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Colorado General Assembly

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MEMORANDUM

March 21, 2012

TO: Karen Stauffer and Carol Baum

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #71, concerning PERA reform

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 purposes of the proposed amendment appear to be:

1. To include amounts deducted from pay for a cafeteria plan and transportation costs in the definition of salary for purposes of the statutory provisions governing the public employees' retirement association (PERA).
2. To create exceptions to the existing statutory provision specifying that PERA shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state by giving the office of state planning and budgeting (OSPB) administrative oversight over PERA, which oversight will be funded by the general assembly, and by requiring PERA to make an annual presentation of its budget to the joint budget committee of the general assembly.

3. To abolish the current PERA board of trustees (board) on January 1, 2013, and to terminate the terms of its members serving immediately prior to that date.
4. To create a new PERA board, effective January 1, 2013, and to specify that the board shall be comprised of the state auditor and the state treasurer, three people with certain qualifications to be appointed by the governor, two members or retirees of the PERA defined benefit plan elected by the members of that plan, and two members or retirees from the PERA defined contribution plan elected by members of that plan.
5. To specify certain details concerning the appointment and election of members to the PERA board and their terms of office, the limitation on the number of terms a board member may serve, how vacancies are filled, and the compensation and training requirements for members of the board.
6. To require the PERA board to submit an initial report to the general assembly with a preliminary assessment of PERA's financial status, including the defined benefit plan, and preliminary recommendations for improving PERA's financial stability.
7. To require the PERA board to contract with a private auditor to conduct an independent financial performance audit every two years of all transactions and accounts of PERA, and to be staggered with the audit conducted by the state auditor.
8. To require the PERA board of trustees to determine the appropriate investment objectives for the defined benefit plan and, after reviewing recommendations from two financial institutions, adopt investment policies for each of the funds entrusted to the board.
9. To reduce the maximum amortization period that is deemed actuarially sound for the defined benefit plan trust funds from forty to thirty years and to specify that an actuarial necessity shall exist when the defined benefit plan is not actuarially sound.
10. In the event of an actuarial necessity, to authorize the general assembly to modify the member and employer contributions and the benefits allowed to members of the defined benefit plan, so long as the benefits of members who are eligible for a service retirement benefit or a reduced service retirement are not modified.
11. To prohibit the attorney general from delegating his or her responsibilities as legal advisor to the PERA board to any legal advisor or in-house counsel hired by PERA and to require PERA to hire legal advisors to serve as in-house counsel for PERA's staff.
12. To increase the age and service requirements for service retirement benefits to sixty years old and thirty years of service for a PERA member who is not a state trooper, who is less than 40 years old on or before January 1, 2013, and whose retirement benefits have not vested on or before that date.
13. To require the general assembly to conduct an actuarial study before increasing benefits for any member in the defined benefit plan to ensure such increase would not cause the value of

PERA's assets to be less than 90% of PERA's actuarial accrued liabilities.

14. To abolish the current defined contribution plan and create a new defined contribution plan on January 1, 2013, which shall include employees hired on or after January 1, 2013, employees who were members of the former defined contribution plan, and members who were part of the defined benefit plan but who are eligible to become members of the defined contribution plan and elect to do so.
15. To require each member of the new defined contribution plan to contribute an amount equal to 2% less than the employer contribution rates specified for the defined benefit plan.
16. Beginning January 1, 2013, to increase contributions by employees in the defined benefit plan by one-half of one percent of the employee's salary annually until the amount of the employee contribution is equal to the amount of the employer contribution.
17. To authorize members in the defined contribution plan to make additional contributions to the member's individual account, and to specify the methods of transmitting and crediting contributions to a member's individual account for those enrolled in the defined contribution plan.
18. To require an employer of a member of the defined contribution plan to contribute the following percentages of the member's salary to the member's individual account: 8% for members in the state, school, and local government divisions, 10% for members who are state troopers, and 11% for members in the judicial division.
19. To require the difference between the employer contribution rates specified in statute for the defined benefit plan and the contribution rate paid by the employer into the defined contribution plan pursuant to the proposed initiative to be used to pay off unfunded liabilities in PERA's defined benefit plan.
20. To require any savings resulting for the administration of the defined contribution plan to be used to pay the unfunded liability of the defined benefit plan.
21. To reduce the employer contribution rate to the new defined contribution plan to a rate two percent less than the division membership employer rate for the defined benefit plan and cap employer contributions at that rate when the new pension plan has eliminated unfunded liabilities and is fully funded so as to meet the federal guidelines for state pension plans of funding one hundred percent of liabilities over a thirty-year period.
22. To specify procedures concerning the limitation on annual contributions, rollover contributions, vesting, and member control of investments.
23. To require the PERA board to select at least five investment alternatives for members of the defined contribution plan, to allow members to change investments regularly, to provide members with information describing investment alternatives, and to designate, subject to certain conditions, the companies from which investment products shall be purchased.

