECT TO ANY LIMITATIONS IMPOSED THEREON PURSUANT TO LAW;

(h) TO PROVIDE FOR THE NECESSARY EXPENSES OF THE BOARD IN THE EXERCISE OF ITS POWERS AND THE PERFORMANCE OF ITS DUTIES AND TO REIMBURSE A BOARD MEMBER FOR NECESSARY AND APPROPRIATE EXPENSES INCURRED IN THE PERFORMANCE OF THE BOARD MEMBERS' DUTIES;

(i) TO PROVIDE FOR THE PROPER KEEPING OF ACCOUNTS AND RECORDS AND FOR BUDGETING OF FUNDS; AND

(j) TO ACT AS A PUBLIC ENTITY FOR PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 TO TITLE 24, C.R.S.

**22-86.1-105. Repeal and reauthorization.** THIS ARTICLE 86.1 IS REPEALED, EFFECTIVE JANUARY 1, 2031, SUBJECT TO REAUTHORIZATION.

**SECTION 2.** In Colorado Revised Statutes, add 39-22-121.5 as follows:

**39-22-121.5. Credit for contribution toward out-of-school learning experiences provided under the Colorado expanded learning opportunities program.** (1) FOR INCOME

TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2020, THERE SHALL BE ALLOWED A CREDIT TO EVERY INDIVIDUAL, ESTATE, TRUST, AND CORPORATION AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR ONE HUNDRED PERCENT OF ANY MONETARY AND IN-KIND CONTRIBUTIONS DURING THE INCOME TAX YEAR TO THE NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j). A CREDIT ALLOWED TO ANY INDIVIDUAL, ESTATE, TRUST, OR CORPORATION SHALL IN NO EVENT EXCEED THE TAXPAYER'S ACTUAL INCOME TAX LIABILITY FOR THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED, EXCEPT THAT A TAXPAYER MAY CARRY FORWARD ANY PORTION OF CREDIT EARNED IN EXCESS OF INCOME TAX LIABILITY FOR UP TO THREE TAX YEARS. A TAXPAYER MAY NOT CONVEY, ASSIGN, OR TRANSFER A CREDIT OR CARRY-FORWARD PORTION OF A CREDIT TO ANOTHER PERSON OR ENTITY.

(2) THE TOTAL AMOUNT OF CREDITS ALLOWED UNDER THIS SECTION IN ANY STATE FISCAL YEAR (THE "FISCAL YEAR CREDIT CAP") SHALL BE FIFTY MILLION DOLLARS. IN ANY STATE FISCAL YEAR IN WHICH TOTAL CREDITS CLAIMED UNDER THIS SECTION EQUAL OR EXCEED NINETY PERCENT OF THE THEN-APPLICABLE FISCAL YEAR CREDIT CAP, THE FISCAL YEAR CREDIT CAP SHALL AUTOMATICALLY INCREASE BY FIFTY MILLION DOLLARS FOR THE NEXT STATE FISCAL YEAR AND SUCCEEDING STATE FISCAL YEARS, UP TO A MAXIMUM FISCAL YEAR CREDIT CAP OF THREE HUNDRED MILLION DOLLARS. TAXPAYERS SHALL BE ALLOWED CREDITS UNDER THIS SECTION, SUBJECT TO THE THEN APPLICABLE FISCAL YEAR CREDIT CAP, IN THE ORDER IN WHICH SUCH CLAIMS FOR ALLOWANCE ARE RECEIVED BY THE DEPARTMENT. THE DEPARTMENT OF REVENUE SHALL PUBLISH ON ITS WEBSITE INFORMATION IDENTIFYING THE APPLICABLE FISCAL YEAR CREDIT CAP AND ANY THEN APPLICABLE INCREASES IN THE FISCAL YEAR CREDIT CAP REQUIRED BY THIS SUBSECTION.

