

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #71 (“Establishment of Expanded Learning Opportunities Program With New Tax on Nicotine Products”)</p> <p>Petitioner: Kenneth Nova</p> <p>v.</p> <p>Respondents: Monica R. Colbert and Juliet Sebold</p> <p>and</p> <p>Title Board: BENJAMIN SCHLER; LEEANN MORRILL; and JASON GELENDER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com</p>	<p>Case No. _____</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019- 2020 #71 (“ESTABLISHMENT OF EXPANDED LEARNING PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS”)</p>	

Kenneth Nova (“Petitioner”), a registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2019-2020 #71 (“Establishment of Expanded Learning Opportunities Program With New Tax on Nicotine Products”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #71

Monica R. Colbert and Juliet Sebold (hereafter “Proponents”) proposed Initiative 2019-2020 #71 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on April 17, 2019, at which time a title was set for 2019-2020 #71. On April 24, 2019, both Proponents and Petitioner Kenneth Nova filed Motions for Rehearing, alleging that #71 contained multiple subjects and that the title set by the Board was misleading. The rehearing was held on April 26, 2019, at which time Proponents withdrew their Motion for Rehearing.

As to Petitioner's Motion, the Title Board denied it on grounds that the measure contains multiple subjects but granted in part and denied in part the Motion on grounds that the title set was misleading.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the 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: (1) the draft, amended, and final versions of the initiatives filed by the Proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the rulings on the Motion for Rehearing as reflected by the titles and ballot title and submission clauses set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. As such, this matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board to comply with the single subject requirement in Article V, §1(5.5) of

the Colorado Constitution and the Colorado Revised Statutes in setting a title that fairly and accurately summarizes the Initiative. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Initiative #71 contains two unrelated subjects designed to attract voters' interest - a tax on non-tobacco nicotine delivery systems and a newly created supplemental learning program.
2. If the Title Board had jurisdiction over this initiative, the titles it set are legally flawed because they fail to inform voters of certain central elements of the measure or misstate those aspects of Initiative #71.
 - (a) The titles disperse elements of the proposed tax increase, rather than treating them together as a single topic, and this two-part description is confusing and misleading to voters.
 - (b) The titles do not set forth the initiative's specific tax credit maximum amounts of \$50 million per year up to \$215.8 million but, instead, use a meaningless euphemism, "specified caps" that does not adequately describe this central feature of Initiative #71.
 - (c) The titles incorrectly refer to the measure as resulting in a "voter approved revenue change" when additional revenue generated is *de*

minimis and the net effect of the measure actually reduces, not adds to, State revenue for budgetary purposes.

(d) The titles selectively list certain programs that might be funded, and this partial list is misleading, having been included to lure voters to support the measure.

(e) The term "individual learning account" is inherently misleading, as it suggests a fund that is funded, invested, and withdrawn by an individual, as in "individual retirement account."

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Title Board lacked jurisdiction to set titles for the Proposed Initiative and order the Board to return this measure to the Proponents, in light of the initiative's failure to comply with the single subject requirement in the Colorado Constitution. In the alternative, Petitioner asks that the Court direct the Board to correct the title to address the deficiencies outlined in Petitioner's pleadings.

Respectfully submitted this 3rd day of May, 2019.

/s Mark Grueskin

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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #71 (“ESTABLISHMENT OF EXPANDED LEARNING PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS”)** was sent this day, May 3, 2019, via Colorado Courts Electronic Filing to Counsel for the Title Board and to Counsel for the Proponents at:

Emily Buckley
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Benjamin Larson
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/s Erin Holweger

DATE FILED: May 3, 2019 4:37 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, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative “2019-2020 #71 ‘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 29th day of April, 2019.

