

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

April 2, 2004

TO: Michael Graves and Scott Isgar

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2004 #123 Concerning election of the Director of the Division of Wildlife and the wildlife commissioners.

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 provide for the election of the Director of the Division of Wildlife every six years beginning with next Senatorial election.
2. To provide for the election of the wildlife commissioners from nine equal districts every four years.
3. To set standards for candidates for both the Director of the Division of Wildlife and the wildlife commissioners.

4. To provide the public with information about such candidates' hunting and angling experience prior to such elections.

Comments and Questions

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

Technical questions:

1. The phrase "Be it enacted by the people of the state of Colorado:," occurs after the amending clause, the section number, and the head note. According to legislative practice and the meaning of the phrase, the amending clause, the section number, and the head note are not being enacted by the people of Colorado. Do the proponents wish to place the enacting clause at the beginning of the measure? For example,

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

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

Section 15. State Wildlife Management ..."

2. The first sentence of subsection (1) appears to read: "Be it enacted by the people of the state of Colorado, in order to protect the fishing and hunting heritage of Colorado." This is an incomplete sentence. Would the proponents consider modifying this sentence?
3. According to Colorado legislative practice, sections are divided into subsections, and subsections are divided into paragraphs. Subsections are denoted by arabic numerals, (1) (2) (3), and paragraphs are denoted by lower case letters, (a) (b) (c). The measure appears to use upper case letters, (A) (B) (C), for paragraphs. Do the proponents wish to use lower case letters for paragraphs?
4. To be consistent with customary principles of constitutional and statutory drafting, would the proponents be willing to show the text of the proposed initiative in "SMALL CAPS" to indicate new language rather than in "ALL CAPS" as it currently reads?
5. Would the proponents consider removing the abbreviation "I.E." from subsection 7 of the proposal and substituting "for example?"
6. Subsection (3) provides, "individuals running for the wildlife commission must reside in the district that they are running for." In statutes, the word "shall" is preferred over the word "must" because the word "shall" is typically an imperative, or a command, but the word "must" is an indicative that

is a statement of fact. Would the proponents consider using the word "shall" instead of the word "must"?

Substantive questions:

1. The measure provides for the election of members from "nine equal sections" of the state. The phrase "equal sections" may mean several things. Given that in *Baker v. Car*, 369 U.S. 186, (1962), the Supreme Court of the United States prohibited the states from electing Representatives from geographical districts with unequal populations, a court may be predisposed to interpreting this measure as meaning nine equal population sections. If the proponents desire for such sections to be purely geographical, would the proponents want to clarify that the sections are equal geographically but not necessarily equal in terms of population?
2. Currently, county clerks are responsible for creating the official ballots listing all candidates who may be elected within the particular jurisdiction. Do the proponents foresee any problems that may arise if a wildlife commissioner district does not coincide with current political boundaries? For example, what happens if a commissioner district boundary divides a particular precinct? Would the county clerk be required to redraw precinct boundaries that would not conflict with the new commissioner district boundaries?
3. Subsection (7) of the proposal states that the commissioner information is to be provided to the Legislative Council "so that it may be published." The word "may" is permissive, which means that the Legislative Council may choose not to publish the information. Is this the proponent's intent? If the proponents intend to require that the information be published, the word "shall" is more appropriate.
4. The proposal states that the director of the Division of Wildlife is to be elected "every six years coinciding with the U.S. Senate Elections." Section 1-4-202, C.R.S., provides for staggered elections of U.S. senators resulting in elections for a Senator in 2002 and 2004, with the next election for a U.S. Senator in 2008 and 2010. To which of these elections do the proponents intend the proposal to apply? Would the proponents consider modifying the proposal to state "At the general election in 2006 and every six years thereafter the voters of the state will elect a Director of the Division of Wildlife?"