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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 measures 2011-2012 #68, 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2011-12 #67 to #69. The substantive comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiatives 2011-12 #67, and substantive questions and comments 2 through 10 addressed in the memorandum for 2011-12 #67 are hereby incorporated by reference in this memorandum.¹ All other substantive comments and questions in this memorandum are new.

¹ As the two initiatives were structured in a different manner, any references to subsection (11), (11.1), (11.2), or (11.3) in 2011-12 #67 shall be the same as (11) (a), (11) (b), (11) (c), or (11) (d), respectively, in 2011-12 #68.

Purposes

The major purposes of the proposed amendments to the Colorado constitution appear to be:

1. To reduce the number of signatures required to propose legislation through the initiative process from an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election to four percent.
2. 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. In the proposed initiative, there appears to be a title (The "Voter Protection Act") following the enacting clause but before the amending clause. This language is not assigned to any constitutional or statutory provision and so will not become law if this initiative is approved.
4. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. Following standard drafting practice, your amending clause should read: "In the constitution of the state of Colorado, section 1 of article V, **amend** (2); and **add** (11) as follows:".
5. 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.
6. It is standard drafting practice to use small capital letters to show the language being added to the Colorado constitution. For example, the changes in subsection (2) of section 1 would appear as: ". . . required to propose ~~any measure~~ A CONSTITUTIONAL AMENDMENT by petition AND AT LEAST FOUR PERCENT TO PROPOSE LEGISLATION . . .".

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. The word "subsection" does not need to precede the subsection number in this case. For example:

"Section 1. General assembly - initiative and referendum. (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ A CONSTITUTIONAL AMENDMENT by petition AND AT LEAST FOUR PERCENT TO PROPOSE LEGISLATION BY PETITION, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(11) (a) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "VOTER PROTECTION ACT".

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

8. It is standard drafting practice to place punctuation outside of quotation marks. For an example, see paragraph (a) in subsection (11) in the previous comment 6.
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 paragraph (a) of subsection (11) is an exception to this requirement, you might consider amending section 22 by adding the phrase "EXCEPT AS SET FORTH IN SECTION 1 (11) (a) OF ARTICLE V OF THIS CONSTITUTION," to the beginning of the section.
10. In paragraph (d) of subsection (11), you refer to "this section". If you intended to refer only to the new language of the proposed initiative, you should describe it as "THIS SUBSECTION (11)".

Substantive Comments and Questions

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

1. As used in section 1 (2) of article V in the proposed initiative, does "legislation" mean the same as "state legislation"? Does it include statutory and non-statutory provisions? For example, does it include an initiative with a title that is not added to a particular section of law, or a legislative declaration that is not added to the Colorado Revised Statutes?
2. With respect to the votes required to place a statutory initiative on the ballot, four percent of what amount? Assuming that it is the same base as for constitutional amendments, you may want to reference that amount in some way, though it may not be necessary to repeat the

entire phrase used for the amount for constitutional amendments.

3. In section 1 (11) (b) in the proposed initiative, the requirement states "except by either a", but there is no alternative to the three-fourths vote requirement. Was it your intention to present another alternative? Because the last phrase in the paragraph is introduced by the word "unless", it appears to be an exception to the three-fourths requirement, rather than an alternative. Stated differently, the words "either" and "unless" do not work together.
4. 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?