Jena Griswold

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 1 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 ONE PERCENT OF THE TOTAL COMBINED REVENUE APPROPRIATED TO THE GENERAL FUND AND STATE CASH FUNDS FOR THE IMMEDIATELY PRECEDING COMPLETED STATE FISCAL YEAR. 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 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) 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 #71¹

The title as designated and fixed by the Board is as follows:

STATE TAXES SHALL BE INCREASED \$4,100,000 ANNUALLY BY A CHANGE TO THE COLORADO

REVISED STATUTES CONCERNING THE CREATION OF AN EXPANDED LEARNING OPPORTUNITIES PROGRAM THAT PROVIDES OUT-OF-SCHOOL LEARNING EXPERIENCES, SUCH AS TUTORING, SUPPLEMENTAL INSTRUCTION IN READING, MATH, SCIENCE, AND WRITING, SUPPORT FOR STUDENTS WITH SPECIAL NEEDS, ENGLISH AND FOREIGN LANGUAGE PROGRAMS, AND ARTS, CAREER, OR TECHNICAL EDUCATION TRAINING, FOR ANY COLORADO CHILD AGED 3 TO 18, AND, IN CONNECTION THEREWITH, CREATING AN INDEPENDENT AGENCY WITHIN THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM AND SELECT A NON-PROFIT TO ADMINISTER THE PROGRAM; ALLOWING A 100% INCOME TAX CREDIT, SUBJECT TO SPECIFIED CAPS, TO ANY TAXPAYER WHO MAKES A CONTRIBUTION TO THE ADMINISTERING NON-PROFIT TO FUND THE PROGRAM; REQUIRING THE ADMINISTERING NON-PROFIT TO PROVIDE NEED-BASED FINANCIAL AID TO PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS FOR PARTICIPATING STUDENTS AND TO SELECT AND CERTIFY PROVIDERS OF SUCH EXPERIENCES; LEVYING A TAX ON SALES OF DEVICES USED TO VAPORIZE NICOTINE AND CONTAINERS OF NICOTINE USED WITH SUCH DEVICES AT THE RATE OF 5 CENTS PER DEVICE OR MILLILITER OF NICOTINE; REQUIRING THE TAX REVENUE TO BE USED TO FUND THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; AND EXEMPTING THE TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE.

The ballot title and submission clause as designated and fixed by the Board is as follows:

SHALL STATE TAXES BE INCREASED \$4,100,000 ANNUALLY BY A CHANGE TO THE COLORADO

REVISED STATUTES CONCERNING THE CREATION OF AN EXPANDED LEARNING OPPORTUNITIES PROGRAM THAT PROVIDES OUT-OF-SCHOOL LEARNING EXPERIENCES, SUCH AS TUTORING, SUPPLEMENTAL INSTRUCTION IN READING, MATH, SCIENCE, AND WRITING, SUPPORT FOR STUDENTS WITH SPECIAL NEEDS, ENGLISH AND FOREIGN LANGUAGE PROGRAMS, AND ARTS, CAREER, OR TECHNICAL EDUCATION TRAINING, FOR ANY COLORADO CHILD AGED 3 TO 18, AND, IN CONNECTION THEREWITH, CREATING AN INDEPENDENT AGENCY WITHIN THE DEPARTMENT OF EDUCATION TO

¹ 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.

OVERSEE THE PROGRAM AND SELECT A NON-PROFIT TO ADMINISTER THE PROGRAM; ALLOWING A 100% INCOME TAX CREDIT, SUBJECT TO SPECIFIED CAPS, TO ANY TAXPAYER WHO MAKES A CONTRIBUTION TO THE ADMINISTERING NON-PROFIT TO FUND THE PROGRAM; REQUIRING THE ADMINISTERING NON-PROFIT TO PROVIDE NEED-BASED FINANCIAL AID TO PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS FOR PARTICIPATING STUDENTS AND TO SELECT AND CERTIFY PROVIDERS OF SUCH EXPERIENCES; LEVYING A TAX ON SALES OF DEVICES USED TO VAPORIZE NICOTINE AND CONTAINERS OF NICOTINE USED WITH SUCH DEVICES AT THE RATE OF 5 CENTS PER DEVICE OR MILLILITER OF NICOTINE; REQUIRING THE TAX REVENUE TO BE USED TO FUND THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; AND EXEMPTING THE TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?

