

# STATE OF COLORADO

## Colorado General Assembly

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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 #107, concerning marijuana tax revenue to establish housing for disabled

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 ten million dollars annually of recreational marijuana tax revenues to establish and operate permanent housing for certain persons with brain injuries or intellectual disabilities; and

2. To specify that leftover moneys after the establishment and operation of said permanent housing reverts 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 Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed.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.

## 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 the 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. What entities are governed by the proposed initiative? The state? Local governments? Would any entity other than the state be required to retain and spend revenue pursuant to the provisions of the proposed initiative?
6. 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?
7. 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 \$10 million to be set aside annually for the purposes specified in the proposed initiative come from a specific retail marijuana tax?
8. 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 \$10 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 \$10 million for your proposed initiative be taken before the \$40

- million for public school capital construction? Would the tax revenue for your measure 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?
9. The proposed initiative specifies that the \$10 million in marijuana tax moneys has to be spent to establish and operate permanent housing designed for people with brain injuries and intellectually disabled people. Would a state entity be required to establish and operate the housing or can the Colorado General Assembly give grants to private organizations that are already in the business of establishing and operating housing for people with brain injuries and other intellectual disabilities?
  10. The phrase "intellectually disabled people" is not defined in the proposed initiative or in current Colorado law. However, the term "persons with intellectual and developmental disabilities" is defined in the Colorado Revised Statutes. Would you consider either defining "intellectually disabled people" in your proposed initiative or using the term that is currently defined in law?
  11. What do you mean by "intellectually disabled people who are compatible"? Do you mean compatible with people with traumatic brain injuries? Who would make this determination and what criteria would they use? Would you consider providing more guidance regarding what you mean by "intellectually disabled people who are compatible"?
  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 permanent housing for people with brain injuries will not need \$10 million annually to achieve this purpose and therefore some of the \$10 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. What would happen if there is not \$10 million in tax revenue from retail marijuana tax in a given year?

15. Is it the proponents' intent that the marijuana tax revenues be in addition to any other moneys the state currently uses to provide housing for disabled people? Could the general assembly simply reduce other funding for the disabled by \$10 million and not provide any net additional benefit to these individuals? Would the proponents consider clarifying language on this issue?
  
16. 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?