(3) CONTRIBUTIONS TO THE NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j) FOR WHICH A CREDIT IS CLAIMED UNDER THIS SECTION MAY NOT BE DIRECTED, RESTRICTED, OR CONDITIONED IN ANY MANNER TO THE BENEFIT OR EXCLUSION OF ANY PARTICULAR ACTUAL OR POTENTIAL INDIVIDUAL OR CLASS OF FINANCIAL AID RECIPIENTS OR ACTUAL OR POTENTIAL INDIVIDUAL OR CLASS OF PROVIDERS CONTRACTING WITH THE NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j).

(4) FOR EACH INCOME TAX YEAR, FOR WHICH CREDITS ARE ALLOWED UNDER THIS SECTION, THE GENERAL ASSEMBLY SHALL REDUCE THE TOTAL AMOUNT OF OTHER CREDITS ALLOWED TO INDIVIDUALS, ESTATES, TRUSTS, AND CORPORATIONS AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT AT LEAST EQUAL TO THE CREDITS ALLOWED UNDER THIS SECTION. IN DOING SO, THE GENERAL ASSEMBLY SHALL PRIORITIZE THE PRESERVATION OF CREDITS AND EXEMPTIONS THAT BENEFIT VETERANS, PARKS, OPEN SPACE, EARLY CHILDHOOD EDUCATION PROGRAMS, LOW-INCOME COLORADO RESIDENTS, SENIORS, AND OTHER UNDERSERVED OR VULNERABLE COMMUNITIES. SUCH REDUCTION OF OTHER CREDITS SHALL BE MADE EFFECTIVE FOR THE EARLIEST PRACTICABLE INCOME TAX YEAR FOLLOWING THE INCOME TAX YEAR FOR WHICH CREDITS FOR CONTRIBUTIONS ARE ALLOWED UNDER THIS SECTION.

(5) EXCEPT FOR ANY REDUCTION IN CREDITS REQUIRED BY SUBSECTION (4) OF THIS SECTION, THIS SECTION 39-22-121.5 IS REPEALED, EFFECTIVE JANUARY 1, 2031, SUBJECT TO REAUTHORIZATION.

**SECTION 3.** In Colorado Revised Statutes, **add** article 28.6 to title 39 as follows:

**ARTICLE 28.6**  
**TAXES ON NICOTINE PRODUCTS**

**39-28.6-101. Definitions.** UNLESS THE CONTEXT OTHERWISE REQUIRES, ANY TERMS NOT DEFINED IN THIS ARTICLE 28.6 HAVE THE MEANINGS SET FORTH IN ARTICLE 26 OF THIS TITLE 39. AS USED IN THIS ARTICLE 28.6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NICOTINE PRODUCT" MEANS ANY NONLIGHTED, NONCOMBUSTIBLE PRODUCT THAT EMPLOYS A MECHANICAL HEATING ELEMENT, BATTERY, OR ELECTRONIC CIRCUIT REGARDLESS OF SHAPE OR SIZE AND THAT CAN BE USED TO PRODUCE VAPOR FROM NICOTINE IN A SOLUTION. THE TERM INCLUDES ANY VAPOR CARTRIDGE OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR OTHER FORM THAT IS INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE. "NICOTINE PRODUCT" DOES NOT INCLUDE CIGARETTES OR A "TOBACCO PRODUCT" AS DEFINED IN SECTION 39-28.5-101(5).

**39-28.6-102. Sales tax on nicotine products – administration – enforcement.** THE TAX IMPOSED PURSUANT TO THIS ARTICLE SHALL BE ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, INCLUDING, WITHOUT LIMITATION, ANY PENALTIES FOR FAILURE TO MAKE ANY RETURN OR TO COLLECT OR PAY ANY TAX; EXCEPT THAT, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS ARTICLE AND THE PROVISIONS OF ARTICLE 21 OF THIS TITLE OR PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

**39-28.6-103. Nicotine products sales tax.** IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE 39 AND THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE 29, 30, 31, OR 32, BEGINNING JANUARY 1, 2020, THERE IS IMPOSED UPON ALL SALES OF NICOTINE PRODUCTS BY A RETAILER A TAX IN THE AMOUNT OF FIVE CENTS PER MILLILITER OR DEVICE. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO IMPLEMENT THIS SECTION.