Hearing April 17, 2019:

*Single subject approved; staff draft amended; titles set.
Hearing adjourned 1:22 p.m.*

RECEIVED

APR 24 2019

S.WARD

4:45 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF PROPOSED INITIATIVE 2019-2020 #71

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #71

On behalf of Juliet Sebold and Monica R. Colbert, Designated Representatives of Proposed Initiative 2019-2020 #71, undersigned counsel hereby submits this Motion for Rehearing on the Initiative pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

1. The Designated Representatives disagree with the abstract prepared by the Director of Research of the Legislative Council of the General Assembly with regard to Proposed Initiative 2019-2020 #71. The Designated Representatives request a rehearing on that issue.

Respectfully submitted this 24th day of April, 2019.

Dated: April 24, 2019

Respectfully submitted,

s/ Benjamin J. Larson

William A. Hobbs, #7753

Benjamin J. Larson, #42540

IRELAND STAPLETON PRYOR & PASCOE, PC

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*Attorneys for Designated Representatives
Juliet Sebold and Monica R. Colbert*

Designated Representatives' Addresses:

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Aurora, CO 80013

Monica R. Colbert
1142 South Fultondale Circle
Aurora, CO 80018

RECEIVED 1:27 P.M.
APR 24 2019 S. WARD

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Kenneth Nova, Objector,

vs.

Juliet Sebold and Monica R. Colbert, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #71

Kenneth Nova, registered elector of the State of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2019-20 #71 ("Establishment of Expanded Learning Opportunities Program with New Tax on Nicotine Products").

The Title Board set a title for #71 on April 17, 2019. At the hearing held in connection with this proposed initiative, the Board designated and fixed the following ballot title and submission clause:

SHALL STATE TAXES BE INCREASED \$4,100,000 ANNUALLY BY A CHANGE TO THE COLORADO REVISED STATUTES CONCERNING THE CREATION OF AN EXPANDED LEARNING OPPORTUNITIES PROGRAM THAT PROVIDES OUT-OF-SCHOOL LEARNING EXPERIENCES, SUCH AS TUTORING, SUPPLEMENTAL INSTRUCTION IN READING, MATH, SCIENCE, AND WRITING, SUPPORT FOR STUDENTS WITH SPECIAL NEEDS, ENGLISH AND FOREIGN LANGUAGE PROGRAMS, AND ARTS, CAREER, OR TECHNICAL EDUCATION TRAINING, FOR ANY COLORADO CHILD AGED 3 TO 18, AND, IN CONNECTION THEREWITH, CREATING AN INDEPENDENT AGENCY WITHIN THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM AND SELECT A NON-PROFIT TO ADMINISTER THE PROGRAM; ALLOWING A 100% INCOME TAX CREDIT, SUBJECT TO SPECIFIED CAPS, TO ANY TAXPAYER WHO MAKES A CONTRIBUTION TO THE ADMINISTERING NON-PROFIT TO FUND THE PROGRAM; REQUIRING THE ADMINISTERING NON-PROFIT TO PROVIDE NEED-BASED FINANCIAL AID TO PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS FOR PARTICIPATING STUDENTS AND TO SELECT AND CERTIFY PROVIDERS OF SUCH EXPERIENCES; LEVYING A TAX ON SALES OF DEVICES USED TO VAPORIZE NICOTINE AND CONTAINERS OF NICOTINE USED WITH SUCH DEVICES AT THE RATE OF 5 CENTS PER DEVICE OR MILLILITER OF NICOTINE; REQUIRING THE TAX REVENUE TO BE USED TO FUND THE

***ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; AND
EXEMPTING THE TAX REVENUE FROM ALL REVENUE AND SPENDING
LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?***

I. The Title Board lacks jurisdiction over Initiative #71, as it violates the Constitution's single subject requirement.

A. Initiative #71 contains two subjects – a general tax increase and the substantive program relating to certain learning programs.

