

# 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

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 #72, 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 require all information, publications, documents, and other communications and materials produced, received, housed, or used by PERA and PERA employees to be transparent and open to public inspection pursuant to article 72 of title 24, C.R.S.
2. To require all PERA board meetings and meetings between members of the PERA board to be open under the Colorado Sunshine Law.

### 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 word "enacted".
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/Colorado Revised Statutes, followed by the text of the initiative.
3. 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 part 18 to title 51 of article 24 of the Colorado Revised Statutes, include an amending clause that reads as follows: "In Colorado Revised Statutes, **add** part 18 to article 51 of title 24 as follows:".
4. 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.
5. 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...".
6. The preferred method for separating a series in a list is to use a comma after the second to last item in the series.
7. 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.".
8. Constitutional/Statutory provisions are usually divided into component parts using the following structure: Subsection, or, for example, "(1)", followed by paragraphs, or, for example, "(a)" followed by subparagraphs, or, for example, "(I)", ending with sub-subparagraphs, or, for example, "(A)".
9. 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. The proponents should insert a left tab at the beginning of the first line of the

section heading and paragraph (B).

10. 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, the first sentence would begin "THIS AMENDMENT SHALL BE KNOWN AS..."

### **Substantive Comments and Questions**

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

1. 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.
2. 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?
3. What will be the effective date of the proposed initiative?
4. The proposed initiative states that specified records of PERA are transparent and open to inspection pursuant to article 72 of title 24. Is it your intent to refer to the "Colorado Open Records Act", part 2, of article 72, of title 24, C.R.S., commonly known as CORA?
5. CORA excludes certain records from public inspection including trade secrets, software, and security plans. Do you intend the CORA exemptions apply to PERA records? If so, would you consider adding language to specify what PERA records are not subject to public inspection?
6. Could the requirements the proposed initiative potentially violate the privacy rights of PERA members and retirees if personal information of such members and retirees becomes a matter of public record?
7. The proposed initiative states that all meetings of the PERA board and members of the PERA board shall be covered under the Section 24-6-402, C.R.S., the Colorado Open Meetings Law. The Open Meetings Law generally applies to two or more members of a state public body at which public business is discussed. The proposed initiative appears to apply to a member of the PERA board. Do the proponents intend any event involving one member of the PERA board be open to the public? If so, are there any activities of an individual member of the PERA board that are not an open meeting? For example, would the public be allowed to enter the home of a PERA board member if they believe that the board member is discussing PERA related business with his or her spouse?