

# 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: ols.ga@state.co.us

### MEMORANDUM

March 14, 2014

**TO:** Caitlin Leahy, Gregory Diamond, and Martha Tierny

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #89, concerning local government regulation of environment

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 to the Colorado Constitution appear to be to:

1. Create a public right to the environment; and
2. Effectuate that right by:

- a. Designating the state and local governments as trustees with a duty to conserve the environment; and
- b. Authorizing local governments to enact laws that are more protective of the environment than state 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. The proposed initiative should be revised to indicate the number of the article being added to the Colorado constitution. The constitution currently has 29 articles, so you should consider making the proposed initiative article XXX of the Colorado constitution. If the proponents choose to number the article as XXX, the article number should appear in all capital, bold-faced type and the heading should appear in bold, lower-case type; both should be centered and placed after the amending clause as shown in technical comment 3.
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the language is being changed; see the format shown in technical comment 3.
3. It is standard drafting practice to number, before the amending clause, each section, part, etc., that is being amended, repealed, or added with a section number. For example, the amending clause and heading should read as follows:

**SECTION 1.** In the constitution of the state of Colorado, **add** article XXX as follows:

**ARTICLE XXX**  
**Conservation of Colorado's Environment**

4. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section as shown in the example in technical comment 3.
5. It is standard drafting practice for the language of each section to directly follow the headnote, as shown in the example in technical comment 7.

6. Although it is standard drafting practice to show all new language in small capitals, the section numbers and headnotes should not be shown in small capitals. See the example shown in technical comment 7.
7. It is standard drafting practice to separate items in a series of three or more items with commas and to use a comma after the second to last item in the series; however, when an item in the series contains commas, such as a series within a series or a parenthetical phrase, it is common to separate the larger series with semi-colons. For example, the series in section one should be written as follows:

**Section 1. Purpose and findings.** THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT COLORADO'S ENVIRONMENT IS THE COMMON PROPERTY OF ALL COLORADANS; CONSERVATION OF COLORADO'S ENVIRONMENT, INCLUDING ITS CLEAN AIR, PURE WATER, AND NATURAL AND SCENIC VALUES IS FUNDAMENTAL; AND COLORADO'S ENVIRONMENT SHOULD BE PROTECTED AND PRESERVED FOR ALL COLORADANS, INCLUDING GENERATIONS YET TO COME.

8. In section 1, the use of the word "that" in the series is necessary only in the first item in the series. It is not necessary to repeat "that" for the second and third items in the series, and the word should be omitted. Please see this correction reflected in the example shown in technical comment 7.
9. In sections 1 and 2, the proponents use the phrase "clean air, pure water, natural, and scenic values." This phrase is not grammatically correct as written. The proponents should consider rewriting the phrase as follows: "clean air, pure water, and natural and scenic values." This correction is reflected in technical comment 7.
10. The word "shall" should be used to indicate that a person has a duty; it should not be used as a future-tense verb. See section 2-4-401 (6.5) and (13.7), Colorado Revised Statutes, which define "must" and "shall." Simple present tense verbs should be used when possible. For example:
  - a. In section 2, write "THE PROVISIONS OF THIS ARTICLE APPLY TO THE STATE OF COLORADO...." or "THIS ARTICLE APPLIES TO THE STATE OF COLORADO...."
  - b. In section 3, write "LOCAL GOVERNMENTS HAVE THE POWER TO ENACT LAWS ...."

- c. In the last sentence of section 3, write "THE MORE RESTRICTIVE AND PROTECTIVE LAW OR REGULATION GOVERNS."
11. In the sixth line of section 2, there is an unnecessary comma between "Colorado" and "and"; the comma should be removed.

## **Substantive Comments and Questions**

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

1. The constitution requires each initiative to contain only a single subject. What is the single subject for the proposed initiative?
2. The proposed heading of the new article refers to "conservation" of the environment, and the second sentence of section 2 directs the state and local governments, as trustees, to "conserve" the environment. But the first sentence of section 2 creates a right in the people only "to Colorado's environment", not to a "clean" environment or a "conserved" or "natural" environment. Colorado's environment has already been substantially altered by humans, including Native Americans, early American miners, pioneers, farmers and ranchers, large urban populations, extensive modern mining developments, and permits that allow releases of pollutants into the environment.
  - a. What kind of environment does the proposed initiative give a right to?
  - b. Can the governmental trustees balance the environmental right granted by the proposed initiative against other rights, such as the right to enjoy and develop personal and real property, even if the exercise of these other rights might result in impacts on the environment?
  - c. If so, what is the policy justification for favoring a local government's balancing of those interests over the state's balancing, as specified in the second and third sentences of section 3?
3. The second sentence of section 3 specifies that local governments can enact laws that are more protective of the environment to "facilitate the conservation of Colorado's environment." Do members of the public have any role in facilitating the conservation of Colorado's environment, such as the ability to file a lawsuit to enforce the right granted in the proposed initiative?