

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, 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



Charles W. Pike, 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

January 12, 2004

TO: Tom Tancredo

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #80, concerning Restrictions on State Services

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 specify that the provision of any and all services of the State of Colorado is restricted to legal residents of the United States of America.
2. To specify that the provision of any and all services of the State of Colorado may be provided to persons who do not legally reside in the United States of America if it is mandated by federal law.

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 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 proponent consider adding such an enacting clause at the beginning of the proposed measure?

2. To provide notice to the public of the proposed changes to the law, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional section that is to be amended or repealed. An initiative usually goes further to provide the specific language within the statutory section or constitutional provision that will be amended or repealed. Arguably, the language in the proposed measure does not provide adequate notice to the public of the changes to the law proposed by the initiative. Would the proponent consider specifying constitutional sections that are to be amended or repealed or created by the proposed measure?
3. In Colorado, when a proposed measure adds new language to or repeals existing language of the Colorado Revised Statutes or the state constitution, the proposed measure uses an amending clause indicating the specific section of the law where new language will be added or existing language will be deleted. The new language itself generally is shown in capital letters. If language from the statutes is to be repealed, the convention is to show the language with dashes through it to indicate it is repealed or to state in the amending clause that the entire provision or provisions are repealed. Each section of the statutes begins with a section heading that includes the section number and a short description of the section contents.

Would the proponent consider adding an appropriate amending clause to the proposed measure to indicate whether the measure will add new language to or repeal existing language of the state constitution? Would the proponent consider showing existing constitutional language with dashes through it, if the proponent intends to repeal existing language, or indicating new language with capital letters? In copying existing constitutional or statutory provisions into the measure, the proponent should include the section heading.

4. When does the proponent intend for the proposed measure to become effective? Does the proponent wish to include a specified effective date?
5. Consider the example of a person who is currently receiving services from the state of Colorado, e.g. prenatal services. To whom or what services does the proponent intend the proposed

measure to apply? Would the proponent consider adding an applicability clause to the proposed measure for clarification purposes?

Substantive questions:

1. What does the proponent intend the phrase "services of the State of Colorado" to mean?
 - a. Would the proponent consider defining the phrase "services of the State of Colorado" or specifically listing those services intended to be covered by the measure for purposes of the proposed measure?
 - b. Would the proponent consider giving the general assembly the authority to define this phrase or to identify the services to be restricted?
 - c. Does the proponent intend "services" to include only those services provided by a state agency directly to an applicant?
 - d. Does the proponent intend "services" to include more generalized services such as information services? Consumer publications? Information via website?
 - e. Does the proponent intend "services" to be restricted to those for which a person must apply or enroll?
 - f. Does the proponent intend "services" to include those services that are provided by the private sector using state moneys? For example, services to the developmentally disabled through a community centered board.
 - g. Does the proponent intend "services" to include those services that are administered by the state but are paid for using federal moneys? For example, food stamps.
 - h. Does the proponent intend "services" to include those services that are only partially funded with state moneys?
 - i. Does the proponent intend "services" to include those services provided by quasi-governmental agencies, such as CoverColorado?
 - j. Does the proponent intend "services" to include those services that are administered by the state of Colorado but paid for partially or completely with private moneys?
 - k. Does the proponent intend "services" to include the state of Colorado's collection of income taxes?
 - l. Does the proponent intend "services" to include a county clerk's recordation of the transfer of

real property? If so, how would the proponent reconcile the proposed measure with article II, section 3 of the state constitution?

m. Does the proponent intend "services" to include, not only those services administered by the state of Colorado, but those services administered by municipalities and counties and other governmental entities within Colorado? If so, would the proponent consider clarifying this intent?

n. Does the proponent intend "services" to include those services administered by the counties on behalf of the state of Colorado?