**39-28.6-104. Disposition of collections.** (1) THE STATE TREASURER SHALL CREDIT THE REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE TO THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED IN THE DEPARTMENT OF EDUCATION AS SPECIFIED IN SECTION 22-86.1-102, TO BE UTILIZED AND APPLIED BY SUCH AGENCY EXCLUSIVELY FOR ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; NO REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE MAY BE USED TO FUND INDIVIDUAL LEARNING ACCOUNTS ESTABLISHED PURSUANT TO SECTION 22-86.1-102(2)(f) OR DIRECTED TO THE ADMINISTERING NONPROFIT DESIGNATED UNDER SECTION 22-86.1-102(2)(j);

(2) THE VOTERS HEREBY FIND AND DECLARE THAT BECAUSE THE SALES AND USE TAX REVENUE GENERATED BY THE SALES AND USE TAX LEVIES PURSUANT TO SECTIONS 39-26-106 AND 39-26-202 IS SUFFICIENT TO FUND THE OLD AGE PENSION FUND AS REQUIRED BY ARTICLE XXIV OF THE STATE CONSTITUTION, THE STATE MAY CONSTITUTIONALLY CREDIT ALL REVENUE GENERATED BY THE ADDITIONAL SALES AND USE TAXES LEVIED PURSUANT TO THIS ARTICLE TO THE COLORADO OUT-OF-SCHOOL EDUCATION AGENCY AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

**39-28.6-105. Effect of voter approval – revenue, spending, and other limitations.** REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2019, TOGETHER WITH EARNINGS ON SUCH REVENUE, SHALL BE RETAINED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE AND SHALL BE EXEMPT FROM ALL REVENUE, SPENDING, AND OTHER LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER LAW.

**39-28.6-106. Repeal and reauthorization.** THIS ARTICLE 28.6 IS REPEALED, EFFECTIVE JANUARY 1, 2031, SUBJECT TO REAUTHORIZATION.



Ballot Title Setting Board

**Proposed Initiative 2019-2020 #68<sup>1</sup>**

*Hearing April 17, 2019:*

*Title setting denied on the grounds that the measure does not constitute a single subject.*

*Hearing adjourned 11:58 a.m.*

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<sup>1</sup> Unofficially captioned “**Establishment of Expanded Learning Opportunities Program with New Tax on Nicotine Products**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

APR 23 2019

S. WARD  
11:15 AM

Colorado Secretary of State

BALLOT TITLE SETTING BOARD

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IN THE MATTER OF PROPOSED INITIATIVE 2019-2020 #68

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MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #68

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On behalf of Juliet Sebold and Monica R. Colbert, representatives of the proponents of Proposed Initiative 2019-2020 #68, undersigned counsel hereby submits this Motion for Rehearing on said Initiative pursuant to Section 1-40-107, C.R.S. (2018), and as grounds therefore states as follows:

1. The Ballot Title Setting Board denied the setting of a title for Proposed Initiative 2019-2020 #68 on the grounds that it does not constitute a single subject. Proponents request a rehearing on that issue.

2. The Proponents also are not satisfied with the abstract prepared by the Director of Research of the Legislative Council of the General Assembly with regard to Proposed Initiative 2019-2020 #68.

