

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

July 18, 2011

TO: Debra Mintener and Deb May

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #38, concerning branch banking

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 either the Colorado constitution or the Colorado Revised Statutes to include a provision that bans branch banking in the state of Colorado.

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.

Text Being Amended is Unclear

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.

The Proposed Initiative Is an Idea Rather Than Text

2. 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. The proponents have submitted an idea rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. The proponents should amend their proposal to include the actual text of their proposed constitutional or statutory change. The remainder of the technical comments included in this memo are intended to assist the proponents in the drafting of their proposal.

Enacting Clause

3. 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, this phrase should be added to the beginning of the proposed initiative.

Format/Organization of Initiative

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. It is also standard practice to bold the section number. For example:

Example if amending the Colorado Revised Statutes:

SECTION 1. 11-35-101.5, Colorado Revised Statutes, is amended to read:

11-35-101.5. Irrevocable letter of credit permitted - requirements. (1) Where there is the requirement of either an irrevocable letter of credit or a bond as a condition to....

(2) Each appropriate state agency required to....

(3) Before accepting such irrevocable letters of credit, each appropriate state agency....

Example if amending the Colorado constitution:

SECTION 1. Section 9 of article XVIII of the constitution of the state of Colorado is amended to read:

Section 9. Limited gaming permitted. (1) Any provisions of section 2 of this article XVIII or any other provisions of this constitution to the contrary notwithstanding, limited...

5. 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. See the example in item 4 above.
6. 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 or Colorado Revised Statutes, followed by the text of the initiative, followed by the effective date of the initiative.

Numbering of Statutes and Constitution

7. Constitutional and statutory provisions are usually divided into component parts using the following structure: Subsection, for example, "(1)"; followed by paragraphs, for example, "(a)"; followed by subparagraphs, for example, "(I)"; ending with sub-subparagraphs, for example, "(A)". For example:

12-2-109. Educational and experience requirements - rules - repeal. (1) Any person who has qualified under the provisions of section 12-2-108 shall be granted a certificate of certified public accountant:

- (a) If the person:
 - (I) Has a baccalaureate degree conferred by an accredited college or university with an accounting program approved by the board and has a concentration in accounting or what the board determines to be the equivalent thereof or has a nonaccounting concentration supplemented by what the board determines to be the equivalent of an accounting concentration, including related courses in other areas of business administration; and
 - (II) Has one year's experience that:
 - (A) Meets the requirements set by the board by rule;
 - (B) Is in any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be gained through employment in government, industry, academia, or public practice; and
 - (C) Is verified by an actively licensed certified public accountant;
 - (b) If the person has successfully completed a course of study concerning the subject of professional ethics, approved by the board, and passed a written examination concerning such subject prepared and given by educational institutions or professional organizations deemed qualified by the board to administer such examination;
 - (c) If the person has a baccalaureate or higher degree conferred by an accredited college or university with an accounting program approved by the board and has a concentration in accounting, plus, when the baccalaureate is the highest degree held, not less than thirty semester hours' additional

study, the total educational program to include an accounting concentration or its equivalent and such related subjects as the board determines to be appropriate.

8. Constitutional and statutory provisions are often divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs for ease of reading. The proponents may want to consider breaking up the text of the proposed initiative into separate subsections, etc.

Amending Clauses

9. It is standard drafting practice to include an amending clause telling the reader what is being added to or amended in the Colorado Revised Statutes. For example, if your intention is to add a new article to title 11 of the Colorado Revised Statutes, include an amending clause after the section number that reads as follows: "Title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:". Also see item 4 above for an example of an amending clause with the section number and text.
10. 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, "Article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:".

Strikes/Small Caps/Capitalization

11. When you're amending a section of the Colorado constitution or Colorado Revised Statutes, use strike type to delete language and small caps to show new language. Current law cannot be deleted without showing it as such in strike type. Also, the current language should be in mixed-case letters, while the language being added should be the only language shown in small caps. Stricken text should precede new text where such changes appear together. For example:

24-80.1-104. Effect of state register - exception - legislative declaration. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, PROPERTIES INCLUDED OR NOMINATED FOR INCLUSION IN ~~OR ACCEPTED BY~~ THE STATE REGISTER ~~SHALL BE~~ ARE PROTECTED FROM ANY ACTION INITIATED BY A STATE AGENCY UNTIL A FINAL DETERMINATION CONCERNING THE EFFECT OF ~~SUCH~~ THE ACTION ON SUCH PROPERTIES IS MADE PURSUANT TO SUBSECTION (2) OF THIS SECTION.

12. It is standard drafting practice to use small capital letters (rather than all caps) to show the language being added to the Colorado constitution or Colorado Revised Statutes. For example:

THIS IS SMALL CAPS vs. THIS IS ALL CAPS

Note that although the text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The following should be large capitalized:

- a. The first letter of the first word of each sentence;
- b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
- c. The first letter of proper names.

