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MEMORANDUM

April 23, 2004

TO: Renee Klincko and Katherine Lafayette

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #153, concerning seating for employees

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding your proposed amendment, a copy of which is attached.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in drafting the language of their proposal and to make the public aware of the contents of the proposal. Our first objective is to be sure we understand your intent and objective in proposing the amendment. We hope that the statements and questions in this memorandum will provide a basis for discussion and understanding of the proposal.

Purpose

The major purpose of the proposed amendment appears to be to allow each employee who works in a grocery store or mall to setting have a chair or other type of seating available when the employee finds it necessary to sit down during work hours regardless of the age or health status of the employee.

Comments and Questions

The form and substance of the proposed amendment raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8), of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

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

Would the proponents consider adding an enacting clause at the beginning of the proposed measure?

2. It is unclear whether the proponents intend to amend Colorado's constitution or the Colorado Revised Statutes. It is also unclear where in the constitution or statutes the proponents intend to codify the initiative. Would the proponents consider specifying their intent through the use of an amending clause such as the following:

(to amend the Colorado Revised Statutes)

"SECTION 1. ___-__-___, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW (ARTICLE/PART/SECTION) to read:"

or

(to amend the Colorado Constitution)

"SECTION 1. Article ___, Section _ of the Constitution of the State of Colorado is amended BY THE ADDITION OF A NEW (ARTICLE/SECTION) to read:"

- a. The subject matter of title 8, Colorado Revised Statutes, concerns labor and industry. If the proponents intend to amend the Colorado statutes, would the proponents consider amending title 8? If the amendment is intended to create a new article, may we suggest that the initiative propose a new article 14.3 so that if enacted, the language will appear with other articles concerning labor conditions?
 - b. Article XVIII of the Colorado constitution contains miscellaneous provisions. If the proponents intend to amend the Colorado constitution, may we suggest that the initiative propose a new section 15, to article XVIII?
3. It is unclear if the proponents intend for the language submitted to function only as an explanation of the initiative or whether a part of the language is intended to be codified either as a declaration of intent or as substantive law. Will the proponents specify the language that is intended to be codified and if any of the language submitted is intended to be declaratory or substantive through the use of an amending clause with a head note such as "**Declaration of intent.**", if appropriate, or another head note to signify a substantive meaning, such as "**Required employee seating.**"?
 4. To conform to standard drafting practices regarding the form of proposed amendments, would the proponents:
 - a. Show all of the substantive text of the proposed initiative (everything except the enacting clause, the amending clause, and the bold-faced type head notes) in "LARGE AND SMALL

CAPITAL LETTERS" to indicate that the text is new language?

- b. Begin the first word of each new subdivision with a capital letter?
 - c. Consider using the following standard numbering format throughout the proposed measure? The various subdivision of law are generally organized to provide consistency in the law and to aid the reader. The constitution is organized by article and then section. The Colorado Revised Statutes are organized by title, article, part, and then section. For both the constitution and the statutes, sections are divided into numbered subsections, which can be subdivided into lowercase lettered paragraphs, which can be subdivided into subparagraphs that are numbered with capitalized Roman numerals, which can be further subdivided into uppercase lettered sub-subparagraphs (i.e., (8) (d) (I) (A)). Also, typically these subdivisions are not organized through the use of indent, but rather left tabs.
5. The second line of the language on page 1 uses the word "must". "Must" is often construed as being directory rather than mandatory, while mandatory provisions are indicated by "shall". If this language is intended to be substantive to the initiative, would the proponents consider use of the word "shall"?

Substantive questions:

1. What employers and employees do the proponents intend to include in this initiative? Do the proponents intend that seating be available for all employees in any setting, specifically to employees of grocery stores and malls, or to persons employed in the retail and service industries?
2. The intent of the statements in the first paragraph on page 1 that employees must have a chair or stool or some type of sitting implement to sit on and the language in the second paragraph on page 2 that "for these employees to be required to have a chair or stool" is unclear. Do the proponents intend for the employer or the employee to provide the seating? If it is the intent of the proponents that the employer provide seating to the employee, would the proponents consider the use of the active voice, such as "AN EMPLOYER SHALL PROVIDE SEATING TO EACH EMPLOYEE..."?
3. Is it the intent of the proponents that if an employee chooses to sit down throughout the employee's entire shift he or she may do so, or do the proponents intend to limit the time increments that an employee is allowed to sit? How is this initiative intended to apply to persons who work as wait staff or in retail settings where moving throughout the premises is a requirement of the employee's duties?
4. Do the proponents intend that the Department of Labor and Employment enforce the provisions of the initiative? If so, would the proponents consider a provision granting rulemaking authority to the department of labor and employment to enact details to the provisions in the initiative?