Respectfully submitted this 23rd day of April, 2019.

s/Edward T. Ramey

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**Ballot Title Setting Board**

**Proposed Initiative 2019-2020 #68<sup>1</sup>**

*Hearing April 17, 2019:*

*Title setting denied on the grounds that the measure does not constitute a single subject.*

*Hearing adjourned 11:58 a.m.*

*Rehearing April 26, 2019:*

*Motion for Rehearing denied as it applies to single subject; withdrawn as it applies to the fiscal impact abstract.*

*Hearing adjourned 10:30 a.m.*

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<sup>1</sup> Unofficially captioned “Establishment of Expanded Learning Opportunities Program with New Tax on Nicotine Products” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative  
Council Staff  
*Nonpartisan Services for Colorado's Legislature*

# Initiative # 68

## INITIAL FISCAL IMPACT STATEMENT

**Date:** April 16, 2019

**Fiscal Analyst:** Josh Abram (303-866-3561)

**LCS TITLE:** ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS

Fiscal Impact Summary		FY 2019-20	FY 2020-21	FY 2021-22
<b>Revenue</b>	General Fund Decrease	(\$25.0 million)	(\$75.0 million)	(\$125.0 million)
	Cash Fund Increase	-	up to \$4.1 million	up to \$4.1 million
<b>Net Change</b>		<b>(\$25.0 million)</b>	<b>(\$70.9 million)</b>	<b>(\$120.9 million)</b>
<b>Expenditures</b>	General Fund	\$385,491	-	-
	Cash Funds	-	\$748,963	\$1,073,295
	<b>Total</b>	<b>\$385,491</b>	<b>\$748,963</b>	<b>\$1,073,295</b>

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

### Summary of Measure

The measure creates the Colorado Expanded Learning Opportunities Agency (state agency) and the Colorado Expanded Learning Opportunities Program (program) in the Colorado Department of Education (CDE). The program establishes individual learning savings accounts maintained by a third-party nonprofit administrator that provide funding for parents or legal guardians to purchase out-of-school educational materials, services, or experiences for their eligible children. The measure creates an income tax credit and imposes additional sales taxes on non-tobacco nicotine products. The state agency and program are repealed January 1, 2031, unless the legislature acts to reauthorize.

**Expanded learning opportunities agency.** The state agency is created as an independent entity within the CDE to establish the program and arrange for its administration. The agency must be governed by a 7 member board of directors (agency board). The measure specifies requirements for the agency board's selection, composition, and terms of service. Board members serve without compensation, but may be reimbursed for expenses.

No later than August 1, 2020, the state agency must establish a process to select a nonprofit organization to administer the program, or create a new nonprofit corporation to take this responsibility if no existing Colorado nonprofit entity satisfies the selection criteria. The state agency is required to create and develop criteria for use by the administering nonprofit related to:

- allowable uses for funding distributed to parents or guardians from individual learning accounts;
- publication, solicitation, receipt, and evaluation of applications from potential providers of out-of-school learning experiences;

- the certification, approval, and compensation of providers of out-of-school services;
- ensuring student safety;
- establishing and managing parent-directed individual learning accounts funded through eligible contributions and other donations; and
- protocols for the rollover of unused funds.

**Administering nonprofit.** Subject to criteria determined by the state agency, the administering nonprofit must develop and manage the program, including individual learning accounts funded through eligible contributions. Contributions to the agency received prior to January 1, 2021, may be retained for administrative and organizational start-up purposes; the nonprofit may also seek and accept gifts, grants, or private donations for these costs. Thereafter, the nonprofit may retain up to 10 percent of eligible contributions for administrative expenses. This rate may be adjusted by the legislature in future years if necessary. The administering nonprofit must be governed by a volunteer board of directors (nonprofit board). Members of the nonprofit board receive no compensation, but may be reimbursed for expenses.

**Individual learning accounts.** Funding from individual learning accounts must be provided and administered by the nonprofit on a sliding scale, with the amount of funding being inversely related to the family income and financial means of an eligible student. Subject to rules adopted by the state agency, the administering nonprofit will have control over when and how funding is distributed to approved providers that parents choose.

