

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

January 30, 2014

TO: Clifton Willmeng and Lotus

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #63, Right to Local Self-Government

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:

1. Stating that the people of Colorado have a right to local self-government.

2. Providing that this right to local self-government cannot be preempted by any other state, federal, or other law, or any other limitations set forth by the constitution of the state 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. In amending the constitution, standard drafting practice uses the following amending clause: “In the constitution of the state of Colorado, **add** section 32 to article II as follows:”.
2. To conform to standard drafting practice, do not underline terms in the proposed initiative.
3. In separating paragraphs in the constitution, standard drafting practice is to number each paragraph, as so: “(1) As all political power...”
4. When creating a headnote at the beginning of a paragraph, standard drafting practice is to use **bold** rather than underlined emphasis. Additionally, when using this subject heading, the punctuation following the emphasized statement is also subject to the bold coding.
5. United States is spelled out and initial capped, not abbreviated as “U.S.”.
6. “Constitution”, "Article", and “State” are not initial capped.
7. Internal citations are written as “section 1 (4) of article V of this constitution.”
8. Because section 1(4) of article V of the Colorado constitution already governs the effective date of initiatives, it is not necessary to include an effective date in the proposed initiative.

Substantive Comments and Questions

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

1. 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?
2. The proposed initiative is located under article II of the state constitution (the state “Bill of Rights”). As this article is concerned principally with *individual* rights and liberties, is this the most appropriate location for the “Community Rights Amendment”?
3. The rights enunciated in the proposed initiative are enjoyed by “each county, city, town, and any other municipal subdivision or other local community within the [s]tate”.
 - a. If cities and counties (Denver and Broomfield) are included, should such entities be specifically mentioned?
 - b. Are any types of local governments excluded from the purview of the “Community Rights Amendment”? Special districts? School districts?
4. Many local governmental entities are political subdivisions of the state, organized for the convenient administration of state government and possessing only those powers conferred by the legislature. However, the proposed initiative alludes to “an inherent and inalienable right to local self-government”. Does such a right currently exist, or is this right new? If the latter, is it the proponents’ intent to alter the fundamental character of local governments?
5. The proposed initiative purports to insulate local laws from preemption by any international, federal, or state laws.
 - a. Federal preemption of state or local law is premised on the Supremacy Clause of the United States constitution (art. VI, clause 2), which provides that the laws of the United States “shall be the supreme [l]aw of the [l]and ...”. The proposed initiative appears to upend this preemption doctrine so that a local law would supersede a federal law. How do the proponents intend the initiative to withstand federal preemption analysis?
 - b. The proposed initiative similarly upends well-settled law in support of the proposition that subordinate political subdivisions cannot unilaterally act to nullify the operation and effect of laws that cannot be abridged by local action, regardless of the type of local government acting and the matter with which a particular local law

is concerned. Are the proponents creating a new preemption regime under which local laws take priority of state laws, even (for example) in matters of traditional statewide concern?

- c. Would the state have the authority to enact any laws on issues of statewide concern that could not be preempted by local law and, if so, what would the standard be for these laws? Could a local government, for example, enact its own traffic laws that conflict with traffic laws used elsewhere in the state? Its own conflicting commercial code? Consumer protection laws? Criminal laws? Labor laws? Liquor laws?
 - d. Under article XX, section 20 of the Colorado constitution, “home rule cities” have plenary authority over issues solely of local concern, and a home rule city is not inferior to the general assembly with respect to local and municipal matters that are within this authority. Under the proposed initiative, will statutory cities in effect enjoy the same quantum of power as home rule cities?
 - e. Many local governmental boundaries in Colorado overlap. If every type of local government act is supreme, what happens when the laws of overlapping local governmental entities conflict? How do courts determine which law should prevail?
6. The breadth of the proposed initiative appears to be limited only by the proscription on local governments restricting the “fundamental rights of individuals, their communities, or the natural environment...” Is your intent to allow local governments to enact laws on any matter, or do traditional limitations (e.g., the purposes for which a special district is formed) still apply?
7. The proposed initiative creates a right to alter or eliminate the rights, powers, and duties of for-profit businesses entities that usurp or conflict with the fundamental rights of people, their communities, and the natural environment.
- a. What rights, powers, and duties of businesses could be altered or eliminated?
 - b. What are the “fundamental rights” of communities? Of the “natural environment”? What results if the fundamental rights of individuals, communities, and the natural environment conflict?

- c. Are the rights of for-profit businesses always trumped by the rights of the people, their communities, and the natural environment? Would a property right of a business, for example, always be subject to any environmental regulation adopted by a local government? Would there be any attempt to weigh or balance the rights against each other?
 - d. Why may local governmental entities act with regard to for-profit entities but not nonprofit organizations?
8. Who would have the authority to enforce the provisions of the proposed initiative? The local government itself? Citizens residing within the boundaries of the local government? Both?