

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

April 11, 2011

TO: Thaddeus J. Tecza and Marty Neilson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #27, concerning vote requirements to amend citizen initiatives

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 initiative appears to be to amend the Colorado constitution to include a provision stating that any statute enacted through the initiative process may not be repealed or amended by the general assembly except by a three-fourths majority vote of both the senate and the house of representatives or by a vote of the people through a referendum approved by the general assembly.

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. Pursuant to section 1 (2) of article V of the Colorado constitution, proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative should be revised to indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.
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. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "Section 1 (4) of article V of the constitution of the state of Colorado is amended to read:".
4. It is standard drafting practice to use small capital letters to show the language being added to the Colorado constitution. For example, the first sentence would begin "A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO . . ."
5. Each section in the Colorado constitution has a headnote. Headnotes should briefly describe the content of the section, should follow the section number, should be in bold-faced type, and should be in lower-case letters. For example, the headnote for section 1 of article V of the Colorado constitution appears as follows: "**Section 1. General assembly - initiative and referendum.**"
6. When referring to the Colorado constitution within the text of the constitution, it is standard drafting practice to refer to it as "this constitution".
7. Consider clarifying the phrase "each house" by writing it as "each house of the general assembly" or as "the house of representatives and the senate".
8. By incorporating the changes suggested in this memorandum, the proposed initiative would appear as follows:

Be it Enacted by the People of the State of Colorado:

Section 1 (4) of article V of the constitution of the state of Colorado is amended to read:

Section 1. General assembly - initiative and referendum.

(4) The veto power of the governor . . . the power to enact any measure;
EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND OR REPEAL . . .

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?
3. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. Would you consider amending section 1 (4) of article V of the constitution of the state of Colorado? See, for example:

Section 1. General assembly - initiative and referendum.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and 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. This section shall not be construed to deprive the general assembly of the power to enact any measure, EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND OR REPEAL AN INITIATED STATUTORY LAW THAT WAS APPROVED AT AN ELECTION . . .

5. You specify that the general assembly may not repeal or amend an initiated statute except under specified circumstances. What is your intention regarding initiated statutes that are superseded, contradicted, or otherwise trumped by later statutes adopted by the general assembly in the normal course? For example, what if the general assembly were to pass a law that said, "Notwithstanding [the initiated statute,]". Could an argument be made that such a legislative measure is not a repeal or an amendment of an initiated statute?
6. You do not specify a time limitation for this requirement. Similar proposals have included a time limitation: 1) 1996 Referendum A, four years; 2) 2005 SCR05-002, five years; 3) 2006 SCR06-003, five years; 4) 2008 Referendum O, five years; 5) 2011 SCR11-001, three years. Is it your intention to not have a time limitation so that, for example, even twenty-five years after the passage of an initiated statute an amendment or repeal would require a supermajority vote or approval by voters via a referendum?

7. Section 11 of article V of the Colorado constitution regarding a legislative quorum states "A majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members". The following questions relate to the proposed initiative's requirement of "a three-fourths vote of the members of each house":
 - a. Do you mean approved by a vote of three-fourths of all elected members or approved by a vote of three-fourths of the members present?
 - b. Assuming you mean "approved by a vote of three-fourths of all elected members":
 - i. In the House of Representatives that would mathematically require a vote of 48.75 members. Is it your intention that approval will then require a vote of at least 49 elected members?
 - ii. In the Senate that would mathematically require a vote of 26.25 members. Is it your intention that approval will then require a vote of at least 26 elected members?
8. Could a statute enacted by citizen initiative be repealed or amended by a subsequent citizen initiative, or can it only be amended by a supermajority vote or a referred measure?