**Income tax credit.** The measure creates a state income tax credit for taxpayer monetary or in-kind contributions to the administering nonprofit. Beginning tax year 2020, a state income tax credit is allowed for 100 percent of contributions up to a fiscal year credit cap. The tax credit is non-refundable and may be carried forward for up to three tax years. The credit is repealed effective January 1, 2031, subject to reauthorization.

The cap on issued tax credits is initially set at \$50 million. The measure requires the Department of Revenue (DOR) to track credits claimed against the cap and to disallow credits claimed after the applicable cap has been reached. If for a given fiscal year the amount of credits claimed equals or exceeds 90 percent of the cap, the cap is increased by \$50 million for the following fiscal year, up to a maximum of \$300 million.

The measure directs the state legislature to repeal other tax credits in order to reduce state income tax revenue by at least the amount of the revenue reduction attributable to the new income tax credit in the measure. In making decisions regarding which credit(s) to retain or repeal, the measure directs the legislature to prioritize retaining credits that benefit veterans, parks, open space, early childhood education programs, low-income Coloradans, seniors, and other under served and vulnerable communities.

**Tax on non-tobacco nicotine products.** The measure imposes a tax of \$0.05 per milliliter or device on non-tobacco nicotine products, such as e-cigarettes, vaporizers, and e-liquid used in an e-cigarette or vaporizer. The tax is assessed in addition to the state sales and use tax but is not imposed on products that are already subject to the state cigarette or tobacco excise taxes. Revenue is credited to the Expanded Learning Opportunities Agency for its administrative and operational expenses, and may not be used to fund individual learning accounts or directed to the administering nonprofit. Revenue from the tax is exempt from TABOR as a voter-approved revenue change.

## State Revenue

The measure will both reduce and increase state revenue. Revenue from income taxes to the General Fund is reduced by up to \$25.0 million in FY 2019-20, reduced by up to \$75.0 million in FY 2020-21, and reduced by up to \$125.0 million in FY 2021-22. State revenue from sales taxes are increased between \$2.3 million and \$4.1 million beginning in FY 2020-21, with larger amounts collected in subsequent years. Changes to state revenue are described below.

**Income tax credit.** The income tax credit in the measure is expected to reduce General Fund revenue by up to \$25 million in FY 2019-20 (half-year impact) and up to \$75 million in FY 2020-21. The revenue impact will increase by up to \$50 million annually until the fiscal year credit cap is increased to the maximum \$300 million in the measure, which may occur as early as FY 2025-26.

Because the measure offers a 100 percent tax credit, there is no financial cost or benefit to a taxpayer who makes a financial contribution to the administering nonprofit up to the amount of the taxpayer's income tax liability, and who is allowed to claim the tax credit. The fiscal year credit cap in the measure increases when tax credits from the prior year equal at least 90 percent of that year's cap. Because future taxpayer contributions to the administering nonprofit are uncertain, timing for when the cap will increase is also uncertain. Table 2 presents the revenue reduction attributable to the measure if the maximum amount of the credit is allowed each year through FY 2026-27, when the revenue reduction is expected to stop growing. Because the revenue impact for a single tax year is accrued across two fiscal years, the revenue impact of the tax credit is not equal to the fiscal year credit cap.

**Table 2**  
**Maximum Revenue Reduction Under Initiative #68**

	<b>Revenue Reduction</b>
FY 2019-20	(\$25.0 million)
FY 2020-21	(\$75.0 million)
FY 2021-22	(\$125.0 million)
FY 2022-23	(\$175.0 million)
FY 2023-24	(\$225.0 million)
FY 2024-25	(\$275.0 million)
FY 2025-26	(\$300.0 million)
FY 2026-27	(\$300.0 million)

**Elimination of current law credits.** The measure includes a provision directing the General Assembly to eliminate current law tax credits in the amount of the revenue reduction. To the extent that credits are eliminated, tax revenue will increase. Most credits reduce the amount of income tax revenue, which is credited to the General Fund.

