

STATE OF COLORADO

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MEMORANDUM

March 12, 2004

TO: Michael Graves and Scott Isgar

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #101, concerning State Wildlife Management.

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 the appended proposed initiative.

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 determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To authorize the Colorado Division of Wildlife to override a public ballot initiative or constitutional amendment concerning wildlife and fisheries management and development;
2. To authorize the Colorado Division of Wildlife to override an executive order of the Governor or state governing body concerning wildlife and fisheries management and development;

3. To provide for the election of the Director of the Division of Wildlife and wildlife commissioners every 4 years at a presidential election;
4. To establish the Colorado Wildlife Commission as nine voting members and two ex-officio members;
5. To provide for the election of the nine voting members, each from a district set by the Colorado Division of Wildlife, and the appointment of the Director of the Colorado Department of Natural Resources and the Colorado Agricultural Commissioner as ex-officio members;
6. To limit the terms of the Director of the Division of Wildlife and wildlife commissioners to two 4-year terms;
7. To set qualifications for the Director of the Division of Wildlife and the wildlife commissioners;
8. To publish certain information about the candidates for the Director of the Division of Wildlife or wildlife commissioner on the internet and in the ballot information booklet prepared by the nonpartisan research staff of the General Assembly;
9. To require voter approval to raise resident wildlife license fees during a non-presidential election year;
10. To require all moneys raised through wildlife license fees to be used for wildlife development and management and to support the Division of Wildlife;
11. To instruct the Division of Wildlife to obtain three helicopters used exclusively for wildlife management, law enforcement, search and rescue, and wildfire suppression; and
12. To impose a one dollar and fifty cent motor vehicle registration fee to fund the three helicopters and the elimination of wildlife diseases.

Comments and Questions

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

Technical questions:

1. Article V, Section 1(8) of the Colorado Constitution states that "The style of all laws adopted by the People of Colorado through the initiative shall be, 'Be it enacted by the People of the State of Colorado.'" Do the proponents wish to begin the initiative with this phrase?
2. It appears that the proponents intend to amend the Colorado Constitution. Do the proponents

wish to specify where in the Colorado Constitution the initiative would be placed? For example, the proponents may wish to place the provision as Section 15 of Article XVIII, which is the next available number under the Article titled "Miscellaneous."

3. Standard drafting practice in Colorado is to introduce changes to constitutional and statutory provisions by means of an "amending clause." Such clause would typically read, for example,

"Article XVIII of the state constitution is amended BY THE ADDITION OF A NEW SECTION to read:"

Would the proponents consider incorporating this form of amending clause into the text of the proposed initiative?

4. Typically, sections of the Colorado Constitution are introduced by a section heading that appears in bold without headings for individual subsections. Would the proponents consider conforming the text of the proposed amendment to be consistent with this practice?
5. To be consistent with basic principles of constitutional and statutory drafting, would the proponents be willing to show the text of the proposed initiative, apart from the section heading, in "SMALL CAPITAL LETTERS" to indicate that it is new language?
6. Would the proponents consider reorganizing the proposal with additional subsections? For example, it appears that the proposal could be separated into the following subsections:

- (1) **Purpose**
- (2) **Powers**
- (3) **Officers**
- (4) **Elections**
- (5) **Funding**

Substantive questions:

1. How would the proponents respond to the argument that the proposal violates Article IV, Section 4, of the United States Constitution, which states that "The United States shall guarantee to every State in this Union a Republican Form of Government ..." While this particular type of law has not been adjudicated, the Supreme Court observed the following in *In re Duncan* 139 U.S. 449, 11 S.Ct. 573 (1891): "By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves ..." Allowing the division to nullify constitutional provisions that were passed by the people, without a vote of the people, may be construed to impair the people's right

to enact constitutional provisions, and therefore, may violate Article IV, Section 4, of the United States Constitution.

2. How would the proponents respond to the argument that the proposal violates the First Amendment to the United States Constitution which contains the right to petition the government for a redress of grievances? Arguably, granting the Division of Wildlife the ability to override statutory or constitutional provisions makes the right to petition the government meaningless because the Division may ignore a successful petition.
3. Section 1 of article V of the Colorado constitution requires that each initiative contain no more than one subject, which must be clearly expressed in its title. What do the proponents intend to be the single subject of this proposed initiative?
4. Article III of the Colorado Constitution states that "The powers of the government of this state are divided into three distinct departments,--the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." The Colorado Division of Wildlife is a division of the Department of Natural Resources which is an executive agency. Repealing a statute is generally considered a legislative prerogative. Article IV, Section 11 of the Colorado Constitution gives the Governor exclusive veto power, only after a law has been presented to him. *See In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987)*. Do the proponents see a conflict between these provisions and the proposed initiative?
5. Article V, Section 1(4) of the Colorado Constitution states that "The veto power of the governor shall not extend to measures initiated by or referred to the people. . . . [A]ll such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor...." Do the proponents see a conflict between this provision and the proposed initiative?
6. What do the proponents mean by the phrase "override any executive order"? Is this analogous to the veto power? When the Division of Wildlife overrides an order, is the order permanently or temporarily repealed for all purposes, or does it merely mean the Division itself may ignore the law?
7. Article X, Section 18 of the Colorado Constitution states: "[T]he proceeds from the imposition of any license, registration fee, or other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel except aviation fuel used for aviation purposes shall, except costs of administration, be used exclusively for the construction, maintenance, and supervision of the public highways of this state. ..." Do the proponents see a conflict between this provision and the proposed initiative?