24. To specify that PERA and the employer are not responsible or liable for financial losses experienced by members of the defined contribution plan.
25. To require the PERA board to determine distribution options by which a member of the defined contribution plan may elect to receive the distribution of his or her individual account.
26. To specify that members of the defined contribution plan may participate in PERA's optional life insurance, long-term care insurance, voluntary investment program, and health care program.
27. To require the PERA board to provide members with quarterly reports regarding the members' accounts and administrative fees charged to members.
28. To authorize members of PERA's defined benefit plan to make an irrevocable election to participate in the defined contribution plan in lieu of the defined benefit plan, subject to certain eligibility requirements.
29. To provide for the transfer to the defined contribution plan of a member's individual account and the matching employer contributions to which the member would be entitled at the time of the transfer and to specify the requirements for the transfer.

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 word "enacted" should be capitalized.
2. 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 and headnote.
3. It is standard drafting practice to include an amending clause that reads as follows: "In Colorado Revised Statutes, 24-51-201, **amend** (1) and (2) introductory portion as follows:". See the Initiative Drafting Guide and Style Sheet for more examples of the correct form.
4. When amending a section of the Colorado Revised Statutes, strike type is used to delete language and SMALL CAPS (rather than ALL CAPS) are used to show new language. Current

law cannot be deleted without showing it as such in strike type. Stricken text should precede new text where such changes appear together. Please include in the proposed initiative all current law that is being deleted or changed by the proposed initiative and indicate those deletions or changes as explained above.

5. 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, such as the first letter of the first word of each sentence.
6. The word "section" should precede any section number in the text (i.e., section 24-51-101).
7. There are numerous spelling, punctuation, and formatting errors that need to be corrected. For example, numerals are used instead of letters (i.e., "part 160F" should read "part 16 of"); nonsensical phrases such as "tn ti-te" or "ti4t" appear throughout; ";s" should read "is"; blank lines appear in the middle of paragraphs; periods appear in the middle of sentences; etc.
8. In section 10 of the proposed initiative, the new section you are adding in part 2 of article 51 of title 24 should be "24-51-211.3".
9. When adding a new section, subsection, etc., to the Colorado Revised Statutes, make sure that the section or subsection number you are adding does not already exist in statute. For example, there is already a part 16 in article 51 of title 24; the next new part would be part 18. In section 4 of the proposed initiative, you are adding a new subsection (6) to section 24-51-203; however, currently, section 24-51-203 already has a subsection (6); the next new subsection would actually be (9); there is already a section 24-51-1009; and so on.
10. Please include an amending clause for "SECTION 24. TRANSPARENCY" as explained in comment #3 above.
11. Each section in the Colorado Revised Statutes/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 lower case letters.
12. It is standard drafting practice for the headnote to be followed immediately by the first subsection. For example, in the proponent's draft text, the section would look like this "**SECTION 1. Headnote.** (1) THIS AMENDMENT SHALL...".
13. The preferred method for separating a series in a list is to use a comma after the second to last item in the series.
14. References to the Colorado Revised Statutes should refer to articles within titles, for example: "under article 72 of title 24" and should be abbreviated as "C.R.S.".
15. The proposed initiative does not amend current statute. Please correct the initiative so that it amends current law. Incorrect sections include 24-51-101, 24-51-201, 24-51-205, 24-51-211, 24-51-216, 24-51-1001, 24-51-1501, and 24-51-402.

