

STATE OF COLORADO

Colorado General Assembly

Charles S. Brown, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Douglas G. Brown, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

February 21, 2003

TO: Jack Rudd and Steven Hatfield

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #29, concerning legislation with safety clauses

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 require a declaration of emergency by the governor for any bill necessary for the immediate preservation of the public peace, health, or safety and containing a safety clause.
2. To require the declaration of emergency be made within forty-eight hours of introduction of a bill containing a safety clause or from the time that a safety clause is added to a bill after introduction.
3. To prohibit the addition of a safety clause to a bill during the third reading of the bill.

4. To require that a notice of the declaration of emergency and the related bill be published in all statewide newspapers with a full page advertisement for three consecutive days within the first week following introduction of the bill and weekly thereafter until the bill is signed by the governor or is killed.
5. To prohibit the advertisement from containing any advocacy language either for or against the bill.
6. To require any bill containing a safety clause to be approved by a three-fourths majority in both houses of the general assembly.

Comments and Questions

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

Technical questions:

1. Would the proponents consider deleting "Section 1." from the second line of the proposed initiative, as such language is unnecessary?
2. It is unnecessary to capitalize the first letter of the term "constitution". Would the proponents consider removing the initial capital letter in this term?
3. The proposed new section to article V of the state constitution is identified as "Section XX". The sections of the state constitution are identified by arabic numbering, not roman numerals. Furthermore, section 20 of article V already exists, as "Bills referred to committee - printed". Would the proponents consider using a different section number in the proposed initiative? If the proponents would like the new provision as close as possible to Section 20, it would be "Section 20a". If the proponents would like to add this section to the end of article V, it would be "Section 44".
4. It is standard drafting practice to show the text of a section heading in bold, normal-sized text, to capitalize the first letter of "section" and the first word of the heading, and to place a period after the section number and after the last word in the section heading. Also, the section heading should be immediately followed by the first subsection. Thus, the section heading should read as follows: "**Section 20a. Safety clause restrictions.** (1) ANY BILL...". Would proponents consider revising the proposed initiative in this manner?
5. To be consistent with standard drafting practice, would the proponents be willing to show the text of the proposed amendment, apart from the section heading, in "SMALL CAPS" to indicate new language?
6. It is standard drafting practice to express numbers in words rather than in figures. To be consistent

with this practice, would the proponents consider spelling out the numbers in the proposed amendment (e.g., "forty-eight" and "three-fourths").

7. In subsection (2) of the proposed initiative, would the proponents consider setting off the phrase "along with the actual wording of the bill" with commas?
8. The phrase "actual wording of the bill" is ambiguous. Would the proponents consider replacing it with the phrase "a copy of the bill"?
9. The term "advertisement" in the proposed initiative could be confusing because the notice published in the statewide newspapers shall not contain any "advocacy language either for or against the bill". Would the proponents consider replacing it with the term "notice"?

Substantive questions:

1. Does the phrase "any bill necessary for the immediate preservation of the public peace, health, or safety" refer to a bill that includes a declaration by the general assembly that the bill is necessary for the immediate preservation of the public peace, health, or safety?
2. The term "safety clause" is not currently defined in the Colorado law. As it is used in the proposed initiative, what does this term mean? Would the proponents consider defining the term?
3. The proposed measure provides that any bill containing a safety clause¹ "shall require" a declaration of emergency by the governor. What does the phrase "shall require" mean? What would happen if the governor does not make a declaration of emergency? Would the bill be invalid or otherwise fail? Would the safety clause be struck from the bill, but the remainder of the bill would be valid?
4. What do the proponents mean by the phrase "a declaration of emergency by the governor"? What constitutes an emergency? What shall be included in the declaration? Are there any formal requirements related to the declaration? Could the general assembly determine the grounds and requirements by law? Would the proponents consider clarifying the meaning of this phrase and, if necessary, adding a definition for the term "declaration of emergency"?
5. Who would be responsible for notifying the governor of the addition of a safety clause to a bill? How shall the governor communicate the declaration of emergency to the general assembly?
6. Some bills must take immediate effect, such as those dealing with crimes, federal mandates, disasters, or fiscal matters. How will those bills be affected by the restriction on the use of safety clauses? Have the proponents considered any exceptions to the proposed requirements? The

¹ As used hereafter, a "safety clause" is presumed to mean a provision added to a bill that includes the following language: "The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety."

general appropriations bill (the "long bill"), for example, provides for the general expenses of state government and needs to take effect at the beginning of the state's fiscal year on July 1. Last year's long bill contained over 1,100 pages. Would the long bill require a declaration of emergency and multiple publications statewide in order to take effect on July 1?

