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MEMORANDUM

March 31, 2014

TO: Lisa Brumfiel and Peter Coulter

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #127, concerning the official Colorado logo

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 Revised Statutes appear to be:

1. Requiring the official Colorado logo for all purposes to be a scaled version of the current Colorado flag; and

2. Specifying that the requirement that the Colorado flag be used as the official logo is self-executing, severable, and supersedes existing state and local laws.

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. Pursuant to article V, section 1 (2), 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. It is standard drafting practice to include an amending clause that indicates the part(s) of the Colorado Revised Statutes or Colorado constitution being added to, amended, or repealed. 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:". For the Colorado constitution, if you are adding a new section you would include the following amending clause: "In the constitution of the state of Colorado, **add** section ___ to article X as follows:".
3. 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:

4. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.
5. To show language being added to the Colorado constitution or the Colorado Revised Statutes, it is standard drafting practice to use small capital letters, which are different than ALL CAPS/CAPS LOCK. For example, the first sentence would begin "THE OFFICIAL COLORADO LOGO...."

6. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. Headnotes should: Follow the section number, be in bold-faced type, and be in lowercase letters. A headnote should be added to the first section in the proposed initiative. The headnote for the second section should be lowercase, bold, and on the same line as the text. The third headnote, "Effective date.", should be bold and on the same line as the text.
7. Given that existing law governs such topics as self-execution, severability, conflicting provisions, and the effective date of a proposed initiative, standard drafting practice would be to exclude these provisions unless the proponents intend to do something in an initiative not provided by such existing law. (e.g. make it effective before the proclamation of the governor rather than upon the proclamation of the governor.)

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 specifies that the state flag shall be the “official Colorado logo for all purposes.” This raises the following questions:
 - a. How is it determined whether something is being used as a logo? For example, the state has a number of other symbols, including the state seal, the state flower, and the state tree. Some of these are used on business cards, letterhead, pamphlets, television ads, license plates, or websites. Would this be prohibited? Does the proposed initiative modify the ability to use other state symbols?
 - b. Who is subject to the proposed initiative? The state government only? Local governments? Private entities or individuals?
 - c. How would the proposed initiative be enforced? Who would have the authority to enforce it? What, if any, penalties would exist for violating its provisions?
3. The proposed initiative specifies that the official logo consists of the “current Colorado flag.” Does this mean the flag as it exists at the time the proposed initiative becomes law? The flag that exists at the time the logo is

- used? Some other time? Does the proposed initiative prevent any future changes to the design of the state flag?
4. In August of 2013, the state unveiled a brand program known as the “brandCOLORADO initiative” to create a new brand and help market the state. The program includes, among other things, a new triangular green and white logo to promote the state as well as the catchphrase, “It’s our nature”. How would the proposed initiative affect this branding program?
 5. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?
 6. The proposed initiative specifies that the official Colorado logo is to be a “scaled version” of the Colorado flag but does not specify to what scale (proportionally up or down from the flag’s actual size). Do the proponents wish to specify size guidelines for the logo?