8. What do the proponents mean by "executive order issued by ... state governing body"? Is such an order the same thing as a statute?
9. Within the legal profession, the phrase "blue book" means a citing reference; therefore, using the phrase, "Blue Book," without further specifics may cause confusion. Do the proponents intend the candidate information to be published in the "ballot information booklet" prepared by the nonpartisan research staff of the general assembly as required by Section 1 (7.5) of Article V of the Colorado Constitution?
10. Currently, the Secretary of State is not responsible for the publication of the voter information booklets identified in the proposal as the "Blue Book." Rather, pursuant to Section XX of the Colorado Constitution, the Legislative Council of the Colorado General Assembly is responsible for this publication. Would the proponents consider clarifying the purpose for delivering the information regarding the candidates to the Secretary of State?
11. Would the proponents consider defining the terms "fisheries management" and "wildlife management" as they appear in the proposal?
12. The proposal states that the Director of the Division of Wildlife and the Wildlife Commissioners are to be elected at a presidential election and are limited to two terms in office. The earliest that such an election would occur upon approval of the proposal would be November of 2008. This raises the following questions:
 - a. How do the proponents intend that vacancies on the commission be filled? What about a vacancy in the office of the Director of the Division of Wildlife?
 - b. The entire commission would be required to step down after eight years of service, requiring a brand new commission with no experience. Is it the intent of the proponents to allow the entire commission to turn over in an election year? Would the proponents consider staggering terms of the commission such that not all members of the commission would be new every four or eight years?
 - c. What do the proponents intend during the interim period between passage of the proposal and when the commissioners are first elected? Would the commission exist as it does currently?
13. How are the districts for the wildlife commissioners to be drawn? Would they be drawn by the existing Division of Wildlife? What would be the basis for redrawing such districts? Would geography, population, or other considerations be used to determine a district's boundary?
14. To be elected as either the director or as a commissioner, the proposal requires either a Bachelor of Art Degree in wildlife biology or management from an accredited university or college or ten years of hunting or angling experience in Colorado. This raises the following questions:

- a. Do the proponents intend candidates who have a degree in wildlife biology or management also be required to have their hunting or angling licenses verified? If so, then using the disjunctive term, "or," fails to require such experience because it only requires one of the three conditions to qualify as a candidate.
 - b. If the proponents intend that a Bachelor of Art Degree in wildlife biology or management is sufficient to qualify as a candidate, why do all candidates need to have their hunting or angling licenses verified?
 - c. Would the proponents define what constitutes "hunting or angling experience?" Would a person who hunts or fishes once a year for ten years qualify? Would it matter if they have never caught a fish or killed an animal while hunting? Would a person who has watched or tracked wildlife for ten years, but never purchased a license, be eligible?
 - d. The proposal states that a fee of one hundred dollars is to be paid for the purpose of verifying a candidate's hunting and fishing history. If the proposal is placed in the state Constitution, the fee may only be increased or decreased by an affirmative vote of the people of Colorado on an initiated or referred measure. Is this the proponent's intent?
15. Currently, the Division of Wildlife is housed within the Department of Natural resources as an entity of state government, where the Director is appointed by the Governor and approved by the Senate. Is it the intent of the proponents to remove the Division from the Department of Natural Resources and create a new state agency outside of the executive branch of government? If so, who would be responsible for determining how the agency would function? Do the proponents foresee additional legislation that would be necessary in order for the Division to exist? For example, would employees of the Division be part of the state personnel system or part of a separate system run by the Division? What type of relationship will exist between the Department of Natural Resources and the Division of Wildlife under this proposal? Will there be additional oversight over the Division apart from the Director and Commissioners? How will the division's budget be established? Will the budget be subject to review by the General Assembly?
16. Currently, the Colorado General Assembly establishes by statute hunting and fishing license fees. This proposal states that any increase in license fees will require approval by the vote of the people, which raises the following questions:
- a. How would a fee increase occur? Would the Division of Wildlife propose an amendment to state statute to increase the fees? If so, would the proponents clarify that the Division has such power? If not, would the proponents explain how license fees would be proposed and by whom?
 - b. When will such votes occur? Will they only be authorized at a presidential election or may the Division establish a special election? Who would pay for such an election?
 - c. What would be the fee for a hunting or fishing license during the period of time between

such an election and passage of the proposal? Would the fees that are currently set by state statute be the fees that would be charged during this period? How do the proponents see the authority of the General Assembly to set license fees working with the authority of the Division to submit to the voters any increase in license fees?

17. Would the proponents clarify what is meant by the phrase "all funds raised through license sales...must be used for wildlife development and management and to support the operations of the Division of Wildlife?" For example could funds be used to finance a campaign to raise license fees?
18. The proposal states that the Division is to acquire three helicopters. Would the proponents clarify what is meant by a "turbine helicopter?" Is this exhaustive of the type of aircraft that the Division may purchase? What if the commissioners and the director determine that such helicopters are not needed, or if there are other forms of aircraft that would be better, either financially or technologically, for the Division to purchase?
19. Section 42-3-134, Colorado Revised Statutes, establishes the fee structure for motor vehicle registration and provides how the various fees are to be allocated. If this measure is approved, how would the increased funds from the motor vehicle fees be transferred to the Division?
20. The requirement that certain information be published on the world wide web is not technology neutral and requires the division to have a web page. Do the proponents intend to require the division to have a web page? Do the proponents wish to limit such publication to the web, if and when new technology begins to replace the internet?