

<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 #75 (“Establishment of Expanded Learning Opportunities Program”)</p> <p><b>Petitioner: Kenneth Nova</b></p> <p>v.</p> <p><b>Respondents: Monica R. Colbert and Juliet Sebold</b></p> <p>and</p> <p><b>Title Board: BENJAMIN SCHLER; LEEANN MORRILL; and JASON GELENDER</b></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: <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a></p>	<p>Case No. _____</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019- 2020 #75 (“ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM”)</b></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 #75 (“Establishment of Expanded Learning Opportunities Program”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2019-2020 #75**

Monica R. Colbert and Juliet Sebold (hereafter “Proponents”) proposed Initiative 2019-2020 #75 (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 the Board refused to set a title for 2019-2020 #75 because it violated the single subject requirement in the Colorado Constitution. On April 23, 2019, Proponents filed a Motion for Rehearing, asking the Board to find the measure contained a single subject and to address the fiscal abstract prepared for the measure. The rehearing was held on April 26, 2019, at which time the Board changed its position on the

measure's subject(s). Only then did the Board, for the first time, set a ballot title and submission clause for Initiative #75.

On April 29, Petitioner filed a Motion for Rehearing, alleging that the Board incorrectly decided the single subject issue and that its titles were misleading to voters and needed to be corrected. At its regularly scheduled May 1 hearing, held within 48 hours of the filing of Petitioner's Motion, the Board refused to accept jurisdiction over the Petitioner's Motion for Rehearing and did not address either the subject(s) of Initiative #75 or the accuracy or fairness of the titles it had set.

### **B. Jurisdiction**

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Because his Motion was filed after the ballot title and submission clause was set, Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1)(c). 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 Motions for Rehearing filed by Proponents and Petitioner; and (4) the Board's rulings as to

its jurisdiction on the Motion for Rehearing, reflected as a note to the titles set by the Board. Petitioner believes the Title Board erred in denying jurisdiction over Petitioner's timely Motion for Rehearing. As such, this matter is properly before this Court.

### **GROUND FOR APPEAL**

The Title Board's failure to consider Petitioner's Motion for Rehearing violated the Board's obligations imposed by the Colorado Revised Statutes. The following is an advisory list of issues to be addressed in Petitioner's brief:

Whether, after it initially refused to set titles for Initiative #75 and only did so at a later proceeding, the Title Board had jurisdiction to hear Petitioner's Motion for Rehearing, which was filed on the first business day after #75's ballot title and submission clause was set.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Title Board possessed jurisdiction to hear the Motion for Rehearing filed by Petitioner and direct the Board to consider the arguments raised therein at its next meeting.

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

*/s Mark Grueskin*

---

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](mailto:mark@rklawpc.com)  
**ATTORNEY FOR PETITIONERS**

**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 #75 (“ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM”)** 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  
Ireland Stapleton Pryor & Pascoe, PC  
717 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202

*/s Erin Holweger*

DATE FILED: May 3, 2019 4:49 PM

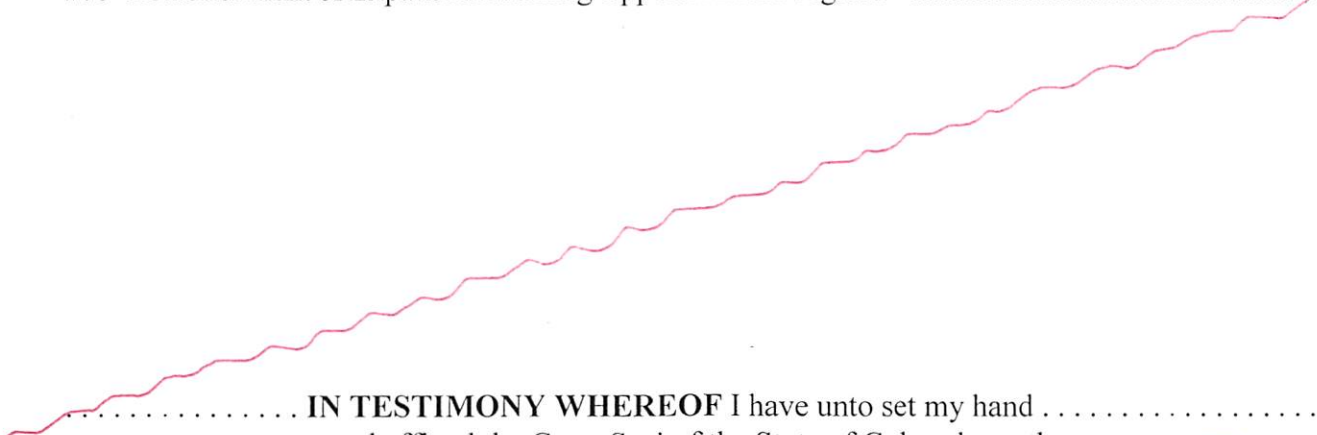


# STATE OF COLORADO

## 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 #75 'Establishment of Expanded Learning Opportunities Program'" .....



..... **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 1<sup>st</sup> day of May, 2019.

*Jena Griswold*

SECRETARY OF STATE



RECEIVED S.WARD  
APR 05 2019 1:20PM.