Headnotes

13. Each section in the Colorado Revised Statutes and Colorado constitution has a headnote. Headnotes should briefly describe the contents of the section, should follow the section number, should be in bold-faced type, and should be in mixed-case letters. A headnote should precede each new section in the proposed initiative.

Commas

14. The preferred method for separating a series in a list is to include a comma after the second to last item in the series. For example, instead of "apples, oranges and pears" use "apples, oranges, and pears".
15. It is standard drafting practice to set off certain phrases (i.e., introductory or parenthetical phrases) with commas.
16. It is standard drafting practice to use commas to connect two independent clauses.
17. It is standard drafting practice to separate coordinate adjectives with a comma.

Definitions

18. The following is the standard drafting language used for creating a definition: "As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means (the definition for the term)...". Here is an example of a definitions section:

35-40-100.2. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Animal" means coyotes, foxes, bobcats, bears, mountain lions, wolves, beavers, muskrats, raccoons, opossums, and striped skunks and any animals identified by rule promulgated by the commissioner and approved by the wildlife commission.

(1.5) "At risk" means any depredated animal species that has been designated by the wildlife commission as endangered, threatened, or at risk after:

(a) A scientific investigation by the division of wildlife in the department of natural resources that is based on valid, sound, and objective data and analysis that substantiates such designation; and

(b) Presentation of scientifically valid data, analysis, or commentary by the commissioner relating to depredated animals; and

(c) Presentation of scientifically valid data, analysis, or commentary by objective

professionals, mutually identified by the state agricultural commission and the wildlife commission relating to depredating animals.

(2) "Board" means the Colorado sheep and wool board.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Depredating animal" means any animal, animals, or group of animals that pose a threat to an agricultural product or resource.

(5) "Pose a threat" means the threat of causing economic loss by killing or damaging an agricultural product or resource or consuming stored agricultural products. A threat shall be presumed to be posed when damage has historically occurred, is occurring, or when it is necessary to prevent depredating animals from inflicting death or injury to livestock or damaging agricultural products or resources.

19. Definitions should be in alphabetical order.

20. It is standard drafting practice to use the terms that have been defined for a particular article, without having to refer to full names repeatedly.

References

21. When referencing a subsection, paragraph, subparagraph, or sub-subparagraph, it is standard drafting practice to repeat the letter or number of the subsection, paragraph, subparagraph, or sub-subparagraph. For example:

(1) (a) An elector may register to vote, and a registered elector may change his or her residence on the registration record, change or withdraw his or her affiliation, apply for permanent mail-in ballot status, or amend his or her existing mail-in ballot status, by completing an electronic form on the official web site of the secretary of state if the elector's signature is stored in digital form in the database systems maintained by the department of state pursuant to section 1-2-301 (1) or accessible to the department of state in accordance with the requirements of sections 1-2-302 (6) and 42-1-211 (1.5), C.R.S.

(b) The official web site referenced in paragraph (a) of this subsection (1) shall be fully secure. The web site shall maintain the confidentiality of all users and preserve the integrity of the data submitted. Further specifications regarding the security of the web site may be promulgated by the secretary by rule in accordance with the provisions of section 1-1-107 (2) (a).

22. If the proposed initiative is adding language to the Colorado constitution and refers to entities outside the constitution, the proponents should add the phrase "or a successor statute/officer/agent/committee/program" after every instance that a statute, entity, etc., is referenced. For example:

(3.7) "E-verify program" means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(o) Conveyances at facilities regulated by the mine safety and health administration in the United States department of labor, or its successor, pursuant to the "Federal Mine Safety and Health Act of 1977", Pub.L. 91-173, codified at 30 U.S.C. sec. 801 et seq., as amended;

Miscellaneous

23. Use the singular form whenever possible.
24. Numbers should be spelled out.
25. It is standard drafting practice to use the word "that" instead of "which" when indicating a restrictive clause, meaning the word, clause, or phrase following the word "that" is necessary to the meaning of the sentence and is not simply additional or descriptive information.
26. It is standard drafting practice to avoid the use of archaic terms. For example, instead of using "herein", use "in this section".
27. It is standard drafting practice to use "shall" for requirements and "may" for privileges or rights.
28. It is standard drafting practice to use gender-neutral language. Therefore, "his attorney fees and costs" should be written as "his or her attorney fees and costs" or "the property owner's attorney fees and costs".

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. The "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994" is a federal law. While it is unclear what specific provisions are being proposed, any specific provisions may conflict with existing federal law. Under the Supremacy Clause, clause 2 of article 6 of the United States Constitution, the federal law would control in the event of a conflict. Would the specific provisions conflict with federal law?
4. If a bank currently has a branch, what would the proponents require a bank to do with the branch? When would this action be required to happen?
5. What person or entity would be responsible for enforcing the proposed initiative?
6. What penalties would be imposed for violation the proposed initiative?