There is no linkage between the program and the tax portions of this initiative. The tax revenue is limited to payment of administrative and operational expenses. However, those expenses are far less than the \$2.3 million in the first partial fiscal year and the \$4,100,000 of tax revenue in subsequent fiscal years, as estimated by the fiscal impact statement. The only tax revenue actually expended from the nicotine delivery device tax is estimated to be \$385,481 in the first fiscal year, \$748,963 in the first full fiscal year, and \$1,073,295 in subsequent fiscal years.

Thus, the taxing aspect of this measure actually creates much more revenue for non-program purposes than for the administrative and operational expenses. In fact, since the measure prohibits the use of tax revenues on the learning programs to be funded, the tax has no material relationship to the balance of the measure and thus violates the single subject requirement.

B. Initiative #71 contains two unrelated subjects designed to attract voters' interest – a tax on nicotine delivery systems and a newly created supplemental learning program.

This measure has been designed with the "log rolling" characteristics that the single subject requirement was intended to avoid – joining unrelated subjects that appeal to different elements of the electorate. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52 at ¶¶ 32-33 (Colo. 2014). This concern applies equally where one of the subjects of a measure is tax-related and the other addresses fiscal policies of the State, such as #71's tax credit scheme. *See In re Proposed Initiative for 1997-1998 #30*, 959 P.2d 822, 827 (Colo. 1998) (invalidating decision of Title Board to set title). Therefore, the measure violates the single subject requirement, and no title should have been set.

II. Even if the Title Board has jurisdiction, the titles set are legally flawed because they titles fail to inform voters of certain central elements of the measure or misstate those aspects of the Initiative #71.

A. The titles conceal key parts of the tax increase by dispersing throughout the ballot title and submission clause.

The title separates the tax increase amount – at the beginning of the title – from the actual tax on nicotine delivery devices, the limited use allowed for such tax revenue, and the treatment

of the question as a “voter-approved revenue change.” *In re Title, Ballot Title and Submission Clause, and Summary for Initiated Constitutional Amendment Concerning Limited Gaming in Antonito*, 873 P.2d 733, 742 (Colo. 1994) (“In order to correctly and fairly express the true intent and meaning of the Initiative, all provisions solely concerning Antonito must be grouped together, and not separated and placed like bookends at both the beginning and the end of the title and submission clause. Grouping together related material is necessary to alert voters and petition signers that the Initiative not only involves limited gaming in Antonito, but also changes the provisions regulating limited gaming in all other areas in which limited gaming is lawful”).

B. The titles are silent as to central features of the measure.

1. The titles do not set forth the initiative’s specific tax credit amounts of \$50 million per year up to “one percent of the total combined revenue appropriated to the general fund and state cash funds” but, instead, use the empty euphemism, “specified caps.” *See* Proposed Section 39-22-121.5(2) at p. 8 of Initiative.
2. The titles do not state that the tax credit may be claimed by “any individual, trust, estate, or corporation.” *See* Proposed Section 39-22-121.5(1) at p. 8 of Initiative.
3. The titles do not inform voters that students need not be persons “residing in Colorado” or enrolled in a public schools in Colorado, as a person is an “eligible student if he or she is “otherwise eligible for admission to public school within the state.” *See* Proposed Section 22-86.1-102(4) at p. 2 of Initiative (definition of “eligible student”).
4. The titles do not state that the nicotine delivery system tax proceeds must be used “exclusively” administrative and operational expenses of the agency. *See* Proposed Section 39-28.6-104(1) at p. 9 of Initiative.
5. The titles do not state that “no revenue collected” from the nicotine delivery system tax can be used on the individual learning accounts authorized. *See* Proposed Section 39-28.6-104(1) at p. 9 of Initiative.
6. The titles do not state that as much as “10% of the eligible contributions received” by the administering non-profit can be used annually on its administrative costs – a figure ranging between \$5 million (when tax credit is capped at \$50 million) and \$21.5 million (when program has grown to its full amount, \$215.8 million). *See* Proposed Section 22-86.1-103(2)(j)(VIII) at p. 6 of Initiative.
7. The titles do not state that the tax revenue raised far exceeds the amount that may be spent by the agency on administrative and operational expenses. *See* Fiscal Impact Statement at 4 (compare “Tax on non-tobacco nicotine products” and “State Expenditures”).
8. The titles do not state the appointing authorities (the governor and either the Speaker or the Minority Leader of the House of Representatives) of what is

otherwise portrayed to be an “independent” agency. *See* Proposed Section 22-86.1-104(1)(a) at p. 6 of Initiative.