2019-2020 #75 - 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.

(5) BY THEIR VOTE AT THE STATEWIDE ELECTION IN NOVEMBER 2019, THE VOTERS AUTHORIZE THE STATE TO RETAIN AND SPEND STATE REVENUES IN EXCESS OF ANY LIMITATIONS UPON STATE FISCAL YEAR SPENDING IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER LAW IN AN AMOUNT EQUIVALENT TO ANY APPROPRIATION TO THE AGENCY FOR THE 2020-21 STATE FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER.

**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. Appropriation.** FOR THE 2020-21 STATE FISCAL YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY THE LESSER OF \$2,000,000 OR THE ACTUAL EXPENSES INCURRED IN ESTABLISHING AND OPERATING

THE AGENCY DURING THE 2019-20 AND 2020-21 STATE FISCAL YEARS. NO REVENUE APPROPRIATED UNDER THIS SECTION MAY BE USED TO FUND INDIVIDUAL LEARNING ACCOUNTS ESTABLISHED PURSUANT TO SECTION 22-86.1-103(2)(f) OR DIRECTED TO THE ADMINISTERING NONPROFIT DESIGNATED UNDER SECTION 22-86.1-103(2)(j).

**22-86.1-106. 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.**



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

# Initiative # 75

## INITIAL FISCAL IMPACT STATEMENT

Date: April 16, 2019

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

LCS TITLE: ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM

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)
	<b>Total</b>	<b>(\$25.0 million)</b>	<b>(\$75.0 million)</b>	<b>(\$125.0 million)</b>
Expenditures	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 also creates an income tax credit. 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.

**Appropriation.** For FY 2020-21, the measure requires that the General Assembly appropriate to the agency either \$2.0 million or the actual expenses incurred in establishing and operating the agency during FY 2019-20 and FY 2020-21, whichever is less. No amount of this appropriation may be used for individual learning accounts, or to fund the administering non-profit.

**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 nonrefundable 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.

### State Revenue

The measure will reduce state revenue from income taxes to the General Fund by \$25.0 million in FY 2019-20, \$75.0 million in FY 2020-21, and \$125.0 million in FY 2021-22. Reduced state revenue is 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 #75**  
*assuming a \$215.8 million maximum fiscal year credit cap*

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

## 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. The measure requires the legislature to appropriate up to \$2.0 million in FY 2020-21 to pay costs in both FY 2019-20 and FY 2020-21. This analysis assumes appropriations are required from the General Fund in FY 2019-20, until the following year's appropriation is made. New state expenditures are summarized in Table 3 and described below.

**Table 3  
 Expenditures Under Initiative #75**

	FY 2019-20*	FY 2020-21	FY 2021-22
<b>Colorado Department of Education</b>			
<b>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 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.

**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 and related reporting features to permit document access and tax statistics for the new tax policy.

## **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.

## **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
Personnel	Revenue

### **Abstract of Initiative 75: ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM**

*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 reduce state revenue from income taxes to the General Fund by \$25.0 million in FY 2019-20, \$75.0 million in FY 2020-21, and \$125.0 million in FY 2021-22.

**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 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.

**Ballot Title Setting Board**

**Proposed Initiative 2019-2020 #75<sup>1</sup>**

*Hearing April 17, 2019:*

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

*Hearing adjourned 1:35 p.m.*

---

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

RECEIVED

APR 23 2019

S. WARD  
11:15A.M.

BALLOT TITLE SETTING BOARD

Colorado Secretary of State

---

IN THE MATTER OF PROPOSED INITIATIVE 2019-2020 #75

---

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #75

---

On behalf of Juliet Sebold and Monica R. Colbert, representatives of the proponents of Proposed Initiative 2019-2020 #75, 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 #75 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 #75.

Respectfully submitted this 23rd day of April, 2019.

s/Edward T. Ramey

Edward T. Ramey, #6748  
Tierney Lawrence LLC  
225 East 16<sup>th</sup> Avenue, Suite 350  
Denver, CO 80203  
Telephone: 720-242-7585  
Email: [eramey@tierneylawrence.com](mailto:eramey@tierneylawrence.com)

Attorneys for Representatives of Proponents

Representatives of Proponents:

Juliet Sebold  
3507 S. Joplin Street  
Aurora, CO 80013  
Phone: 720-338-9053  
Email: [julietsebold@live.com](mailto:julietsebold@live.com)

Monica R. Colbert  
1142 South Fultondale Circle  
Aurora, CO 80018  
Phone: 303-578-0711  
Email: [monica.r.colbert@gmail.com](mailto:monica.r.colbert@gmail.com)

-

## **Ballot Title Setting Board**

### **Proposed Initiative 2019-2020 #75<sup>1</sup>**

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

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; and authorizing the state to annually retain and spend state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses.

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

Shall there be 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; and authorizing the state to annually retain and spend

---

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



state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses?

*Hearing April 17, 2019:*

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

*Hearing adjourned 1:35 p.m.*

*Rehearing April 26, 2019:*

*Motion for Rehearing granted as it applies to single subject.*

*Staff draft amended; titles set.*

*Hearing adjourned 12:39 p.m.*

RECEIVED

APR 29 2019

4:37 P.M.  
S. WARD

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

---

Kenneth Nova, Objector,

vs.

