

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

February 4, 2003

TO: David Costlow
Sen. Jack Taylor

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #18, concerning tourism promotion

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 state Constitution. We hereby submit our comments to you regarding the appended proposed amendment.

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.

Purposes

The major purposes of the proposed amendment appear to be:

1. To add a section to article XVIII of the state constitution directing the Colorado lottery commission (commission) to implement a video lottery program to generate additional lottery proceeds for the promotion of tourism in Colorado.
2. To define "Colorado promotion revenues" as an amount up to the first \$25,000,000 of net video

lottery proceeds after allocation of proceeds to the Great Outdoors Colorado Program (GOCO).

3. To define "net VLT proceeds" as all proceeds from the operation of video lottery terminals, net of prizes and expenses including sales agent commissions.
4. To define "restricted locations" as:
 - a. The following racetracks licensed as of January 1, 2003: Arapahoe Park, Cloverleaf Kennel Club, Mile High Kennel Club, Rocky Mountain Post Time Racetrack, and Pueblo Kennel Association; and
 - b. Licensed limited gaming establishments in Blackhawk, Central City, and Cripple Creek.
5. To define "sales agent commission" as the lesser of 6% of the total amount of currency and credits wagered or 39% of all currency wagered less the value of all pay vouchers issued.
6. To define "video lottery terminal" as a computerized video device that, when activated by currency, plays or simulates the play of a lottery game of chance and awards credits in the form of printed pay vouchers or electronic credits redeemable for cash.
7. To direct the commission to implement the video lottery program by November 1, 2004, and adopt rules to regulate the program.
8. To allow the owner of a licensed racetrack to apply to have 500 video lottery terminals at the racetrack, and to allow the operator of a limited gaming establishment to apply to have the number of terminals that the commission deems economically feasible for the commission's purposes.
9. To prohibit the commission from authorizing the operation of video lottery terminals except at restricted locations.
10. To provide that net VLT proceeds shall be set aside, allocated, allotted, and continuously appropriated for distribution.
11. To state that net VLT proceeds shall be distributed to GOCO in accordance with the constitutional provision governing the distribution of lottery proceeds after all net proceeds from other state-supervised lottery programs for a fiscal year have been distributed to GOCO.
12. To provide that in a fiscal year when the video lottery program generates Colorado promotion revenues, those revenues shall be distributed to the Colorado travel and tourism additional source fund (promotion fund), that net VLT proceeds in excess of Colorado promotion revenues shall be appropriated by law, and that net VLT proceeds are exempt from restrictions on spending,

revenues, and appropriations, including the restrictions of section 20 of article X of the state constitution (TABOR).

13. To state that net VLT proceeds are accounted and allocated separately from proceeds of other state-supervised lottery programs and that net VLT proceeds shall not affect the allocation of net proceeds of other state-supervised lottery programs to GOCO or other programs funded by lottery proceeds.
14. To repeal the amendment, effective July 1, 2019.

Comments and Questions

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

Technical questions:

1. The phrase "restricted location" is potentially confusing to readers. It may imply that a restriction is placed upon these locations, when in fact the restriction against video lottery is placed upon all locations *other* than these. Do the proponents believe a phrase like "permitted location" might more unambiguously express their intent?
2. To be consistent with other Colorado statutory and constitutional provisions, would the proponents consider replacing "As used in this section:" with the phrase "As used in this section, unless the context otherwise requires:"?
3. Subsection (2) (a) of the proposed amendment refers to "net VLT proceeds from the video lottery program". Do the proponents believe the phrase "from the video lottery program" is redundant and could be deleted, since the term "net VLT proceeds" is defined in subsection (2) (c) as proceeds derived "under the video lottery program"?
4. In standard drafting style for provisions of the state constitution, numbers are spelled out. Would the proponents consider spelling out the figures "\$25,000,000", "6%", "39%", and "500" in the text of the proposed amendment?
5. The abbreviation "C.R.S." following a statutory citation is normally set off by commas. Would the proponents consider inserting a comma after "C.R.S." in subsections (2) (b), (2) (d), and (6) of the proposed amendment?
6. Subsection (2) (d) defines the term "promotion fund", but the phrase "Colorado promotion fund" is used in subsection (6). Would the proponents consider deleting the word "Colorado" before "promotion fund"?

7. Would the proponents consider adding a comma after "January 1, 2003" in subsection (2) (e) (I) of the proposed amendment?
8. The phrase "rules and regulations" is considered redundant in current drafting practice. Would the proponents consider deleting "and regulations" in subsection (3) of the proposed amendment?
9. Would the proponents consider using the phrase "Central City, the city of Blackhawk, and the city of Cripple Creek" in subsection (2) (e) (II)?
10. To be consistent with standard drafting style, would the proponents consider revising subsection (8) of the proposed amendment to read: "This section is repealed, effective July 1, 2019."?

Substantive questions:

1. Section 1 of article V of the state constitution requires that each initiative contain no more than one subject, which must be clearly expressed in its title. How would the proponents describe the single subject of the proposed amendment?
2. Subsection (2) (e) (I) lists several licensed racetracks in the state.
 - a. For purposes of this proposed amendment, is this an exhaustive list of the racetracks that may be considered restricted locations? Does listing the racetracks by name limit their ability to change their name? Would it be consistent with the proponents' intent to include "any successor organization"?
 - b. Alternatively, does the phrase "[p]roperties licensed as racetracks as of January 1, 2003" alone sufficiently describe the places contemplated by the proponents? Do the proponents believe that a general definition is preferable to a list of specific private entities in the state constitution?
 - c. Is there such a thing as a "property licensed as a racetrack" under Colorado law? Is the property itself licensed, or does an individual or legal entity hold a license to operate a racetrack?
 - d. If a property is licensed as of January 1, 2003, but later loses its license or otherwise discontinues racing, does it continue to qualify as a restricted location?
3. With respect to subsection (2) (h) of the proposed amendment:
 - a. "Video lottery terminal" is defined as a device that is activated by the insertion of

"currency". Do the proponents intend to exclude a device that is activated by coin, credit or debit card, and other forms of payment?