9. The titles do not state that parents do not control the so-called “parent-directed” individual accounts and should state that the administering nonprofit has sole control of how and when the funds are distributed to approved providers. *See* Proposed Section 22-86.1-103(2)(j)(VI) at p. 5 of Initiative (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”); Proposed Section 22-86.1-103(2)(f) at p. 3 of Initiative (non-profit “shall have control over when and how financial aid is distributed”).
10. The titles do not state that parents cannot direct money to the so-called “parent-directed” accounts of their own choice, given that parents are expressly restricted to contributing to the administering nonprofit, which will have sole control of the funds and funding decisions that do not benefit specific children. *See* Proposed Section 22-86.1-103(2)(j)(VI) at p. 5 of Initiative (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”).
11. The titles do not state that money in a so-called “parent-directed” account is based on a “sliding scale,” which is contingent on family income and financial means of the eligible student. *See* Proposed Section 22-86.1-103(2)(f) at p. 3 of Initiative (financial aid is conditioned on “a sliding scale” which is “inversely related to the family income and financial means of an eligible student”).

A ballot title is invalid where it is “so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶34 (Colo. 2016). This title suffers from that infirmity.

- C. The titles inaccurately describe a central element of the initiative by describing it as a “voter approved revenue change” that is “exempt” from “revenue and spending limitations”.

Tax revenue from the nicotine delivery device tax is not, as a matter of law, a “voter-approved” revenue change. A voter-approved revenue change exists only where the new tax revenue from a TABOR election exceeds the amount that would trigger a spending limit election. *See Mesa Cty. Comm’rs v. State*, 203 P.3d 519, 529 (Colo. 2009) (“Subsection (4)(a) must be read in conjunction with the other provisions of article X, section 20; specifically, the subsection (7) revenue limits”). The net effect of a \$4 million tax and the \$215.8 million reduction in state revenues is that there will be less – not more – revenue because of this measure. As such, this misstatement is material, because it incorrectly leads voters to think that the State will have more revenue available for programs if this measure is passed when that understanding would be indisputably false.

D. The titles are misleading and must be corrected in order to accurately and fairly describe this initiative.

1. The use of the word “independent” to modify the word “agency” in the titles is incorrect, given that all board members are political appointees (and thus far from being independent from any outside influence) and given that the word “independent,” as used here, is a catch phrase that violates the Title Board’s duty of neutrality. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #258(A) (“English Language in Education in Public Schools”)*, 4 P.3d 2094, 1100 (Colo. 2000) (“as rapidly and effectively as possible” was a catch phrase because it was the kind of phrase that “tips the substantive debate surrounding the issue to be submitted to the electorate”); *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871, 876 (Colo. 1994) (finding catch phrase where initiative’s title used “consumer protection” and “open government”); *Henry v. Baker*, 354 P.2d 490, 491 (Colo. 1960) (ballot title misleads voters by using phrase that did not accurately reflect a change of law that is attributable to the ballot measure).
2. The phrase, “expanded learning opportunities,” which is used to modify the word “program” in the titles, is a catch phrase. That such catch phrase is taken directly from initiative itself does not prevent the Title Board from using alternative wording to describe the program. *In re #258(A), supra*, 4 P.3d at 1100.
3. The list of some of the learning programs to be funded is misleading, given that it is non-exclusive and designed to lure voters to support the measure based on this partial list of funding objectives.
4. The terminology of “individual learning account” is inherently misleading, as it suggests a fund that is controlled by the individual, as in “individual retirement account.” See Proposed Section 22-86.1-103(2)(j)(VI) (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”) at p. 5 of Initiative. The Board is not permitted to use misleading language in the titles, even if it is found in the initiative text, if that language will “impede voter understanding.” *Id.*

WHEREFORE, the titles set April 17, 2019 should be reversed, due to the single subject violations addressed herein and corrected to address a lack of needed information and material misrepresentations about #71.

