

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

October 13, 2011

TO: Trenton Parker and Earl Brauch

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #41, concerning government employee rights.

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 bar all state, county, and municipal employees, with the exception of medical professionals, from receiving special rights, immunities, privileges, or procedures of law that are not also awarded to other citizens 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.

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, this phrase should be added to the beginning of the proposed initiative.
2. Pursuant to article V, section 1 (2), 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.
3. Standard drafting practice for formatting a proposed initiative includes:
 - 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;
 - When amending a section of the Colorado constitution or Colorado Revised Statutes, strike type is used to delete language (for example, ~~this is strike type~~) and small capital type is used to show new language (for example, THIS IS SMALL CAP);
 - 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.
4. The following is an example of formatting that would amend the Colorado Revised Statutes by adding a new subsection to 24-18-114, C.R.S. This is for informational purposes only and does not suggest where to place the language of the proposed initiative.

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

In Colorado Revised Statutes, 24-18-114, **add** (5) as follows:

24-18-114. Equal rights of citizens. (5) ALL COLORADO STATE, COUNTY, OR MUNICIPAL EMPLOYEES, EXCEPT MEDICAL PROFESSIONALS, SHALL BE BARRED....

5. In its present form, the proposed initiative reads as a ballot question. To conform to standard drafting practice, the text of the proposed initiative should be stated in the same form that the proposed law (whether constitutional or statutory) will read once codified. Among other things, this means the text should express its basic requirements using the language of clear, easy to understand legal commands, e.g., "All Colorado state, county, or municipal employees shall be barred from having..."

7. It is standard drafting practice to only capitalize proper nouns such as "Colorado". For example, "Citizens of Colorado" should be written as "citizens of Colorado".
8. The word "employee" needs to be made plural, i.e., "employees".

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? Under section 1 (4) of article V of the Colorado constitution, an initiative approved by the voters becomes law from and after the date of the official declaration of the vote thereon by the governor, but not later than 30 days after the vote has been canvassed. Unless otherwise indicated, the effective date of the proposed initiative will be as specified in this constitutional provision. Is this effective date acceptable to you, or do you have another effective date in mind?
3. What is the proponents' rationale for the proposed initiative?
4. What do the proponents mean by: a) "special rights"; b) "immunities"; c) "privileges"; or d) "procedures at law"? Would the proponents provide specific examples of what they mean for each of these 4 items?
5. What is the proponents' rationale for the exclusion of "medical professionals"? What do the proponents mean by "medical professionals"?
6. How would the proposed initiative affect the Public Employees Retirement Association ("PERA") and, in particular, any contractual rights state employees have to retirement or other benefits under PERA?
7. Have the proponents examined whether and to what extent it would be constitutional for restrictions to be placed in the state constitution on the rights or other legal protections granted to municipal employees under the home rule provisions of the state constitution? What is the statewide interest implicated in limiting the rights or other legal protections granted to municipal employees?
8. What do proponents mean by "citizens of Colorado"? Assuming citizens include minors and retired persons, how would the state or a county or municipality ever be able to satisfy the requirements of the proposed initiative?
9. Under a literal meaning of the proposed initiative, it would appear to prevent any person employed by the state or a county or municipality from receiving any form of right, immunity, privilege, or procedure unless every other citizen of the state receives the identical panoply of rights, immunities, privileges, or procedures? Is this an accurate and fair interpretation of proponents' intent? If not, why not?

10. Would a right, immunity, privilege, or procedure include merely being employed by the state or a county, or a municipality? If not, why not? If so, why would implementation of the proposed initiative not essentially bar the state or any county or municipality from having any employees at all since the very fact of employment with the governmental body gives such individuals a right, immunity, privilege, or procedure that, by definition, is not equally shared, possessed, or enjoyed by others not employed by those governmental bodies?