16. There are several instances where the text reads "which THAT" - either strike through "which" or delete "THAT".

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
3. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?
4. The proposed initiative amends the definition of "member" in section 24-51-101 (29), C.R.S., to include employees governed by section 24-52-201, C.R.S., however, part 2 of article 52 of title 24 has been repealed. What is your intent?
5. The proposed initiative amends the definition of "salary" in section 25-51-101 (42) (a) (II), C.R.S., to include amounts deducted from pay for a cafeteria plan and for transportation costs, while the existing definition of salary in section 25-51-101 (42) (a) (I), C.R.S., does not include such deductions. What is your intent in including these deductions in the definition of salary? What would be the effect of this change on the fiscal condition of the PERA trust funds and the benefits provided by PERA? Given that retirement benefits are calculated based on a member's highest average salary, would this have the effect of increasing the retirement benefit amount for future retirees for whom contributions, up until the time the initiative takes effect, have been based on the current, lower salary amount?
6. Section 24-51-201, C.R.S., of the proposed initiative states that the office of state planning and budgeting (OSPB) shall perform administrative oversight over PERA. If the proposed initiative becomes law, what will be the relationship between PERA and OSPB? What authority, if any, will OSPB have over PERA? Will OSPB have any authority to control, direct, or modify the actions of the PERA board or employees of PERA? Will OSPB have the authority to regulate any policies, personnel decisions, management decisions, or investment activities of the board or other employees of PERA? Will OSPB have the authority to adopt administrative rules?
7. In connection with question #6 above, will OSPB or the state exercise any control over the assets of PERA? Is it your intent that the revenues, assets, expenditures, or liabilities of PERA become those of the state?

8. The existing statutory definition of a special purpose authority in section 24-77-102 (15) (a), C.R.S., states that a special purpose authority "is not subject to administrative direction by any department, commission, bureau, or agency of the state". Section 24-77-102 (15) (b) (IX), C.R.S., currently lists PERA as one of the recognized special purpose authorities in the state. Given that the proposed initiative provides OSPB with administrative oversight of PERA, does this conflict with the existing definition of special purpose authority? Are administrative oversight and administrative direction distinct concepts?
9. The proposed initiative amends section 24-51-201 (1) (a), C.R.S., to require an annual report to the general assembly and the governor, which raises the following questions:
 - a. Is PERA or OSPB responsible for preparing the annual report? Would the proponents consider clarifying who would prepare the report?
 - b. What documents and disclosures regarding PERA's performance would need to be addressed or included in the report? How would the report assess how well PERA is performing its mission in furtherance of the policy changes implemented in accordance with the proposed initiative? Would the information in the report be different from the information found in existing reports and audits currently produced regarding PERA?
 - c. Besides requiring an annual report, are there any other specific actions the proponents intend for the OSPB to take that relate to PERA?
 - d. Section 24-1-136 (11) (a) provides that any requirement to report to the General Assembly expires on the third anniversary of the first such report unless the General Assembly continues the requirement by bill. Is this result acceptable to the proponents or have they considered addressing it in the text of the initiative?
10. Section 24-51-201 (1) (a), C.R.S., is further amended to require that PERA make an annual presentation of its budget to the joint budget committee. What information would be included in the presentation? What action, if any, could the joint budget committee take in response to the presentation? Does the proposed initiative give the joint budget committee, OSPB, or any other entity any control over PERA's budget?
11. Proposed section 24-51-201 (1) (b), C.R.S., states that funding for the administrative oversight of PERA by OSPB shall be appropriated by the general assembly. What specific costs of administration oversight would be funded? What would be the funding source for the costs of the administrative oversight of PERA? Would the funding be provided each year by the general fund? Do you have an estimate of the annual costs of the administration of PERA under the proposed initiative?
12. Currently, the administration of PERA is funded by a portion of employer contributions and its investment earnings. Are the costs of the administrative oversight of PERA different from the costs of the administration of PERA? Do you intend to require a new funding source for the costs associated with the administration of PERA? If so, what is the reason for the

different funding source?