Juliet Sebold and Monica R. Colbert, Proponents.

---

**MOTION FOR REHEARING ON INITIATIVE 2019-2020 #75**

---

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 #75.

The Title Board set a title for #75 on April 26, 2019, based on Proponents' Motion for Rehearing from the April 24 hearing. Thereupon, the Board designated and fixed the following ballot title and submission clause:

*Shall there be 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; and authorizing the state to annually retain and spend state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses?*

**I. The Title Board lacks jurisdiction over Initiative #75, as it violates the Constitution's single subject requirement.**

The de-Brucing language found in Proposed Section 22-86.1-103(6) at p. 6 of Initiative is an unlimited exemption from TABOR and "any other law," and is bounded only by the amount

of “any appropriation” that the General Assembly makes to the agency. *See* pp. 7-8 of Initiative. The only limits on this appropriation are that the moneys cannot be used to fund individual learning accounts or administration of the non-profit organization involved.

There is no restriction on the amount of activity this agency can be assigned by the General Assembly and thus no discernible limit on the amount of money that can be exempted from revenue and spending limits under law. At minimum, there is no way for voters to know the amount of “any appropriation to the agency for the 2020-21 state fiscal year and each fiscal year thereafter” that is TABOR-exempt because of this provision.

Further, this language stands apart from the actual appropriation language in the measure. The appropriation is only specified for two fiscal years – FY 2019-2020 and FY 2020-2021. Yet, the de-Brucing language applies to FT 2020-2021 “and each fiscal year thereafter.” *Compare* Section 22-86.1-103(6) at p. 6 of Initiative and Proposed Section 22-86.1-105 at pp. 7-8 of Initiative. Thus, the measure’s exemption from spending limitations is broader than the substantive measure itself.

**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 #75.**

**A. 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).
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 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.
5. 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.

6. 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”).
7. 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) (“No eligible contribution may be earmarked... for the benefit of... any individual or class of recipients”) at p. 5 of Initiative.
8. 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”).
9. The titles are silent on the fact that unused funds must revert – without condition or limitation on their use – to the administering non-profit. *See* Proposed Section 22-86.1-103(2)(g) at pp. 3-4 of Initiative (“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”).
10. The titles do not state that certain eligible contributions, which must be sent by the administering non-profit to the agency within the Department of Education, are not specifically de-Bruced and therefore *are* subject to the State’s spending limits found in TABOR and other applicable laws. *See* Proposed Section 22-86.1-103(2)(j)(III) at p. 4 of Initiative (“Upon termination of any agreement with the agency, the administering non-profit shall remit all eligible contributions in its possession or control... to the agency”).
11. The title is misleading in referring to de-Brucing of appropriations made for “administrative and operational expenses” when the measure authorizes appropriations equaling either \$2 million or “the actual expenses incurred in *establishing* and operating the agency.” *See* Proposed Section 22-86.1-105 at pp. 7-8 of Initiative.
12. The title is also misleading by referring to de-Brucing of “administrative expenses” as such expenses are required to be paid, first, from “gifts, grants, and

donations that may be retained and spent on administrative expenses” rather than by any amount of an annual appropriation. Of this grouping of revenue sources, only “gifts” are exempt from TABOR’s definition of “fiscal year spending.” Colo. Const., art. X, sec. 20(2)(c). Thus, “grants” and “donations” that are accepted will be counted toward the spending limit. See Proposed Section 22-86.1-103(5) at p. 6 of Initiative.

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.

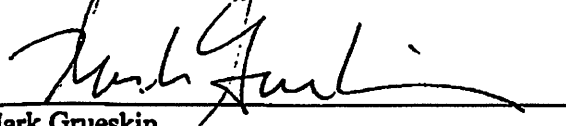
**B. The titles are misleading and must be corrected in order to accurately and fairly describe this initiative.**

1. 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 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”).
2. 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.
3. 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 26, 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 #75.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2019.

RECHT KORNFIELD, 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 #75** was sent this day, April 29, 2019, via email to counsel for the proponents at:

Ben Larsen  
[blarson@irelandstapleton.com](mailto:blarson@irelandstapleton.com)

  
Erin Holweger

## **Ballot Title Setting Board**

### **Proposed Initiative 2019-2020 #75<sup>1</sup>**

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

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; and authorizing the state to annually retain and spend state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses.

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

Shall there be 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; and authorizing the state to annually retain and spend

---

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

state revenue exceeding the state spending limit in an amount equal to the appropriation to the agency for administrative and operational expenses?

*Hearing April 17, 2019:*

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

*Hearing adjourned 1:35 p.m.*

*Rehearing April 26, 2019:*

*Motion for Rehearing granted as it applies to single subject.*

*Staff draft amended; titles set.*

*Hearing adjourned 12:39 p.m.*

*Rehearing May 1, 2019:*

*Motion for Rehearing denied on the grounds that the Board lacks jurisdiction to consider it.*

*Hearing adjourned 10:32 a.m.*