

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

March 31, 2014

TO: Pat Hamill and Bob Diebel

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #137, concerning fiscal impact of ballot measures

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. To require initiative proponents to submit a fiscal impact estimate that is discussed at a review and comment hearing;

2. To require the Director of Research of the Legislative Council to submit a fiscal impact statement, which is a variation of an existing statement, for each proposed initiative to the Title Board for its review; and
3. To require an abstract of the fiscal impact statement to be included in the petition sections that are circulated for signatures.

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. To show language being added to the Colorado constitution/Colorado Revised Statutes, it is standard drafting practice to use SMALL CAPITAL LETTERS, which are different than ALL CAPS.
2. The amending clauses for the following sections should read:
 - a. For section 1: "In Colorado Revised Statutes, 1-40-105, **amend** (4); and **add** (1.5) as follows:".
 - b. For section 2: "In Colorado Revised Statutes, 1-40-107, **amend** (1) (a) as follows:".
 - c. For section 4: "In Colorado Revised Statutes, 1-40-124.5, **repeal** (1) (b) as follows:".
3. Standard drafting practice is to only show the provisions in a statutory section that are being amended, added, or repealed. For example, in section 1, only show the new subsection (1.5) and the amended (4); there is no need to include subsections (1), (2), and (3) since they are not being changed.
4. In the headnotes for each statutory section, do not include "C.R.S. §". Also, the headnote should be on the same line as the beginning of the statutory text. For example, section 1 would begin as follows:

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (1.5) TOGETHER WITH THE ORIGINAL...
5. Numbers should be spelled out as words.

6. Paragraphs follow subsections in statute. In section 3 of the proposed initiative reletter subparagraphs (I), (II), and (III) of subsection (1) as paragraphs (a), (b), and (c).
7. In section 1-40-107 of the proposed initiative, "(1) (a)" should not be in bold type.
8. When including the text of the statutory section, the number of the subsection being amended should be included, even when amending the subsequent paragraphs of that subsection. For example, in section 4, the text should (1) (b) instead of just (b).

Substantive Comments and Questions

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

1. The following questions and comments relate to the new section 1-40-105 (1.5), C.R.S.:
 - a. What happens if the proponents do not submit a fiscal impact estimate with the draft?
 - b. How many years should the proponents include in their estimates?
 - c. What is a state or local government fiscal liability that should be included in the fiscal impact estimate?
 - d. What does it mean that the fiscal impact estimate is "considered part of the petition"?
 - i. Must it be included in the petition sections that are circulated for signatures?
 - ii. Must it be included in the Colorado Revised Statutes or the State Constitution?
 - iii. Must the ballot title include information related to the fiscal impact estimate?
 - iv. Do the requirements in section 1-40-105, C.R.S., for amending and submitting a petition apply to the fiscal impact estimate? Is there any other use of the fiscal impact estimate?

- e. Is Legislative Council Staff, which prepares fiscal notes for the General Assembly, required to prepare its own fiscal impact estimate in order to provide comment on the proponents' estimate?
 - f. Are proponents required to make any of staff's suggested changes to their fiscal impact statement at the review and comment meeting?
 - g. The Title Board does not currently participate in the review and comment meeting, but the initiative provides that the fiscal impact estimate is subject to the title board's review and comment.
 - i. Must the Title Board now participate at the review and comment meeting?
 - ii. Must the Title Board provide a "review and comment" of the fiscal impact estimate a Title Board meeting? If so, are the proponents required to accept the Title Board's suggested changes?
 - iii. Is the Title Board authorized to change the fiscal impact estimate?
 - h. Aside from being considered by Legislative Council Staff when it prepares its fiscal impact statement, is there any other use for the fiscal impact estimate?
 - i. To the extent that many proponents are not economists and may have limited access to information, how useful will a proponents' fiscal impact estimate be?
2. The following questions and comments relate to the amendment to section 1-40-105 (4), C.R.S.:
- a. What are the comments that are required to be submitted to the Secretary of State? Are they only those written questions and comments included in the staff memo discussed at the meeting?
 - b. The proponents are required to provide "amendments" to the fiscal impact estimate. Does this mean that they must show changes to the estimate in an estimate format? (For example, strike "\$1,000,000" and substitute "\$2,000,000.") Or does it mean that they are required to provide an amended estimate based on the comments and questions?

- c. Could a proponent make a change to the fiscal impact estimate based on new information that they learn after the review and comment meeting?
3. The following questions and comments generally relate to the new section 1-40-107.5 (1), C.R.S.:
 - a. Referred measures are not submitted to the Title Board. How will this section work with respect to referred measures?
 - b. The first sentence refers to the proposed statute or constitutional amendment, while the remainder of the section refers to a measure. Should the terms be consistent?
 - c. Must Legislative Council Staff set up a process to solicit feedback about the fiscal impact from other interested persons?
 - d. How many years should the estimates cover?
 - e. May the Title Board change the fiscal impact statement in its discretion?
 - f. Is the Title Board now required to consider fiscal impact statements for referred measures? If so, when would they hear these?
4. It appears that the fiscal impact statement required under section 1-40-107.5 (1), C.R.S., is similar to the existing fiscal impact that Legislative Council Staff currently prepares under section 1-40-124.5 (1) (b), C.R.S. The following questions and comments relate to the abstract of the new fiscal impact statement:
 - a. Who determines whether a measure has a fiscal impact and prepares the abstract? Unlike section 1-40-124.5 (1) (b), C.R.S., it is not clear from the context.
 - b. The information in subparagraphs (I), (II), (III) is part of the fiscal impact statement, but in the existing 1-40-124.5 (1) (b), the same information is required to be included in the abstract of the fiscal impact statement. What should be included in the newly required abstract?
 - c. When must the abstract be prepared? Unlike section 1-40-124.5 (1) (b), C.R.S., it is not clear from the context.
 - d. May the Title Board amend the abstract in its discretion?

- e. May the fiscal impact statement abstract be included anywhere in the petition section that is circulated?
 - f. Must the abstract appear once or on each page that has signatures?
 - g. To the extent that the abstract is included in the petition section, a conforming amendment to the definition of section in 1-40-102 (6), C.R.S., may be necessary.
5. The following questions and comments relate to the amendments to section 1-40-107 (1) (a), C.R.S.:
- a. Does changing "titles, and" to "title or" effect the meaning of the paragraph?
 - b. Beyond being dissatisfied, are there any grounds for a person to request a rehearing?
 - c. Would the Supreme Court be able to review the fiscal impact statement? Can it amend the statement?
 - d. If the fiscal impact statement, which is required to be included in the Blue Book, may be changed by either the Title Board or the Supreme Court, is the Blue Book still prepared by the nonpartisan research staff of the General Assembly, as required by section 1 (7.5) (a) of the State Constitution?
6. To the extent that it was not your intention to change the process for fiscal impact statements for referred measures, you may consider amending that section 1-40-124.5 (1) (b), C.R.S., so that it only applies to referred measures, and the new section 1-40-107.5, C.R.S., can describe the process for fiscal impact statements for initiated measures.