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Colorado General Assembly

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MEMORANDUM

May 25, 2011

TO: Mason Tvert and Brian Vicente

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measures 2011-2012 #29, #30, #31, #32, #33, #34, #35, and #36 concerning the use and regulation of marijuana

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 initiatives.

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. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposals.

Purpose

The major purpose of the proposed initiatives appears to be:

To formalize within article XVIII of the state constitution a framework for the lawful possession, use, display, growth, manufacture, transfer, and transport of marijuana within the state.

Form

The proponents have submitted eight versions of essentially the same initiative proposal, with each version varying slightly from the other versions, as follows:

Proposal #29 is the base version of the proposal ("base version"), including none of the additional provisions that appear in the other versions.

Proposal #30 ("THE version") is the base version with the addition of three provisions:

- A provision that requires the general assembly to enact an excise tax to be levied upon marijuana sold or otherwise transferred from a marijuana cultivation factory to a marijuana product manufacturing facility or to a retail marijuana store ("T provision");
- Certain provisions relating to industrial hemp ("H provisions"); and
- A provision that earmarks certain tax revenues to the public school capital construction assistance fund created by article 43.7 of title 22, C.R.S. ("E provision").

Proposal #31 ("H version") is the base version with the addition of the H provisions.

Proposal #32 ("T version") is the base version with the addition of the T provision.

Proposal #33 ("E version") is the base version with the addition of the E provision.

Proposal #34 ("TE version") is the base version with the addition of the T and E provisions.

Proposal #35 ("HE version") is the base version with the addition of the H and E provisions.

Proposal #36 ("TH version") is the base version with the addition of the T and H provisions.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. 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 initiatives as suggested below.

Numbering of Statutes and Constitution

Constitutional and statutory provisions are usually organized using the following structure:

- Subsection, for example, "(1)";
- followed by paragraphs, for example, "(a)";
- followed by subparagraphs, for example, "(I)";
- ending with sub-subparagraphs, for example, "(A)".

Please rename the provisions of the proposed initiatives accordingly:

- Subsection "1." should be subsection "(1)".
- Paragraph "(B)" should be paragraph "(b)".
- Subparagraph "(3)" should be subparagraph "(III)".

NOTE: For the sake of simplicity in this letter, when we refer to provisions of the proponents' initiative proposals, we will use the numbering format found in the proposals.

Amending Clauses

It is standard drafting practice to include an amending clause telling the reader what is

being added to or amended in the state constitution or Colorado Revised Statutes. For example, if your intention is to add a new article to title 39 of the Colorado Revised Statutes, you would include an amending clause that reads as follows: "Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:".

Each version of the proposed initiative includes an amending clause that reads as follows: "Article XVIII of the constitution of the state of Colorado is amended by the addition of a new Section to read:". Please consider restating this amending clause to reflect standard drafting practice (i.e., "Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:").

Punctuation

In Subsection 1 of the proposed new Section 16 of the state constitution, please use a colon rather than an em-dash to introduce the indented text that follows the introductory portion of the Paragraph (B). Also, please use Roman numerals to identify the indented text as subparagraphs. (I.e., ". . . should be regulated in a manner similar to alcohol so that:

- (I) Individuals will have . . . ;
- (II) Selling, distributing, or transferring . . . ;
- (III) Driving under the influence . . . ;
- (IV) Legitimate, paying business people . . . ; and
- (V) Marijuana sold in this state . . .").

Capitalization

1. To reflect standard drafting practice, please do not capitalize any word other than the first word in the headnote of the proposed new Section 16. I.e., the headnote should read "**Section 16. Personal use and regulation of marijuana.**".

2. To reflect standard drafting practice, please do not capitalize any word other than the first word in the headnotes of the proposed new subsections. I.e., the headnote to Subsection 3. should read "**(3) Personal use of marijuana.**".

Wording

In Subparagraph 2 of Paragraph (A) of Subsection (5) of the new Section 16, the proponents use the wording "...at the time this article takes effect..." when the proper reference is "at the time this section takes effect...".

Sentence Structure

1. In the fourth subparagraph under Paragraph (B) of Subsection 1 of the proposed new Section 16, consider reordering the language of the sentence to read as follows: "Legitimate, taxing business people, and not criminal actors, will conduct sales of marijuana; and".

2. To eliminate redundancy in Paragraph (C) of Subsection 1 of the proposed new Section 16, consider deleting the words "declared to be".

Definitions

1. For clarity, in the definition of "'Marijuana' or 'marihuana'", please consider replacing the word "It", which begins the second sentence of the definition, with the words "'Marijuana' or 'marihuana'".
2. In the definition of "Medical marijuana center" (and elsewhere), please refer to Article XVIII as "this article" or "this article XVIII", as this language is intended to appear within Article XVIII.