13. What is your purpose in changing the composition of the PERA board as outlined in proposed section 24-51-203.5 (1), C.R.S.?
14. Under current law, the trustees appointed by the Governor to the PERA board must be confirmed by the Senate and no more than two appointees may be from the same political party. Proposed section 24-51-203.5 (1) (b), C.R.S., does not require that the Governor's appointees to the PERA board be confirmed by the Senate. Would you consider adding provisions to clarify if the Governor's appointees are subject to confirmation by the Senate and whether party affiliation should be considered when making the appointments?
15. Proposed section 24-51-203.5 (2) (c) and (2) (d), C.R.S., specify that two trustees of the board shall be members or retirees of the defined benefit plan who are elected by members of PERA and two trustees of the board shall be members of retirees of the defined contribution plan who are elected by the members of PERA. Are all PERA members allowed to vote for all four of these board members, regardless of whether they are in the defined benefit or defined contribution plan, or do members of the defined benefit plan and the defined contribution plan elect the board members from their respective plans? Are retirees of PERA allowed to vote for these four board members? If so, do retirees from the two plans vote to elect the members of their respective plans?
16. Proposed section 24-51-203.5 (3), C.R.S., specifies that a trustee of the board may not serve more than two consecutive terms. Is a person who has served two consecutive terms on the board eligible to be elected or appointed to the board again, after a break in his or her service on the board? Is there any limit to the number of non-consecutive terms that a person may serve on the board?
17. Proposed section 24-51-203.7, C.R.S., requires the PERA board to provide the general assembly with a preliminary assessment of the financial status of the association, including the defined benefit plan, and preliminary recommendations for improving the financial stability of PERA. How do the requirements of this section impact the recommendations of the current PERA board and the changes to PERA enacted by the general assembly during the 2010 legislative session, to improve the financial stability of PERA?
18. The proposed initiative amends section 24-51-204, C.R.S., to add a new subsection (6.5) that requires the PERA board of trustees to contract with a private auditor every two years to conduct an independent financial and performance audit. Section 24-51-204 (6), C.R.S., currently requires the state auditor to conduct such audits. What is the purpose of this provision? Would there be any difference in the substance of the audits? Would this new provision affect in any other way the authority or ability of PERA, the state auditor, or the legislative audit committee of the general assembly to conduct audits?
19. The proposed initiative amends section 24-51-211, C.R.S., to require a maximum amortization period of thirty, rather than forty years. Section 24-51-211, C.R.S., as included in the proposed initiative is not current law, as this section currently requires a thirty year

amortization period. What is your intent?

20. Proposed section 24-51-211.5, C.R.S., allows the general assembly to modify the benefits to members of the defined benefit plan who are not eligible for a full or reduced service retirement benefit in the event of an actuarial necessity. Does this mean that these members could potentially have their benefits eliminated? Are there any limitations on how the general assembly could modify the benefits? What constitutes actuarial necessity? Given that the authority to modify the provisions of a defined benefit plan are currently being litigated and may continue to be litigated, what if the courts establish a different standard for allowing such modifications?
21. Current PERA members may view any change in their benefits allowed by proposed section 24-51-211.5, C.R.S., as a violation of their contractual rights. Have you considered this issue and the likelihood that litigation may result from any changes to existing PERA members' benefits?
22. The proposed initiative amends section 24-51-216, C.R.S., to prohibit the attorney general from delegating his or her responsibilities as legal advisor to the PERA board to any legal advisor or in-house counsel hired by PERA. Section 24-51-216, C.R.S., as included in the proposed initiative is not current law, as this section currently authorizes the PERA board to select and retain legal counsel in the board's discretion. What is your intent?
23. What is the purpose of requiring separate legal advisors for the PERA board and for the PERA staff under proposed section 24-51-216 (2), C.R.S.? Does this restrict the ability of the attorney general to delegate his or her responsibilities to another attorney within the office of the attorney general? Does it require PERA to hire separate attorneys to represent PERA staff? Are the interests of PERA and the staff distinct, and would it create a conflict of interest for an attorney to represent both?
24. The proposed initiative amends section 24-51-602 (1), C.R.S. to create a new paragraph (a.7) in this section. Section 24-51-602 (1) (a.7), C.R.S., already exists. What is your intent regarding the current statutory version of this section? Paragraph (a.7) in the proposed initiative references any person whose "retirement benefits have not vested" on or before a specified date. What do you mean by "retirement benefits"?
25. In connection with question #24 above, it appears that section 24-51-602 (1.7) (a), C.R.S., of current law contains age and service requirements for service retirement benefits that are the same as those specified in the version of section 24-51-602 (1) (a.7), C.R.S., as it is amended by the proposed initiative. What is your intent in including the new paragraph (a.7) in the proposed initiative? Besides applying to members who are eligible to retire on different dates, what are the differences between current law and the applicable provision of the proposed initiative?
26. Section 24-51-602 (1.8), C.R.S., of current law includes age and service requirements for a service retirement benefit for certain members of the school division or Denver public schools division of PERA. The age and service requirements for these members are different

from the requirements for other PERA members. The proposed initiative does not make any distinction between members of the state, local government, and judicial divisions and the school and Denver public schools divisions of PERA. What is your intent regarding the relevant provisions of current law that conflict with the age and service requirements for a service retirement benefit in the proposed initiative?