**Tax on non-tobacco nicotine products.** The new tax is estimated to increase cash fund revenue by between \$2.3 million and \$4.1 million in FY 2020-21 and larger amounts in subsequent years as the market share of non-tobacco nicotine products grows. While the measure theoretically imposes the tax from the date of its enactment, this estimate assumes that the tax will be collected beginning in FY 2020-21 after a system for tax collection, remittance, and enforcement is created.

Revenue estimates are based on the experiences of Louisiana and North Carolina, which each assess a unit tax on a rate of \$0.05 per milliliter. North Carolina collected \$4.5 million, or \$0.44 per person, during FY 2017-18, while Louisiana collected \$1.2 million, or \$0.25 per person, during the same year. The discrepancy between the two states is assumed to reflect different consumption habits and levels of tax compliance and enforcement. Both states reported significant tax revenue growth over the last two fiscal years. The estimated range for Colorado's tax revenue assumes consumption and compliance consistent with Louisiana (lower-bound estimate) and North Carolina (upper-bound estimate), and grows an estimate for FY 2017-18 by 21 percent for FY 2018-19, 21 percent for FY 2019-20, and 14 percent for FY 2020-21, consistent with rapid consumption growth in other states.

A tax of \$0.05 per milliliter is expected to account for a small share of the purchase price of a unit of vaping liquid, estimated to cost about \$4.50 for a 0.7 milliliter pod before taxes. Therefore, taxation at this rate is expected to have a very small effect on consumption.

### Technical Note

**Fiscal year credit cap.** The income tax credit in the measure is subject to a fiscal year credit cap, which limits the aggregate amount of income tax credits that may reduce state income tax revenue for a given year. While the measure caps the credit on a fiscal year basis, the Department of Revenue administers income taxes on a tax year basis. This fiscal impact statement treats the fiscal year credit cap as limiting the amount of credit that can be claimed for the tax year that ends during the fiscal year for which the cap applies. If the cap is administered differently, the revenue impact of the measure may shift across fiscal years.

### State Expenditures

The bill increases state expenditures by \$385,491 in FY 2019-20 (half-year impact), \$748,963 in FY 2021-22 and \$1,073,295 in FY 2021-22 and subsequent years. Expenditures are expected to continue through FY 2031-32. This analysis assumes that new revenue from a tax on non-tobacco nicotine products is intended to pay administrative expenses of the new state agency, administering nonprofit, and any other state agency expenses. Because this analysis also assumes no new revenue until FY 2020-21, administrative expenses in FY 2019-20 require appropriations from the General Fund. New state expenditures are summarized in Table 3 and described below.

**Table 3  
 Expenditures Under Initiative #68**

	FY 2019-20*	FY 2020-21	FY 2021-22
<b>Colorado Department of Education                  Expanded Learning Opportunities Agency</b>			
Personal Services	\$67,894	\$131,052	\$131,052
Operating, Capital Outlay, Leased Space, Etc.	\$13,153	\$13,628	\$13,628
Employee Insurance, Disability, Pension	\$12,155	\$23,135	\$23,135
Agency Board Travel & Reimbursement	\$11,200	\$14,000	\$14,000
Nonprofit Administrator Contract	\$250,000	-	-
<b>Department of Law</b>			
Legal Services	\$31,089	\$62,178	\$31,089
<b>Department of Revenue</b>			
Personal Services	-	\$301,647	\$668,263
Operating & Capital Outlay	-	\$70,977	\$12,825
Employee Insurance, Disability, Pension	-	\$79,236	\$179,303
Computer Programming	-	\$53,110	-
<b>Total</b>	<b>\$385,491</b>	<b>\$748,963</b>	<b>\$1,073,295</b>
<b>FTE</b>	<b>0.8 FTE</b>	<b>7.4 FTE</b>	<b>15.0 FTE</b>

\* Half-year impact.