- b. "Video lottery terminal" is further defined as a device that "plays or simulates the play of a lottery game approved by the commission and awards credits . . .". What is the purpose of a device that, when activated by currency, merely simulates the play of a lottery game? On what basis does such a device award credits?

4. With respect to subsection (3) of the proposed amendment:

- a. The lottery commission is directed to implement the program "no later than November 1, 2004." Section 1 (4) of article V of the state constitution provides that "[a]ll elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election." As defined in section 1-1-104 (17), C.R.S., general elections are held in November of even-numbered years. Accordingly, the proposed amendment could be submitted to the voters of the state no earlier than the next general election in November 2004. If enacted, the measure would become part of the constitution upon the proclamation of the governor or thirty days after the vote is canvassed, probably in early January 2005. Would the proponents consider giving the commission some time to implement the program after its effective date?
- b. Subsection(3) states: "The commission shall promulgate all necessary rules and regulations relating to the video lottery program, and shall regulate the video lottery program in accordance with this section." This sentence may imply that promulgating rules and regulating the program are two separate things. Is this the proponents' intent? If so, how would the commission regulate other than by rule? If not, would the proponents consider this language: "The commission shall promulgate all necessary rules to regulate the video lottery program in accordance with this section."

5. With respect to subsection (4) of the proposal:

- a. This subsection states that a restricted location may submit a sales agent application "in a form acceptable to the commission". How is the commission to decide whether a form is acceptable? Are forms to be created by rule or through some other process?
- b. Under this provision, applications are submitted by the *owner* of a racetrack but by the *operator* of a limited gaming establishment. What is the purpose of this distinction? Is it possible for a racetrack to be operated by a person other than the owner of the underlying property?
- c. This subsection states that "the commission shall approve the use of 500 video lottery terminals at the restricted location referenced in the application". Does the commission

have any discretion in authorizing these terminals? If so, by what standard may the commission refuse or approve the application? Is 500 the maximum number of video lottery terminals? May a restricted location submit a request for fewer than 500 video lottery terminals? If so, would the proponents consider clarifying the statement to read "up to five hundred video lottery terminals"?

- d By what standard will the commission deem it economically feasible to allow terminals at a restricted location? What information will be necessary to make such a conclusion? The proposal also states that the commission must deem it "to be economically feasible for the commission's purposes". What are the commission's purposes? How does this phrase relate to the phrase "the commission *shall* approve the use of 500 video lottery terminals at the restricted location referenced in the application" (emphasis added)?
- e. This section also states that "[n]o additional terminals shall be permitted at any restricted location without prior approval . . .". Is it the proponents intent that a restricted location be allowed to have more than 500 video lottery terminals if the commission approves subsequent applications? If so, is there a limit upon how many video lottery terminals a restricted location may have? Will subsequent applications follow the same procedure and standards as the initial application?

6. With respect to subsection (6) of the proposed amendment:

- a. This subsection provides that a certain amount of revenue from the video lottery program is distributed to the Colorado travel and tourism additional source fund (promotion fund) after deduction of prizes and expenses and after allocation of proceeds to GOCO in accordance with section 3 of article XXVII of the constitution. That section allocates 40% of net proceeds from all state-supervised lottery games to the Conservation Trust Fund and 10% to the Division of Parks and Outdoor Recreation. "All remaining Net Proceeds" are allocated to the GOCO trust fund, except that amounts in excess of \$35 million (adjusted for inflation) are allocated to the general fund. Thus, it appears that under the proposed amendment, no new VLT proceeds would go to the promotion fund unless allocations to GOCO from all state-supervised lottery games exceed \$35 million in a fiscal year. Is this the proponents' intent?
- b. This subsection states "[a]ll net VLT proceeds in excess of the Colorado Promotion Revenues shall be appropriated by law". Do the proponents intend for the General Assembly to establish a process for appropriating these funds, or is there already a mechanism in place for disbursing such funds?
- c. This subsection exempts the proposed amendment from restrictions on spending, revenues, or appropriations, including the restrictions in section 20 of article X of the state constitution (TABOR). Would the proposed amendment be affected by the provision in

subsection (1) of TABOR that it supercedes conflicting state constitutional provisions? If the state provides moneys from the promotion fund to a local government, would those moneys be included in the local government's fiscal year spending for purposes of TABOR?

7. Subsection (7) of the proposed amendment states that net VLT proceeds are accounted and allocated separately from the proceeds of other state-supervised lottery games. Does this provision remove net VLT proceeds from the definition of "Net Proceeds" in section 3 (1) of article XXVII of the state constitution, which currently provides for the allocation of "all proceeds from all programs, including Lotto and every other state-supervised lottery game operated under the authority of Article XVIII, Section 2 of the Colorado Constitution"? If so, then how are net VLT proceeds "distributed to the great outdoors Colorado program in accordance with section 3 of article XXVII of the state constitution"?
8. Subsection (8) of the proposal states that the section is to be repealed on July 1, 2019. Will the repeal of this section prohibit the use of video lottery terminals in restricted areas? What will happen to any moneys that remain in the promotion fund defined in subsection (2) of the proposed amendment? The state lottery division, in which the Colorado lottery commission was created, is subject to sunset on July 1, 2024. If the use of video lottery terminals is permitted after this date but the agency is allowed to expire or is terminated by the General Assembly, what agency would regulate the video lottery program?