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MEMORANDUM

April 2, 2014

TO: Lisa Brumfiel and Peter Coulter

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #125, concerning a Prohibition on Fluoride in Public Water Systems

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.

Purpose

The major purpose of the proposed initiative appears to be to prohibit the artificial introduction of fluoride or fluoride byproducts into any Colorado water system.

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 phrase “text of the measure” is not necessary and should be removed.
2. The enacting clause should appear in the following format, rather than in all capital letters: "Be it Enacted by the People of the State of Colorado:".
3. Do you intend for the proposed language to be added to the Colorado Revised Statutes or to the Colorado Constitution? The proposed initiative must include an amending clause that indicates the parts of the Colorado Revised Statutes or Colorado constitution being added to, amended, or repealed. The appropriate amending clause should be inserted on the line following the enacting clause.
 - a. The standard format for adding a section to the Colorado Revised Statutes is: “In Colorado Revised Statutes, **add** [section number] as follows:”; and
 - b. The standard format for adding a section to the Colorado constitution is: “In the constitution of the state of Colorado, **add** section [Arabic numeral] to article [Roman numeral] as follows:".

See technical comment #6 for more information about section numbers and placement in the Colorado Revised Statutes or the Colorado constitution.

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. It is standard drafting practice to number each section, part, etc. that is being amended or added with a bold section number (e.g., **SECTION 1.**, **SECTION 2.**) before the amending clause. For example:

SECTION 1. In Colorado Revised Statutes, **add** 25-1.5-210
as follows:

6. Each section in the Colorado Revised Statutes and the Colorado constitution has a section number. If you intend to add the section to the

Colorado Revised Statutes, a suggested section number is 25-1.5-210. If you intend to add the section to the Colorado constitution, a suggested section is section 17 of article XVIII. The section number should be inserted in bold-faced type before the first word of the first paragraph of the proposed initiative. See the example in technical comment # 7.

7. Each section in the Colorado Revised Statutes and 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 new section in the proposed initiative. For example:

25-1.5-210. Fluoride in public water systems. (1) THERE
SHALL NOT BE ...

8. 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).
9. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
10. Both constitutional and statutory provisions are usually divided into component parts using the following hierarchy: Subsections (denoted by numbers "(1)", "(2)", etc.); followed by paragraphs (denoted by lowercase letters, "(a)"), followed by subparagraphs (denoted by Roman numerals "(I)"), followed by sub-subparagraphs (denoted by capital letters "(A)"). The proponents should number the provisions of the proposed initiative as subsections. Please see technical comment #12 for examples of this.
11. The word “by-products” should appear as one word, rather than as a hyphenated word.
12. The following passages appear to be headnotes: “self-executing, severability, conflicting provisions” and “effective date”. If that is what the proponents intended, these headnotes should be formatted with the text of the subsection following on the same line as the headnote as follows:

(2) **Self-executing - severability - conflicting provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING...

(3) **Effective date.** UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS...

13. Attempt to use straightforward, modern language and avoid archaic or vague terms such as "herein" and "the text". Short sentences help the reader understand the language. For example, in proposed subsection (2), it would be helpful to break the paragraph into two sentences: "ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING, EXCEPT AS SPECIFIED IN THIS SECTION [*rather than "herein"*], AND ARE SEVERABLE. EXCEPT WHERE OTHERWISE ..."
14. In the proposed subsection (2), the word "statutes" should be used in place of "statutory".
15. When a series contains an item that itself contains commas (when a list is used as an item within a larger list, for example), use semi-colons to separate the larger series and commas in the internal item. In these instances, a colon should precede the primary list, and the first letter of the list should be capitalized. Proposed subsection (2) appears to have a series within a series. Consider changing the punctuation as follows: "EXCEPT WHERE INDICATED IN THIS SECTION [*rather than "in the text"*], [*THIS SECTION*] SUPERSEDES CONFLICTING STATE STATUTES; LOCAL CHARTERS, ORDINANCES, OR RESOLUTIONS; AND OTHER STATE AND LOCAL PROVISIONS."

Substantive Comments and Questions

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

1. The constitution requires each initiative to contain only a single subject. What is the single subject of the proposed initiative?
2. How will the provision be enforced?
 - a. Do you want to give the General Assembly authority to enact legislation to implement the provision?
 - b. Do you intend criminal or civil penalties, or both, for a violation of the provision?

- c. If you intend civil penalties, which agency should have the authority to enforce the penalties?
3. You might consider defining in the amendment or directing the General Assembly to define in statute a "fluoride byproduct".
4. You might consider defining in the amendment or directing the General Assembly to define in statute a "Colorado public water system". While the term "public water system" is generally understood to refer only to a system for delivering drinking water, and not a wastewater system or storm water system, the term is not generally defined in Colorado statutes.
5. Under the federal "Safe Drinking Water Act," the term "public water system" is defined to include "pretreatment storage facilities". If the term is defined as broadly in Colorado, wouldn't there be at least trace amounts of artificially introduced fluoride or fluoride byproducts in pretreated water from toothpaste and other products containing fluoride? If so, you might consider exempting pretreated water from the prohibition.
6. Even if public water systems immediately cease fluoridating water to comply with the amendment, there would still be a large amount of previously fluoridated water in the public water systems. You might consider adding a compliance period into the amendment or directing the General Assembly to enact a compliance period in statute to allow for gradual compliance.
7. Do you intend to give the General Assembly authority to repeal conflicting statutes, for example, portions of article 21.5 of title 25, Colorado Revised Statutes, entitled the "Children's Dental Assistance and Fluoridation Program," promoting fluoridation?
8. Do you want to authorize the Colorado Department of Public Health and Environment to promulgate rules to enforce this provision?