2. How does the proponent intend this provision to affect home-rule municipalities?

3. What does the proponent intend the phrase "mandated by federal law" to mean?

a. Would the proponent consider defining what the phrase "mandated by federal law" means?

b. Would the proponent consider giving the general assembly the ability to define the phrase "mandated by federal law" for purposes of the proposed measure?

c. Is it the proponent's intent that "mandated by federal law" include programs or services the state is required to provide as a condition of the receipt of federal assistance or funding?

d. Is it the proponent's intent that "mandated by federal law" include the state's participation in a voluntary or optional federal program?

e. Does the proponent consider Medicaid to be a service "mandated by federal law"?

4. How does the proponent intend the proposed measure to affect the state's collection of income taxes from persons who do not reside legally in the United States?

5. How does the proponent intend the proposed measure to affect the provision of law enforcement against and the incarceration of persons who do not reside legally in the United States?

6. How does the proponent intend the proposed measure to affect the provision of emergency medical services to persons who do not reside legally in the United States?

7. How does the proponent intend the proposed measure to affect the provision of educational services to children who do not reside legally in the United States?

8. What does the proponent intend the phrase "legal residents of the United States of America" to mean?

a. Does the proponent intend for "legal residents" to include anyone in the United States on a visa?

For example, an educational visa? A work visa?

b. Does the proponent intend to allow persons legally in the United States on a visa to establish residence?

c. Does the proponent intend for "legal residents" to include only those persons who have permanent resident status? United States citizenship?

d. What does the proponent intend the phrase "legal residents" to mean in the context of the federal categorization of "qualified" and "not qualified" aliens as defined under the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996"?

e. What does the proponent intend the phrase "legal residents" to mean in the context of the federal categorization of "qualified" aliens as defined under the federal "Illegal Immigration Reform and Immigrant Responsibility Act of 1996"?

9. Does the proponent intend to deny services of the state of Colorado to tourists visiting the state of Colorado since a tourist may not be a legal resident of the United States? For example, access to the state court system or access to the state park system.

10. Does the proponent intend to require the state of Colorado to provide services to legal residents that are currently not provided but are authorized by federal law?

11. Restricting services of the State of Colorado to legal residents would appear to require a heightened level of enforcement by state and local authorities to ensure that only appropriate persons receive government services.

a. Does the proponent intend that a higher degree of vigilance be exercised?

b. If so, could the proponent please explain how the proponent envisions different levels of government would pay for this increased enforcement? For example, would taxes need to be increased for this purpose?

12. One of the major services provided by state and local government in the state of Colorado is the construction and maintenance of streets and highways.

a. Does the proponent intend for access to streets and highways to be "restricted to legal residents"?

b. If so, would the proponent please explain how the proponent envisions this would be accomplished? For example, would law enforcement have to stop each vehicle using a public street or highway to ascertain whether the occupants of a vehicle are "legal residents", or would every vehicle operated in the state be required to have some type of distinctive marking indicating that it is owned and

operated by a "legal resident"?

13. What does the proponent intend for the consequences to be if services of the state of Colorado were inadvertently provided to a person who is not a legal resident?
 - a. Does the proponent intend for the government to be required to recoup the costs of those services?
 - b. If so, how would those costs be measured? For example, if a resident who did not legally reside in the United States were to drive on a street or highway, how would the cost of the use of that service be measured?
14. The federal government has many laws governing naturalization of citizens, the status of citizens of other nations who are in this country, and the activities in which such persons may engage. Treaties and international agreements between the United States and other nations also govern these matters. Recent decisions of the United States Supreme Court have held that state laws that attempt to affect the relations of the United States with other countries may be preempted by conflicting federal laws. Could the proponent please explain the proponent's view of the state of Colorado's authority to enact the proposed measure in light of its effect on these federal issues?
15. Does the proponent intend to deny services that are related to or are required by the Colorado constitution? For example, services of the public defender or the right to a speedy public trial.
16. Has the proponent identified a funding source for the state of Colorado to use to make any necessary administrative changes that may be necessary to implement the proposed measure?