7. The declaration must be made within "forty-eight hours". Are these hours calculated only on business days or does it include weekends and holidays? What would happen if the bill was introduced or the safety clause was added to the bill on a Friday afternoon?
8. What do the proponents mean by the phrase "during its journey through the general assembly"? Does this phrase refer to amendments made by committees of reference or the committee of the whole? Does this phrase refer to any amendment made after the introduction of the bill? Would the proponents consider replacing this colloquial phrase and clarifying their intent?
9. The declaration must be made within forty-eight hours of a safety clause being "added by either house". What does this phrase mean? If a safety clause is added in a committee of reference, would the forty-eight hour deadline be from the time that the amendment is passed orally in committee, from the time that a written committee report is prepared, or from the time that the committee report is approved by the committee of the whole?
10. The proposed initiative includes the following language: "The safety clause may not be added to any bill during the third reading." It is standard drafting practice to use the word "shall" in statutory prohibitions. Do the proponents mean to say that it "shall not be added"? If so, would the proponents considering substituting "shall" for "may"? In addition, what do the proponents mean by "third reading"? May a safety clause be added after third reading in the first house? May it be added through the adoption of a conference committee report by both houses?
11. What does the phrase "with a full page advertisement" mean? Is the copy of the declaration and the bill to be published on or in the full page advertisement? What is meant by advertisement? What size of type shall be used? In addition to the bill and the governor's declaration, what type of language, if any, should be used in the advertisement? What version of the bill is published? For example, would the publication include the introduced version, the bill as amended, etc.? What parts of the bill are published? For example, would the published bill include the title, bill summary, etc., or body of the bill only? Will the published version be formatted with page and line numbers comparable to the actual bill? If the bill is short, must it be enlarged to fill the page? If the bill is long, must the entire bill appear on one full page?
12. Will the readers of the advertisement know and understand what a safety clause is? Would an explanation of a safety clause and how it is used be considered "advocacy language"?
13. Who will be responsible for the cost of printing the advertisement? How will it be funded?
14. The proposed initiative requires that the advertisement be printed "for three consecutive days within

the first week following introduction of the bill". Is it the intention of the proponents that bills that have a safety clause added in a committee also be subject to this notice requirement? If a safety clause is added in a committee, it may not be possible to publish the declaration and a copy of the bill "within the first week following introduction". Is the advertisement relating to a particular bill only required if the governor makes a declaration of emergency for such bill?

15. After the notice is published for three consecutive days in the first week following introduction, it must be published "weekly thereafter" until the bill becomes law or is killed. Does this mean that the notice must be published once a week until the bill becomes law or is killed? What if the safety clause is removed by amendment? In this situation, can the publication cease?
16. What happens if a bill is introduced during the last week of session? How will the notice requirements be satisfied?
17. What do the proponents mean by the phrase "all statewide newspapers." Does this mean newspapers that have statewide circulation, or all papers published in the state? How many statewide newspapers are there and what are they? What would happen if the newspaper was unable to print the advertisement within the time required by the proposed initiative?
18. What does the term "killed" mean? What would happen if a bill was postponed indefinitely by a committee of reference, or if it was deemed lost in a committee for failing to meet a deadline or other requirement? What if the bill is lost on a vote on second or third reading? Would the proponents consider replacing this colloquial term and clarifying their intent?
19. Is it the intention of the proponents that bills containing a safety clause require passage by a three-fourths majority on both second and third readings in each house, or just on third reading? (Only third reading is recorded typically.) Would a conference committee report have to be approved by a three-fourths majority? Does this number include three-fourths of the members in each house, or three-fourths of those members voting?