**Expanded learning opportunities agency.** Creating a new agency in the CDE increases expenditures to hire agency staff and launch the new enterprise, including leased space, office furniture, computers and software, telephones, and other operating expenses.

Once operational, the state agency has ongoing expenses for staff, board travel and reimbursement, and costs to contract or create a third-party nonprofit corporation, and a separate nonprofit board of directors to administer the program. This analysis assumes at least one full-time state agency director and one half-time support staff is required during the first year.

The agency will have costs to contract or create a nonprofit third party administrator. A preliminary estimate of this expense is \$250,000 in the first year; ongoing costs will be paid out of available revenue sources.

**Department of Law.** Creating a new state agency increases cost for legal services related to contracting or creating the nonprofit corporation and adopting rules for the expanded learning opportunities program. Legal services are purchased from the CDE and new agency from the Attorney General's Department of Law.



**Department of Revenue.** Staff are required in the DOR's Taxpayer Service Division to verify and process tax returns claiming the credit and interact with taxpayers who file incorrectly or have questions. The DOR must also program and update database fields in the GenTax software system, modify related reporting features, update forms, and provide technical assistance to retailers for the new state sales tax on non-tobacco nicotine products.

### **Economic Impact**

The measure is expected to provide expanded learning opportunities to Colorado students. Expanded learning opportunities may improve students' educational outcomes and readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for students. The measure may also increase employment in the selected non-profit and reduce child care expenses for parents.

The measure will reduce state revenue, reducing revenue available to fund public education, health care, human services, courts and prisons, and other government functions. This will reduce income to government employees or contractors and benefits to recipients of state services. Specific funding allocations will be made as a result of future legislative and executive decisions.

The measure directs the General Assembly to repeal current law tax credits to offset the measure's revenue impact. If tax credits are repealed, taxpayers who currently benefit from the credits will owe increased taxes, thereby reducing the amount available for spending or saving elsewhere in the economy.

For consumers of nicotine products, the tax will reduce available income to be spent or saved elsewhere in the economy.

### **Effective Date**

If approved by voters at the 2019 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

### **State and Local Government Contacts**

Education

Law

Revenue

### **Abstract of Initiative 68: ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS**

*The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.*

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 16, 2019, identifies the following impacts:**

**State revenue.** The measure will both reduce and increase state revenue. Revenue from income taxes to the General Fund is reduced by \$25.0 million in FY 2019-20, reduced by \$75.0 million in FY 2020-21, and reduced by \$125.0 million in FY 2021-22. State revenue from sales taxes are increased between \$2.3 million and \$4.1 million beginning in FY 2020-21, with larger amounts collected in subsequent years. The measure directs the legislature to eliminate current law tax credits in the amount of the reduced revenue from the new tax credit. If tax credits are eliminated, the estimated reduction in income tax collections will be partially or completely offset.

**State expenditures.** The bill increases state expenditures by \$385,491 in FY 2019-20, \$748,963 in FY 2021-22 and \$1,073,295 in FY 2021-22 and subsequent years. Expenditures are expected to continue through FY 2031-32.

**Economic impacts.** The measure is expected to provide expanded learning opportunities to Colorado students. Expanded learning opportunities may improve students' educational outcomes and readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for students. The measure may also increase employment in the selected non-profit and reduce child care expenses for parents.

The measure will reduce state revenue, reducing revenue available to fund public education, health care, human services, courts and prisons, and other government functions. This will reduce income to government employees or contractors and benefits to recipients of state services. Specific funding allocations will be made as a result of future legislative and executive decisions.

The measure directs the General Assembly to repeal current law tax credits to offset the measure's revenue impact. If tax credits are repealed, taxpayers who currently benefit from the credits will owe increased taxes, thereby reducing the amount available for spending or saving elsewhere in the economy.

For consumers of nicotine products, the tax will reduce available income to be spent or saved elsewhere in the economy.