RESPECTFULLY SUBMITTED this 24th day of April, 2019.

RECHT KORNFELD, P.C.



Mark Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com

Objector's Address:

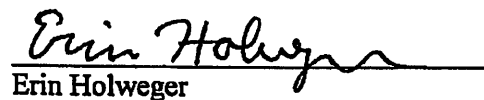
355 South 44th St.
Boulder, CO 80305

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2019-2020 #71** was sent this day, April 24, 2019, via first class U.S. mail, postage pre-paid, and via email to the proponents at:

Juliet Sebold
3507 S. Joplin Street
Aurora, CO 80013
julietsebold@live.com

Monica R. Colbert
1142 South Fultondale Circle
Aurora, CO 80018
monica.r.colbert@gmail.com



Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2019-2020 #71¹

The title as designated and fixed by the Board is as follows:

STATE TAXES SHALL BE INCREASED \$4,100,000 ANNUALLY BY A CHANGE TO THE COLORADO

REVISED STATUTES CREATING AN EXPANDED LEARNING OPPORTUNITIES PROGRAM THAT PROVIDES OUT-OF-SCHOOL LEARNING EXPERIENCES, SUCH AS TUTORING, SUPPLEMENTAL INSTRUCTION IN READING, MATH, SCIENCE, AND WRITING, SUPPORT FOR STUDENTS WITH SPECIAL NEEDS, ENGLISH AND FOREIGN LANGUAGE PROGRAMS, AND ARTS, CAREER, OR TECHNICAL EDUCATION TRAINING, FOR ANY CHILD AGED 3 TO 18 WHO IS ELIGIBLE TO ATTEND PUBLIC SCHOOL IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING A FUNCTIONALLY INDEPENDENT AGENCY WITHIN THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM AND SELECT A NON-PROFIT TO ADMINISTER THE PROGRAM; ALLOWING A 100% INCOME TAX CREDIT, SUBJECT TO SPECIFIED CAPS, TO ANY TAXPAYER WHO MAKES A CONTRIBUTION TO THE ADMINISTERING NON-PROFIT TO FUND THE PROGRAM; REQUIRING THE ADMINISTERING NON-PROFIT TO PROVIDE NEED-BASED FINANCIAL AID TO PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS FOR PARTICIPATING STUDENTS AND TO SELECT AND CERTIFY PROVIDERS OF SUCH EXPERIENCES; LEVYING A TAX ON SALES OF DEVICES USED TO VAPORIZE NICOTINE AND CONTAINERS OF NICOTINE USED WITH SUCH DEVICES AT THE RATE OF 5 CENTS PER DEVICE OR MILLILITER OF NICOTINE; REQUIRING THE TAX REVENUE TO BE USED ONLY TO FUND THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; AND EXEMPTING THE TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE.

The ballot title and submission clause as designated and fixed by the Board is as follows:

SHALL STATE TAXES BE INCREASED \$4,100,000 ANNUALLY BY A CHANGE TO THE COLORADO

REVISED STATUTES CREATING AN EXPANDED LEARNING OPPORTUNITIES PROGRAM THAT PROVIDES OUT-OF-SCHOOL LEARNING EXPERIENCES, SUCH AS TUTORING, SUPPLEMENTAL INSTRUCTION IN READING, MATH, SCIENCE, AND WRITING, SUPPORT FOR STUDENTS WITH SPECIAL NEEDS, ENGLISH AND FOREIGN LANGUAGE PROGRAMS, AND ARTS, CAREER, OR TECHNICAL EDUCATION TRAINING, FOR ANY CHILD AGED 3 TO 18 WHO IS ELIGIBLE TO ATTEND PUBLIC SCHOOL IN COLORADO, AND, IN

¹ 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.

