

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

February 13, 2012

TO: Phyllis Alleman and Tom Johnson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #57, concerning distribution of lottery proceeds

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 amendment appears to be to change the allocation of lottery moneys to divide the money among education, parks and recreation, and highways.

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.

The Proposed Initiative is an Idea Rather Than a Specific Proposed Text

1. 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 or initiated law 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. 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 Colorado constitution or statutes its provisions should be inserted. The Colorado constitution and statutes are available online at <http://www.michie.com/colorado/>. 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.

Format/Organization of Initiative

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 or Colorado Revised Statutes, followed by the text of the initiative, followed by the effective date of the initiative, if one is specified. If none is specified, the initiative would take effect upon proclamation by the governor of the results of the election.
3. 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 headnotes. It is also standard practice to bold the section number.

Enacting Clause

4. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by 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.

Amending Clauses

5. It is standard drafting practice to include an amending clause telling the reader what is being added to, repealed from, or amended in the Colorado constitution or Colorado Revised Statutes. For example, if your intention is to add a part to article 2 of title 42 of the Colorado Revised Statutes, include an amending clause after the section number that reads as follows: "In Colorado Revised Statutes, **add** part ___ to article 2 of title 42 as follows:". 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, **amend** section ___ of article ___ as follows:".

Headnotes

6. 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. 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.

Numbering of Statutes and Constitution

7. For ease of reading, constitutional and statutory provisions are divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs using the following structure: Subsections for example, "(1)"; followed by paragraphs, for example, "(a)"; followed by subparagraphs, for example, "(I)"; ending with sub-subparagraphs, for example, "(A)". The proponents may want to consider breaking up the text of the proposed initiative into separate subsections, etc.

This is an example if you are amending the Colorado constitution:

SECTION 1. In the constitution of the state of Colorado, article XXVII, **amend 3 (1) (b)** as follows:

Section 3. Moneys allocated to Trust Fund. (1) Beginning with the proceeds from the fourth quarter of the State's Fiscal Year 1992-1993, all proceeds from all programs, including Lotto and every other state-supervised lottery game operated under the authority of Article XVIII, Section 2 of the Colorado Constitution, whether by the Colorado Lottery Commission or otherwise (such programs defined hereafter in this Article as "Lottery Programs"), net of prizes and expenses of the state lottery division and after a sufficient amount of money has been reserved, as of the end of any fiscal quarter, to ensure the operation of the lottery for the ensuing fiscal quarter (such netted proceeds defined hereafter in this Article as "Net Proceeds") are set aside, allocated, allotted, and continuously appropriated as follows, and the Treasurer shall distribute such proceeds no less frequently than quarterly, as follows:

(b) For each quarter including and after the first quarter of the State's Fiscal Year 1998-1999:

(I) ~~Forty~~ THIRTY percent to the Conservation Trust Fund for distribution to municipalities and counties and other eligible entities for parks, recreation and open space purposes;

(II) ~~Ten~~ TWENTY percent to the Division of Parks and Outdoor Recreation for the acquisition, development and improvement of new and existing state parks, recreation areas and recreational trails; and

(III) All remaining Net Proceeds in trust to the Board of the Trust Fund, provided, however, that in any state fiscal year in which the portion of the Net Proceeds which would otherwise be given in trust to the State Board of the Trust Fund exceeds the amount of \$35 million, to be adjusted each year for changes from the 1992 Consumer Price Index-Denver, the Net Proceeds in excess of such amount or adjusted amount shall be allocated to the General Fund of the State of Colorado.

This is an example if you are amending the Colorado Revised Statutes:

SECTION 1. In Colorado Revised Statutes, 33-60-104, **amend** (1) as follows:

33-60-104. Distribution of net lottery proceeds beginning first quarter of fiscal year 1998-99. (1) For the first quarter of fiscal year 1998-99 and for each quarter thereafter, the state treasurer shall distribute net lottery proceeds as follows:

(a) ~~Forty~~ THIRTY percent to the conservation trust fund for distribution to municipalities and counties and other eligible entities for parks, recreation, and open space purposes;

(b) ~~Fer~~ TWENTY percent to the division of parks and outdoor recreation for the acquisition, development, and improvement of new and existing state parks, recreation areas, and recreational trails; and

(c) All remaining net lottery proceeds in trust to the trust fund board; except that, in any state fiscal year in which the portion of net lottery proceeds which would otherwise be given in trust to the trust fund board exceeds the adjusted amount of thirty-five million dollars as determined by the state treasurer in accordance with subsection (2) of this section, the net lottery proceeds in excess of such adjusted amount shall be allocated to the general fund.

Strikes/Small Caps/Capitalization

8. When you are amending a section of the Colorado constitution or Colorado Revised Statutes, use strike type (~~strike type~~) to delete language and small caps (THIS IS SMALL CAPS; THIS IS ALL 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.

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

Commas

10. 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".
11. It is standard drafting practice to:
 - a. Set off certain phrases (i.e., introductory or parenthetical phrases) with commas;

- b. Use commas to connect two independent clauses;
- c. Separate coordinate adjectives with a comma.

Definitions

12. 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.

13. Definitions should be in alphabetical order.
14. 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

15. 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 by completing an electronic form on the official web site of the secretary of state

(b) The official web site referenced in paragraph (a) of this subsection (1) must be fully secure.

Miscellaneous

16. Use the singular form whenever possible.
17. Numbers should be spelled out.
18. 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.
19. It is standard drafting practice to avoid the use of archaic terms. For example, instead of using "herein", use "in this section".
20. 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. Under current law, section 24-35-210 (1), C.R.S., revenues from state-run lotteries are allocated first for prizes, second for the expenses of the state lottery division, and then as specified above on pages 3 and 4 (Colorado constitution article XXVII, section 3 (1) (b); section 33-60-104, C.R.S.). Does the proposed initiative alter the preliminary allocation of lottery revenues for prizes and the division?
4. What is meant by "Colorado education" (for example, preschools, kindergartens, elementary schools, middle or high schools, charter schools, home schooling, or higher education)? Do you want to specify the institutions that would control this money (for example, school districts, state board of education, Colorado commission on higher education)? Do you want to specify the funds that the revenues would be transferred into? Do you want to specify particular limits on how the money can be spent?
5. What is meant by "Parks and Recreation"? Do you want to specify the institutions that would control this money (for example, the state board of the great outdoors Colorado trust fund, section 6 of article XXVII of the Colorado constitution and article 60 of title 33, C.R.S.; the division of parks and wildlife, section 33-9-104, C.R.S.; the parks and wildlife board, section 33-9-101, C.R.S.; counties and municipalities, article 21 of title 29, C.R.S.)? Do you want to specify the funds that the revenues would be transferred into? Do you want to specify particular limits on how the money can be spent?
6. What is meant by "Colorado Highways" (for example, federal highways; state highways; county roads; municipal streets)? Do you want to specify the institutions that would control this money (for example, the department of transportation, section 43-1-103, C.R.S.; the transportation commission, section 43-1-106; boards of county commissioners or governing bodies of municipalities)? Do you want to specify the funds that the revenues would be transferred into? Do you want to specify particular limits on how the money can be spent?