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MEMORANDUM

February 27, 2014

TO: Clifton Willmeng and Lotus

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #75, concerning 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.

An earlier version of this proposed initiative, proposed initiative 2013-2014 #63, was the subject of a memorandum dated January 30, 2014. Proposed initiative 2013-2014 #63 was discussed at a public meeting on February 4, 2014. The comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

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 local laws adopted pursuant to the 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. The first letter of the first word of each sentence should be capitalized, including the first word in each paragraph. For example, proposed subsection (2) (a) should begin with "The power to enact..."
2. Would the proponents consider adding a colon to the introductory portion of subsection (3), so that the clause reads "provided that:"?

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. How does the single subject of the proposed initiative compare to the single subject of the proposed initiative #63?
2. In subsection (1), the word "including" is used at the beginning of the list of local governments that enjoy the right enunciated in the proposed initiative. "Including" is a word that does not imply limitation. What is the proposed initiative's scope (i.e., to which local governments does it apply)? In particular, what types of nonmunicipal governments are included (other than counties, which are specifically cited)?

3. In subsection (2) (a), the proponents changed the word "recognizing" to "establishing". This change implies that the rights that follow (to wit, "the fundamental rights of individuals, their communities, and nature") do not necessarily exist already and may be created via local enactment. Is this the proponents' intent?
4. What is intended by adding the word "such" to the beginning of paragraphs (a) and (b) of subsection (3)?