CONNECTION THEREWITH, CREATING A FUNCTIONALLY INDEPENDENT AGENCY WITHIN THE DEPARTMENT OF EDUCATION TO OVERSEE THE PROGRAM AND SELECT A NON-PROFIT TO ADMINISTER THE PROGRAM; ALLOWING A 100% INCOME TAX CREDIT, SUBJECT TO SPECIFIED CAPS, TO ANY TAXPAYER WHO MAKES A CONTRIBUTION TO THE ADMINISTERING NON-PROFIT TO FUND THE PROGRAM; REQUIRING THE ADMINISTERING NON-PROFIT TO PROVIDE NEED-BASED FINANCIAL AID TO PARENT-DIRECTED INDIVIDUAL LEARNING ACCOUNTS FOR PARTICIPATING STUDENTS AND TO SELECT AND CERTIFY PROVIDERS OF SUCH EXPERIENCES; LEVYING A TAX ON SALES OF DEVICES USED TO VAPORIZE NICOTINE AND CONTAINERS OF NICOTINE USED WITH SUCH DEVICES AT THE RATE OF 5 CENTS PER DEVICE OR MILLILITER OF NICOTINE; REQUIRING THE TAX REVENUE TO BE USED ONLY TO FUND THE ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; AND EXEMPTING THE TAX REVENUE FROM ALL REVENUE AND SPENDING LIMITATIONS AS A VOTER-APPROVED REVENUE CHANGE?

Hearing April 17, 2019:

Single subject approved; staff draft amended; titles set.
Hearing adjourned 1:22 p.m.

Hearing April 26, 2019:

Motion for Rehearing filed by proponents withdrawn.
Motion for Rehearing filed by Kenneth Nova granted only to the extent that the Board made changes to the titles; denied in all other respects.
Hearing adjourned 11:59 a.m.



Legislative
Council Staff
Nonpartisan Services for Colorado's Legislature

Initiative # 71

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
Revenue	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
	Net Change	(\$25.0 million)	(\$70.9 million)	(\$120.9 million)
Expenditures	General Fund	\$385,491	-	-
	Cash Funds	-	\$748,963	\$1,073,295
	Total	\$385,491	\$748,963	\$1,073,295

***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 amount of the cap is initially set at \$50 million. The measure requires the Department of Revenue 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. The measure allows the cap to increase to up to 1 percent of combined General Fund and cash fund appropriations for the prior completed fiscal year.

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 \$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. 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 amount in the measure, which is 1 percent of prior year combined appropriations from the General Fund and cash funds. The measure reduces revenue from income tax, which is subject to TABOR.

The maximum amount of the cap will not be known until future budgets and supplemental appropriations are enacted. The introduced version of Senate Bill 19-207, the 2019 Long Bill, includes \$21.58 billion in General Fund and cash fund appropriations. At this level of appropriations, the maximum fiscal year credit cap would be \$215.8 million.

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 allowed for 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 and the maximum fiscal year credit cap is \$215.8 million in all years. Under these assumptions, the credit would cease growing in FY 2025-26. 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 #71
assuming a \$215.8 million maximum fiscal year credit cap

	Revenue Reduction
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	(\$207.9 million)
FY 2024-25	(\$215.8 million)
FY 2025-26	(\$215.8 million)

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 (a 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 #71**

	FY 2019-20*	FY 2020-21	FY 2021-22
Colorado Department of Education Expanded Learning Opportunities Agency			
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	-	-
Department of Law			
Legal Services	\$31,089	\$62,178	\$31,089
Department of Revenue			
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	-
Total	\$385,491	\$748,963	\$1,073,295
FTE	0.8 FTE	7.4 FTE	15.0 FTE

* Half-year impact.

Expanded learning opportunities agency. Creating a new agency in the CDE increases expenditures to hire agency staff and make the physical arrangements necessary to 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, thereby enhancing their readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for the beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce child care expenses for parents of participating children.

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.

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 71: 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 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.

State expenditures. The bill increases state expenditures by \$135,491 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 impact. The measure is expected to provide expanded learning opportunities to Colorado students. Expanded learning opportunities may improve students' educational outcomes, thereby enhancing their readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for the beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce child care expenses for parents of participating children.

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.

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