27. The proposed initiative includes a new section 24-51-1009, C.R.S., however, the section already exists in statute. Section 24-51-1009, C.R.S., of the proposed initiative requires the general assembly to conduct an actuarial study before increasing benefits for any member or retiree in the defined benefit plan to ensure that the increases in benefits would not cause the actuarial value of PERA's assets to decline below 90% of the actuarial accrued liabilities of PERA. In current law, section 24-51-1009, C.R.S., already requires that an actuarial valuation be conducted each year in connection with annual increases of benefits. What does the proposed section 24-51-1009, C.R.S., require that is not already required by current law?
28. The proposed section 24-51-1601, C.R.S., requires all employees subject to PERA hired on or after January 1, 2013, as well as any existing or eligible defined contribution members, to become members of a new defined contribution plan. Why have you created a new defined contribution plan rather than using the defined contribution plan that is already in existence pursuant to part 15 of article 51 of title 24, C.R.S.? Have you conducted or received an actuarial analysis or other research regarding how requiring all new employees to become members of the defined contribution plan will impact the existing defined benefit plan, retirees of the existing defined benefit plan, or the state budget?
29. In section 18 of the proposed initiative, you amend section 24-51-1501, but in section 19 you repeal part 15 of article 51 of title 24. Assuming the sections 18 and 19 of the proposed initiative take effect on the same date, the repeal of part 15 will supercede the amendments to section 24-51-1501. What is your intent?
30. Proposed section 24-51-1602 (1) (b),C.R.S., requires the employee contribution rate for members in the proposed defined contribution plan to increase by one-half of one percentage point annually until the contribution rate equals the employer contribution rate beginning January 1, 2013. Can you clarify whether the proposed section 24-51-1602, C.R.S., is referring to the employer contribution to the new defined contribution plan or the employer contribution to the existing defined benefit plan?
31. Proposed section 24-51-1603, C.R.S., specifies that the employer contribution for members in the proposed defined contribution plan shall be an amount equal to 8% of salary for members in the state, school, and local government divisions, an amount equal to 10% of salary for state troopers, and an amount equal to 11% of salary for members in the judicial division. Why are the rates for members who are state troopers and for members of the judicial division are higher than for the state, school and local government divisions? What is the rate of the employer contribution for members in the Denver public schools division of PERA?
32. How did you derive the employer and employee contribution rates for members in the

proposed defined contribution plan, as specified in proposed sections 24-51-1602 and 24-51-1603, C.R.S.? Is there any research or studies that show that these amounts will provide sufficient funds for retiree benefits?

33. Proposed section 24-51-1603, C.R.S., requires the difference between the employer contribution rate for the defined benefit plan, as specified in section 24-51-401, C.R.S., and the employer contribution rate for the proposed defined contribution plan to be used to pay of unfunded liabilities of PERA's defined benefit plan. Therefore, isn't the employer contribution rate for members in the proposed defined contribution plan the same as the contribution rate for members in the existing defined benefit plan, except that only a portion of the contribution for members in the defined contribution plan will be deposited in the member's individual account?
34. What is your intent in using the phrase "directed to pay off unfunded liabilities [in the] association's defined benefit plan" in proposed section 24-51-1603 (3), C.R.S.? Are the moneys to be transferred to the trust funds of the defined benefit plan? If so, how and when would the transfers be made, and to which funds? Given that any new source of revenue for a trust fund has the effect of reducing the unfunded liability of the fund, must the moneys be used or accounted for in some special or different way than other moneys in the fund?
35. Proposed section 24-51-1603 (4), C.R.S., provides that when the "new pension plan" has eliminated unfunded liabilities and is fully funded in accordance with federal guidelines, the employer contribution rates shall be reduced to 2% less than the employer contribution rate for members of the defined benefit plan pursuant to current law and that the employer contribution shall be capped at this rate. This provision raises the following questions:
 - a. Does "new pension plan" refer to the new defined contribution plan or the defined benefit plan? If it refers to the proposed defined contribution plan, why would this plan have unfunded liabilities?
 - b. By "2% less than the division membership employer rate" do the proponents mean 2 percentage points lower, or that the rate is 2% lower than the existing rate? For example if the current contribution rate is 10%, would the reduced rate be 8% (two percentage points lower) or 9.8% (2% of 10% lower)?
 - c. Are employer contribution rates only reduced for the members in the defined contribution plan? Why would members of the proposed defined contribution plan receive a smaller employer contribution when the defined benefit plan is fully funded?
 - d. In connection with the cap on employer contributions, what happens if the defined contribution plan becomes underfunded again in the future?
 - e. Have you conducted or received an actuarial analysis on how long it would take to pay down the unfunded liability using the method described in the proposed initiative?