Substantive Comments and Questions

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

1. Subsection (5.5) of section 1 of article V of the state constitution requires each proposed initiative to have a single subject. What is the single subject of each of the proponents' initiative proposals?
2. The proponents have submitted eight versions of essentially the same initiative proposal, with each version varying slightly from the other versions. What are the proponents intentions with this strategy? I.e., do the proponents intend to proceed with more than one of the eight proposed initiatives? If not, when will the proponents determine which of the versions will advance and which will not? If so, have the proponents considered the results if two or more of the initiatives pass, thus creating conflicting provisions within the constitution?
3. In Paragraph (C) of Subsection 1 of proposed initiatives #29, 32, 33, and 34 and in Paragraph (D) of Subsection 1 of proposed initiatives #30, 31, 35, and 36, the proponents should consider replacing the word "assure" with "ensure" to be consistent with the use of the word "ensure" in Paragraph (B) of the same subsection.
4. In Paragraph (B) of Subsection 3, the proponents may wish to consider a possible conflict if the six or fewer marijuana plants constitute more than the one ounce or less of marijuana allowed in Paragraph (A) of Subsection 3.
5. In Paragraph (D) of Subsection 3, the proponents may wish to clarify what they mean (or do not mean) by the phrase "consumption of marijuana ... in a manner that endangers others".
6. Subparagraph (2) of paragraph (A) of Subsection 5 of the proposed initiative ("**5. Regulation of Marijuana.**") refers to the "Colorado Medical Marijuana Code". Please clarify this reference and other such references within the proposed initiatives by adding the following language after "Code,": "article 43.3 of title 12, Colorado Revised Statutes,".
7. In Subparagraph (3) of Paragraph (A) in Subsection 5, the proponents may wish to clarify what they mean (or do not mean) by the phrase "qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment".

8. In Subparagraph (5) of Paragraph (A) in Subsection 5, and in Paragraph (C) of Subsection 6, the proponents may want to clarify the phrases "under the age of twenty-one;" and "younger than twenty-one years of age" by using the language "twenty years of age or younger;".

9. Subparagraph (7) of paragraph (A) of Subsection 5 states that the department of revenue shall establish regulations for "health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana". The proponents may consider whether another state agency (such as the department of public health and environment, department of labor and employment, or department of regulatory agencies) is a more appropriate agency for the establishment of health and safety regulations, or whether to require the department of revenue to consult with another state agency on the promulgation of such regulations.

10. In Subparagraph (4) of Paragraph (G) of Subsection 5 and in Paragraph (H) of Subsection 5, the proponents might wish to clarify what type of notice, as well as time requirements, is required by the department and localities upon denial of an application for a license.

11. Paragraph (H) of Subsection 5 provides a mechanism through which an applicant for a license may resubmit its application directly to a locality if the state department of revenue does not issue a license to the applicant within 90 days of the receipt of application and does not notify the applicant of the reasons for its denial, or if the department has adopted regulations but has not issued any licenses by January 1, 2014. However, in Paragraph (C) of Subsection 1, the proponents state that the matters addressed by the proposed initiative are "matters of statewide concern". In determining the relative authority between the General Assembly and home rule municipalities, there are three broad categories of regulatory matters to consider: (1) Matters of local concern; (2) Matters of statewide concern; and (3) Matters of mixed local and statewide concern. The General Assembly has exclusive authority to legislate in areas of statewide concern. Would the proponents consider amending the proposed initiatives to eliminate potential conflict with the home rule provisions?

12. Paragraph (D) of Subsection 6 states that a "school" shall not be prohibited from regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in a school's property. Do the proponents intend this provision to apply to both public and private schools? Do the proponents intend this provision to apply to colleges, universities, and other higher education institutions? The proponents may consider defining "school" in the definitions section of each proposal.

13. Subsection 8 of each version of the proposal states that all of the provisions of the new section 16 are "self-executing". However, each version of the proposal requires the department of revenue to adopt regulations for the implementation of the new section 16; each version of the proposal requires each locality of the state to enact an ordinance or regulation specifying an entity within the locality that is responsible for processing applications submitted for a license to operate a marijuana establishment; each version that includes the T provision requires the general assembly to enact a tax; and each version that includes the H provisions requires the general assembly to enact legislation governing the cultivation, processing, and sale

of industrial hemp. The proponents may consider amending the language in subsection 8 to account for the provisions within each proposal version that do not appear to be self-executing.