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MEMORANDUM

April 30, 2004

TO: J.B. Smith, Willie Wool

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #158, concerning the legal drinking age and student drivers

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 allow persons fourteen years of age and older to consume wine.
2. To allow persons sixteen years of age and older to consume 3.2 beer.
3. To allow persons eighteen years of age and older to consume any type of alcohol beverage.
4. To permit a school to limit drinking as it deems appropriate.

5. To permit an event to limit drinking as it deems appropriate.
6. To prohibit students in Larimer, Weld, Denver, Boulder, Adams, Douglas, Arapahoe, Jefferson, El Paso, Pueblo, Mesa, Pitkin, Eagle, and La Plata counties from driving to high schools during school session.
7. To prohibit students in Larimer, Weld, Denver, Boulder, Adams, Douglas, Arapahoe, Jefferson, El Paso, Pueblo, Mesa, Pitkin, Eagle, and La Plata counties from driving on week days during school session.
8. To prohibit students from driving in the mountains.
9. To prohibit students from driving during bad weather that is apparent before a student starts a drive.
10. To permit students to drive during bad weather that results from a sudden change of weather in the mountains and that is not apparent before a student starts a drive.

Comments and Questions

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

Technical questions:

1. Section 1 (8) of article V 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 proponents consider adding an enacting clause at the beginning of the proposed measure?

2. To provide notice to the public of the proposed changes to the law and to identify whether the proponents intend to amend or add to the state constitution or the Colorado Revised Statutes, and specifically which provisions, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional section that is to be added, amended, or repealed. An initiative usually goes further to provide the specific language within the statutory or constitutional section that will be added, 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 proponents consider specifying the statutory or constitutional sections that are to be added, amended, or repealed in the proposed measure and setting forth the exact language to be added, amended, or repealed?

3. In Colorado, when a proposed measure adds new language 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 statutes or constitution 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 or the state constitution 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 and of the constitution begins with a section heading that includes the section number and a short description of the section contents.

Would the proponents consider adding appropriate amending clauses to the proposed measure to indicate whether the measure will add new language or repeal existing language of the Colorado Revised Statutes or the state constitution? Would the proponents consider showing existing statutory or constitutional language with dashes through it, if the proponents intend to repeal existing language, or indicating new language with capital letters? In copying existing statutes or constitutional sections into the measure, the proponents should include the section heading.

4. Is it the proponents' intent to amend the statutes governing the consumption of alcohol beverages? If so, would the proponents consider placing this proposed measure or a portion thereof within article 47 of title 12 of the Colorado Revised Statutes?
5. Is it the proponents' intent to amend the statutes governing the operation of vehicles? If so, would the proponents consider placing this proposed measure or a portion thereof within article 4 of title 42 of the Colorado Revised Statutes?
6. The proposal contains the term "wine"; however, the Colorado statutes governing this area describe the area governed as "vinous liquors". Would the proponents consider changing the term "wine" to "vinous liquors"?
7. The proposal contains the term "3.2 beer"; however, the Colorado statutes governing this area describe the area governed as "fermented malt beverage". Would the proponents consider changing the term "3.2 beer" to "fermented malt beverage"?
8. The proposal contains the term "all other alcoholic drinks"; however, the Colorado statutes governing the area of alcohol beverages, other than those described in paragraphs 6 and 7, above, describe these other alcohol beverages as "malt liquors", "spiritous liquors", and "hard cider". Would the proponents consider changing the term "all other alcoholic drinks" to "other alcohol beverages including malt liquors, spiritous liquors, and hard cider"?
9. Is it the proponents' intent to include confectionery in the category of "all other alcoholic drinks"? Confectionery may contain alcohol, but currently is not regulated by the Colorado statutes that govern the area of alcohol beverages. If it is the proponents' intent to include confectionery in the category of "all other alcoholic drinks", would the proponents consider placing this proposed

measure within article 47 of title 12 of the Colorado Revised Statutes?

Substantive questions:

1. The opening sentence of the proposal appears to establish the legal age for drinking and driving. Is this the proponents' intent?
2. The proposal would reduce the minimum legal age for the consumption of certain types of alcohol beverages. Do the proponents intend for the proposal to address other areas concerning the legal age for the consumption of alcohol such as the location of consumption, criminal conduct, licenses, or registrations? Is it the proponents' intent that the General Assembly will make the appropriate conforming amendments?
3. Is it the intent of the proponents that the legal age of drinking be:
 - a. 14 years of age for wine;
 - b. 16 years of age for 3.2 percent alcohol beer; and
 - c. 18 years of age for all other alcoholic drinks?
4. The proposal would allow schools and "other events" to "limit drinking, as they desire". Do the proponents intend to legalize the consumption of alcohol in schools or on school grounds? What is meant by "other events"? Do the proponents intend to provide any statutory guidelines for the regulation of alcohol consumption at schools or other events? Would schools be required to adhere to the age limits proposed in the initiative, or could they actually limit drinking "as they desire"?
5. The proposal appears to state that "students ... will not allow students to drive". What does this mean? Is it the proponents' intent that students will be responsible for enforcing the law?
6. The proposal would prohibit "students" in certain counties from driving to high school during certain times. What does "students" mean in this context? Do the proponents intend for the proposal to affect only high school students? Or would it also affect students at other levels such as elementary, middle, or postsecondary?
7. It appears that the proposed measure would prohibit students from driving to high schools and from driving "during the week days during school sessions." Is this the proponents' intent? Would there be any restrictions on students' ability to drive on weekends or when school is not in session?
8. Is it the proponents' intent, by stating the term "driving", to regulate the operation of all vehicles by this category of students or only the operation of certain vehicles such as motor vehicles, motorcycles, motorized bicycles, or bicycles?

9. Do the proponents intend to state in the proposal the reason or reasons they wish to include only the fourteen counties specified in the proposal?
10. The proposal states that "driving in the mountains, and bad weather will also be prohibited".
 - a. Is it the proponents' intent that the proposal prohibit mountain driving by students or by all drivers?
 - b. Do the proponents intend to regulate mountain driving only in the fourteen counties specified in the proposal or in other areas?
 - c. Would the proponents consider adding language to the proposal that clarifies what topography constitutes "the mountains"?
 - d. Would the proponents consider adding language to the proposal that clarifies what constitutes "bad weather"? Do the proponents intend to prohibit mountain driving in bad weather? Or do they intend to prohibit driving in the mountains and driving in bad weather regardless of whether the bad weather occurs in the mountains?
11. 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. The courts have held that an initiative that tends to affect or carry out one general object or purpose satisfies the single subject requirement while a measure that has at least two distinct and separate purposes that are not dependent upon or connected with each other violates the single subject rule. The proposed measure appears to legalize the consumption of certain types of alcohol beverages by certain persons who are 18 years of age or younger. The proposal also appears to authorize schools and "other events" to limit drinking. The proposal also appears to regulate driving by high school students in certain counties and to regulate driving in the mountains during bad weather. What do the proponents intend to be the single subject of the proposed measure?