

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 20, 2012

TO: David Ottke and John Slota

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #67, concerning the citizen initiative process.

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.

#### Purpose

The major purpose of the proposed amendment to the Colorado constitution appears to be to require a supermajority vote of the members of each house of the general assembly to amend or repeal any statute ever enacted through the initiative process, unless the initiated statute includes a provision allowing for a majority vote to amend or repeal it.

#### 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. Article V, section 1 (8) 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, the proponents should capitalize the words "enacted", "people", and "state".
2. The provisions of the proposed initiative should appear in the following order: The enacting clause, followed by the amending clause indicating what change is being made to the Colorado constitution, followed by the text of the 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, "In the constitution of the state of Colorado, section 1 of article V, **add** (11), (11.1), (11.2), and (11.3) as follows:".
4. 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.
5. 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: THE "VOTER PROTECTION ACT."
6. It is standard drafting practice to place punctuation outside of quotation marks. For instance: THE "VOTER PROTECTION ACT".
7. Each section in the Colorado constitution has a headnote. It is standard drafting practice to include the relevant section and headnote, with the subsection to immediately follow the headnote on the same line. For example:

**"Section 1. General assembly - initiative and referendum. (11) THE "VOTER PROTECTION ACT."**

(11.1) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED . . ."

8. In the text of the initiative, subsection (11) is written as: (11) The "Voter Protection Act." As this is not a complete sentence, it appears to be more of a title or headnote, rather than a subsection.
9. Section 22 of article V of the Colorado constitution states that "no bill shall become a law

except by a vote of the majority of all members elected to each house taken on two separate days in each house". Insofar as subsection (11.1) is an exception to this requirement, you might consider amending section 22 by adding the phrase "EXCEPT AS SET FORTH IN SECTION 1 (11.1) OF ARTICLE V OF THIS CONSTITUTION," to the beginning of the section.

### **Substantive Comments and Questions**

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

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Subsection (11) identifies itself as the "Voter Protection Act", and presumably, this refers to the entire proposed initiative. Would an average voter think of voter protection as something that protects the process of voting, rather than establishing procedures related to changing a voted upon measure? Insofar as it protects statutory initiated statutes approved by voters, rather than the voters themselves, could this title be misleading?
3. Subsection (11.1) in the proposed initiative could be interpreted as follows: 1) A prohibition on the General Assembly amending or repealing an initiated statute; 2) An exception to this prohibition if there is a three-fourths vote of the members of each house; 3) An exception to the exception if the initiated statute provides that the measure may be amended by a majority vote. As written, is it possible that an initiated statute that has a provision that it may be amended by a majority vote, could be interpreted as not meeting the exception to the prohibition on the General Assembly amending or repealing an initiated statute, so that initial prohibition on amending or repealing it still applies?
4. With respect to the vote required to change an initiated statute:
  - a. Is the vote "at least" three-fourths of the members of each house?
  - b. Is the "three-fourths" vote based the number of the members elected to each house, the number of members present at the vote, or the number of members actually voting on the issue?
  - c. Could an initiated statute itself allow for it to be passed by a percentage greater than a majority, but less than three-fourths? Or is this embedded exception limited to just a majority?
  - d. Does the supermajority vote in any way modify the requirement that a non-referred measure be presented to the governor?
5. With respect to the phrase, "a statute enacted by citizen initiative pursuant to this article":
  - a. Does it only apply to a section that is entirely created by initiative?
  - b. If a statutory section is originally enacted by the General Assembly and then partially amended by a statutory initiative, would the proposed language apply to the entire

- section, just the provisions that were amended, or no part of the section?
- c. What happens if an existing initiated statute has already been amended by the General Assembly? Is the law still considered an initiated statute, or is it now a matter enacted by the General Assembly? Could the General Assembly change the provisions it has previously changed without a supermajority vote?
6. The proposed initiative requires the supermajority for an initiated statute to be "repealed or amended by the general assembly". Does "amended" only include changes made to the language of the initiated statute itself? Could it include another provision that supercedes or otherwise changes the statute in a different section of law? (For ex., the way your measure creates an exception to section 22 of article V of the state constitution without amending it directly.)
  7. The proposed initiative permits an exception to the supermajority vote requirement "if the statute explicitly provides that the general assembly may repeal or amend it by a majority vote of the members of each house". Does this literally mean that any provision must include the actual requirement, or is it sufficient for the initiated measure to include a general provision that applies to any section of law included in the initiative? If it is the latter, you may consider amending the proposed initiative to make this fact clear.
  8. To the extent that the General Assembly refers a change to an initiated statute, is a majority vote still required of the voters?
  9. In subsection (11.3), you refer to "This section". Do you mean all of section 1 of article V of the state constitution, or are you referring to only the language of the proposed initiative, or parts thereof? If it is not the entire section 1, you should clarify your intent.
  10. It seems possible that proponents who previously submitted an initiated statute did so because they wanted it to become the law of the state, which could be amended like any other law. Insofar as your measure applies to previously passed initiated statutes, would your measure frustrate that intent?