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MEMORANDUM

April 6, 2011

TO: Kenneth Finton and Chaya Finton

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #26, concerning TABOR repeal

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 purpose of the proposed amendment appears to be to repeal section 20 of article X of the Colorado constitution, commonly referred to as the "Taxpayer's Bill of Rights" or "TABOR".

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. Under section 1 (5) of article V of the Colorado constitution, the proponent of an initiative is directed to submit the text of a proposed constitutional amendment for review and comment. You have submitted a proposal to repeal TABOR, but you have not submitted the actual text of a constitutional amendment that would achieve that result. You should amend the proposal to include the actual text of your proposed constitutional change.
2. Section 1 (8) of article V of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
3. It is standard drafting practice to include an amending clause telling the reader what is being amended or repealed in the Colorado constitution. For example, since your intention appears to be to repeal section 20 of article X of the Colorado constitution (TABOR), include one of the following amending clauses:

- a. "Section 20 of article X of the constitution of the state of Colorado is repealed as follows:". If you opt for this type of amending clause, sometimes referred to as a "reader-friendly" repeal, you would then need to include the entire text of section 20 of article X and show it in strike type. For example:

Section 20 of article X of the constitution of the state of Colorado is repealed as follows:

~~**Section 20. The Taxpayer's Bill of Rights.**
(1) **General provisions.** This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. . . .~~ (include remainder of section 20 here)

- b. "Section 20 of article X of the constitution of the state of Colorado is repealed.". If you opt for this type of amending clause, sometimes referred to as a "straight" repeal, it would not be necessary to include the text of section 20 of article X in strike type. This type of amending clause can stand alone and would have the same effect as the "reader-friendly" amending clause.
4. Because section 20 of article X of the Colorado constitution is referenced in numerous other provisions, both in the Colorado constitution and in the Colorado Revised Statutes, the repeal of TABOR would necessitate many conforming amendments. For example, section 17 (2) (b) of article IX of the Colorado constitution defines "inflation" by referencing the definition of that term contained in TABOR:

Section 17. Education - Funding. (2) Definitions. For purposes of this section:

(b) "Inflation" has the same meaning as defined in article X, section 20, subsection (2), paragraph (f) of the Colorado constitution.

If section 20 (2) (f) of article X is repealed, the above definition of "inflation" would need to be amended to reflect that change. One possible solution would be to use the definition currently contained in TABOR or a similar variation of that definition. For example:

Section 17 (2) (b) of the constitution of the state of Colorado is amended to read:

Section 17. Education - Funding. (2) Definitions. For purposes of this section:

(b) ~~"Inflation" has the same meaning as defined in article X, section 20, subsection (2), paragraph (f) of the Colorado constitution~~ MEANS THE PERCENTAGE CHANGE IN THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

Please keep in mind that this is just one of the many conforming amendments that would be needed if TABOR were repealed.

5. As illustrated in question #4 above, when amending a section of the Colorado constitution or Colorado Revised Statutes, ~~strike type~~ is used to delete language and SMALL CAPITAL LETTERS are used to show new language. Current law cannot be deleted without showing it as such in strike type. Additionally, existing constitutional or statutory language should be in lower-case letters, while the language being added should be the only language shown in small capital letters. Stricken text should precede new text where such changes appear together.
6. When referencing other constitutional or statutory provisions in the text of a proposed initiative, it is standard practice to use citations for those provisions rather than referring to them by name. So, even though section 20 of article X is commonly known as "TABOR", in the text of the proposed initiative it should be cited as "section 20 of article X". References to TABOR within the Colorado constitution should read as: "section 20 of article X of this constitution". References to TABOR in the Colorado Revised Statutes should read as: "section 20 of article X of the state constitution".
7. Only issues that concern specific state matters arising under TABOR may appear on the ballot in odd-numbered years, so the voters of the state would not vote on the proposed initiative in 2011, as stated in your proposal, but would vote on the measure in 2012. It is not necessary to specify when the measure will appear on the ballot, as the procedures and timeline for placing items on the ballot are already established in Colorado law.
8. Check the proposed initiative carefully for grammatical or other technical errors.

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. In *In re Amend Tabor* 25, 900 P.2d 121 (Colo. 1995), the Colorado supreme court stated that "[TABOR] itself was not subject to the single subject requirement and contains multiple subjects." As such, an initiative seeking to repeal TABOR probably does not contain a single subject. Have the proponents considered that, because TABOR contains more than a single subject, it would require multiple initiatives to repeal?
3. What will be the effective date of the proposed initiative?
4. TABOR contains several separate and distinct subjects. Is the proponents' intent to repeal all of TABOR or just the provisions of TABOR that concern voter approval? Furthermore, is it the intent of the proponents to only repeal the provisions of TABOR requiring voter approval for new taxes, or do the proponents also wish to repeal the requirement of voter approval for tax rate increases, mill levy increases above the prior year, valuation for assessment increases, expiring tax extensions, tax policy changes, or debt increases?
5. If TABOR were to be repealed, what would be the effect on other provisions of law referencing TABOR, both in the constitution and the Colorado revised statutes? Would those provisions remain in effect to the extent possible? Would the proponents consider specifying which provisions of law would remain?