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MEMORANDUM

April 3, 2012

TO: Richard Evans and Stacie Kemp

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #89, concerning income generated by video lottery terminals

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 to the Colorado constitution appear to be:

1. After November 6, 2012, to require that all net machine income generated by video lottery terminals be paid to the governmental recipients of lottery funds.
2. To allow a private party that operates video lottery terminals to reduce the amount of moneys paid to the state from video lottery terminal proceeds only when approved by a vote of statewide electors through the ballot process.
3. To require the ballot title of a measure that would allow a private party to reduce the amount

of moneys paid to the state from video lottery terminal proceeds to include the percentage and first year's projected dollar amount of net machine income to be retained by the private party and to only grant approval of such a measure at a general election in an even-numbered year.

4. To define the terms "video lottery terminal" and "net machine income".
5. To exempt from the proposed amendment any slot machines used in limited gaming to the extent that their use has been approved by electors pursuant to section 9 of article XXVIII of the Colorado constitution.
6. To exempt from the proposed amendment any gaming allowed on Indian reservations as approved by federal law.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The proposed initiative is to be added to the Colorado constitution as a new section within an existing article, and the amending clause should reflect the updated drafting format adopted by the Office of Legislative Legal Services prior to the 2012 legislative session as follows:

In the constitution of the state of Colorado, **add** section 16 to article XVIII as follows:

2. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings. Similarly, instead of separating subsections and paragraphs by a blank line, you should simply insert a left tab at the beginning of the first line of each subsection or paragraph.
3. The section number and headnote should be in lowercase type rather than small capital letters.
4. It is standard drafting practice for the first subsection to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote.
5. In proposed subsection (2), the word "state" should not be capitalized.
6. It is standard drafting practice to arrange defined terms in alphabetical order, so "net machine income" should precede "video lottery terminal".

7. You may want to consider adding an introductory portion to proposed subsection (3) that clarifies the use of the defined terms. A common drafting practice is to include the following phrase to introduce a series of definitions: "As used in this section, unless the context otherwise requires:". For example:

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
REQUIRES:
 (a) "NET MACHINE INCOME" MEANS THE TOTAL AMOUNT OF MONEY
 BET BY VIDEO...
 (b) "VIDEO LOTTERY TERMINAL" MEANS A FORM OF SLOT MACHINE
 THAT IS OPERATED...

8. It is standard drafting practice to place punctuation outside of quotation marks.
9. The internal reference in proposed subsection (4) should read: "SECTION 9 OF THIS ARTICLE".

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative? Section 1 (4) of article V of the Colorado constitution states that initiated measures "shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed". As drafted, the proposed initiative is effective "after November 6, 2012," which is the date of the 2012 election. However, if the governor does not issue a proclamation on the day of the vote, the measure might not actually take effect for several days or weeks. Do you foresee any complications with the use of the November 6 date in the text of the measure?
3. Is the proposed initiative intended to address House Bill 12-1280, "Concerning regulation of the state lottery by the state lottery division in the department of revenue, and, in connection therewith, authorizing the installation of video lottery terminals under the control of the division."? This measure appears to change the distribution of the net machine income as specified in that legislation. Is that correct?
4. Who are the "governmental recipients of lottery funds"? Is this a reference to the Conservation Trust Fund, state parks, and the Great Outdoors Colorado Trust Fund? Would it be more accurate to provide a cross reference to section 3 (1) (b) of article XXVII of the Colorado constitution, or are you also making reference to the spillover that is statutorily earmarked for the "Building Excellent Schools Today Act"?
5. Who is a "private party"?

6. Must there be one ballot measure for each private party to reduce the amounts paid to the state for the benefit of lottery fund recipients?
7. Must each private party file an initiative measure to obtain the necessary approval to reduce the amounts paid to the state?
8. Why may the necessary approval be obtained only at even-numbered year elections?
9. Why are you specifying that a video lottery terminal is a form of slot machine? Is this so that you effectively limit the location of video lottery terminals to the limited gaming localities and to Indian reservations?
10. By specifying that a video lottery terminal is a "form of slot machine that is operated by or for the state lottery", are you intentionally excluding the slot machines allowed for limited gaming pursuant to section 9 (4) (b) and (4) (c) of article XVIII of the Colorado constitution from your definition of "video lottery terminal"?
11. What does "the value of redeemable games" mean?
12. What is proposed subsection (4) intended to do?
13. Standard drafting practice is to use the word "fund" to refer to an account into which "moneys" or "revenues" are placed. Therefore, the word "fund" or "funds" is typically not used to refer to the moneys or revenues themselves. Would you consider clarifying the use of these terms in the proposed initiative accordingly?