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MEMORANDUM

March 31, 2014

TO: Craig Hall, Paula Rhoads Hook, and Brian Memeth
FROM: Legislative Council Staff and Office of Legislative Legal Services
SUBJECT: Proposed initiative measure 2013-2014 #108, concerning marijuana tax revenue to establish workers' compensation public defender

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 obtain voter approval to spend five million dollars annually of recreational marijuana tax revenues to:
 - a. Establish and operate the Colorado workers' compensation public defender;

- b. Investigate and prosecute workers' compensation fraud against mentally disabled claimants;
 - c. Guarantee certain rights, take specified actions to enforce those rights, and provide certain services to mentally disabled workers' compensation claimants; and
2. To specify that leftover moneys after the establishment and operation of said programs revert to the Colorado traumatic brain injury trust fund for individual grants for cognitive rehabilitation or family support.

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. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed.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, **add** section __ to article X as follows:". Or, for example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".
2. It is standard drafting practice to number each section, part, etc. that is being amended or added with a section number (e.g., **SECTION 1.**, **SECTION 2.**) before the amending clause. For example:

SECTION 1. In Colorado Revised Statutes, add article 39 to title 8 as follows:
3. To show language being added to the Colorado constitution or Colorado Revised Statutes, it is standard drafting practice to use SMALL CAPITAL LETTERS.
4. The word "worker's" should be "workers".

Substantive Comments and Questions

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

1. Pursuant to article V, section 1 (2) 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 constitution or statutes its provisions should be inserted.
2. 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 for review and comment. You have submitted an idea for a ballot question rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. You should amend your proposal to include the actual text of your proposed constitutional or statutory change.
3. 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, this phrase should be added to the beginning of the proposed initiative.
4. 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?
5. The proposed initiative refers to "recreational" marijuana tax, while the Colorado Revised Statutes refer to "retail" marijuana taxes. Is recreational marijuana the same as retail marijuana? Is it your intent to use tax revenues from retail marijuana taxes for the purposes specified in the proposed initiative? If so, would you consider changing "recreational" to "retail" in the proposed initiative?
6. The proposed initiative refers to marijuana tax revenues, but there are three separate state taxes levied on retail marijuana: the 2.9% state sales tax, the 10% retail marijuana sales tax, and the 15% retail marijuana excise tax. Is it your intent that the \$5 million to be set aside annually for the purposes specified in the proposed initiative come from a specific retail marijuana tax?

7. The state constitution requires that the first \$40 million annually collected from the excise tax on retail marijuana be used for public school capital construction. If you intend your proposed initiative to be a constitutional amendment, how does the \$5 million requirement for your proposal impact the current constitutional requirement in connection with the first \$40 million from the excise tax? For example, would your proposed initiative use revenues collected after the first \$40 million in excise tax? Would the \$5 million for your proposed initiative be taken before the \$40 million for public school capital construction? Would the tax revenue for your proposed initiative be taken from one of the marijuana sales taxes and therefore not create a conflict? Would you consider clarifying this issue in your proposed initiative?
8. The proposed initiative requires that \$5 million annually be used to establish and operate the Colorado workers' compensation public defender, to investigate and prosecute workers' compensation fraud against mentally disabled claimants. What do you mean by workers' compensation fraud against mentally disabled claimants? Do you mean to defend claimants who are mentally disabled and who are accused of workers' compensation fraud? Or do you mean to prosecute employers that are accused of committing employer fraud, such as knowingly lying to prevent or discourage injured employees from seeking claims? If it is the latter, why would the public defender's office be the appropriate entity to pursue these claims?
9. It appears that one purpose of the Colorado workers' compensation public defender would be to represent mentally disabled claimants. Are mentally disabled claimants unable to seek representation from the public defender's office pursuant to current law?
10. Would the Colorado workers' compensation public defender's office assist only individuals who are mentally disabled or all individuals with workers' compensation claims? Would you consider clarifying the individuals to whom the office could or could not provide assistance?
11. The proposed initiative specifies that the Colorado workers' compensation public defender's office would have many powers that are not commonly granted to public attorneys' offices and some that are contrary to current law. Why would the Colorado workers' compensation public defender's office need all of these powers?
12. The proposed initiative requires that leftover funds be reverted annually to the Colorado traumatic brain injury trust fund. What are the "leftover" funds to which you refer? Do you anticipate that the entity that is required to establish and operate the Colorado workers' compensation public

defender will not need \$5 million annually to achieve this purpose and therefore some of the \$5 million from the proposed initiative would go to the Colorado traumatic brain injury trust fund each year? Would you consider clarifying your intent regarding the "leftover funds"?

13. Standard drafting practice is to use the word "fund" to refer to an account into which "moneys" or "revenues" are placed. Therefore, the word "fund" or "funds" is not typically used to refer to the moneys or revenues themselves. Would you change "funds" to "moneys" or "revenues" to be consistent with standard drafting practice?
14. Have you considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state or local governments in this state? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have you considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?