36. What are the federal guidelines for state pension plans that must be met in accordance with proposed section 24-51-1603 (4), C.R.S.? Would you consider specifying the guidelines referred to in the text of the proposed measure?
37. Proposed section 24-51-1604, C.R.S., states that if the annual additions to each member's individual account in the proposed defined contribution plan exceed the amount permitted under federal law, the board or the executive director of PERA are required to take necessary remedial action to correct the excess contribution. What is the amount permitted under federal law to which you refer? Would the changes to contribution rates pursuant to this section be made without input from or action by the general assembly?
38. Proposed Section 24-51-1607 (1) (b), C.R.S., requires that PERA allow a member "to change investments regularly". What is a regular change? Do you intend to limit irregular or one-time changes to investments? Do you intend to allow unlimited investment changes provided that the changes are made at regular times such as hourly, daily or weekly?
39. Proposed section 24-51-1608, C.R.S., specifies distribution options, presumably for PERA retirees, but refers to "members". Is it your intent to refer to PERA retirees in this section and other sections of the proposed initiative that relate to PERA members who are retired? If so, would you consider making a distinction between PERA members and PERA retirees where appropriate?
40. Currently, the distribution options for PERA retirees are specified in statute. Proposed section 24-51-1608, C.R.S., states that the board shall determine the distribution options by which a member of the proposed defined contribution plan may elect to receive the distribution of his or her individual account. If the options are not specified in statute, it is possible that the board could change the distribution options at any time without input from or action by the general assembly. Was this your intent?
41. Why is a defined contribution plan retiree eligible to enroll in the health care program as a benefit recipient, as specified in proposed section 24-51-1609 (3), C.R.S., only if the member elects a lifetime annuity distribution option? The health care program is supported by the health care trust fund to which a portion of employer contributions are diverted during a member's years of employment. Do members of the defined contribution plan contribute to the trust fund during their employment? Would they receive the same amount of premium subsidies upon retirement as members of the defined benefit plan?
42. Proposed section 24-51-1609 (1), C.R.S., states that a member of the defined contribution plan shall not be considered a member or retiree for the purposes of parts 4 to 11 of article 51 of title 24, C.R.S. Proposed subsection (4) of the same section specifies that a member of the defined contribution plan who has met certain requirements and returns to PERA employment shall not be subject to the provisions of part 10 of article 51 of title 24, C.R.S., concerning employment after retirement. Why have you included proposed subsection (4) of section 24-51-1609, C.R.S., when proposed subsection (1) of the same section already specifies that part 10 does not apply to members, and presumably retirees, of the proposed defined contribution plan?

43. Does the proposed initiative repeal the existing statutory authority for a member who resumes membership in PERA to purchase forfeited service credit? Why have the proponents included section 24-51-318, C.R.S., in the proposed initiative?
44. What is your intent in striking the language in sections 24-51-402 (3) (a), and 38-13-117, C.R.S., in the proposed initiative? What do these changes accomplish?
45. Section 1 (4) of article V of the Colorado constitution provides that an initiated measure 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". Section 25 of the proposed initiative appears to provide that the measure shall take effect January 1, 2013, upon voter approval and certification by the secretary of state. What is the intent of this provision of the proposed initiative? Does it conflict with the constitutional provision referenced above?