

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

April 12, 2013

TO: Earl Staelin and Robert Bows

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #39, concerning the establishment of a state-owned bank

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 #7, was the subject of a memorandum dated March 15, 2013. Proposed initiative 2013-2014 #7 was discussed at a public meeting on March 19, 2013. 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. To make statements about the benefits of state-owned banks;
2. To require the state of Colorado to establish and operate a state-owned bank;
3. To specify the membership, appointment, and duties of a board of directors, an advisory board, and a president for the state bank;
4. To authorize the bank to lend money at interest or at no interest to promote development, commerce, industry, and agriculture in the state, to promote home ownership, maintenance and construction of needed infrastructure, education, public health, safety, and other purposes for the general welfare;
5. To specify that the bank has all the powers and authority of other banks chartered by the state of Colorado;
6. To specify that the debts and obligations of the bank are backed by the full faith and credit of the state of Colorado;
7. To specify that the revenue and income of the bank are not limited and its expenditures and management of its revenue, income, and assets are not restricted except upon sound financial and public policy considerations; and
8. To specify that the provisions of the proposed initiative are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions.

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. In the first paragraph, the subsection number (1) should appear after the headnote rather than before, and the paragraph letter (a) should appear in lower-case rather than in small caps. See the example in technical comment 4 in the memo for proposed initiative 2013-2014 #7.
2. In subsection (1) (b), it is standard drafting practice to spell "monies" as "moneys".
3. In the headnote of subsection (3), when words are hyphenated, the second word should not be capitalized.

4. In subsection (3), the full name of the FDIC should be spelled out unless it is defined in a definition section.
5. It is standard drafting practice to avoid the use of archaic terms. In subsection (4) (f), instead of using "herein", use "in this section".
6. In the last sentence of subsection (5) (b), the "a" in the word "all" should be capitalized.

Substantive Comments and Questions

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

1. Is the phrase "multi-year obligations" in subsection (3) intended to be synonymous with the phrase "multiple-fiscal year direct or indirect district debt or other financial obligation" as used in article X, section 20 (4) (b) of the Colorado Constitution? If not, how does it differ?
2. Should any of the requirements of article X, section 20 apply to the "multi-year obligations" of the Colorado state bank?
3. The proposal states that its provisions are "self-executing", but there is no regulatory or enforcement responsibility assigned to anyone other than the state bank's managers and board of directors.
 - a. The revised proposal now contains (in subsection (7)) a requirement that other banks transfer any state moneys that they hold to the state bank within 10 working days after the state bank begins operation. If they fail to do so, who should enforce this requirement and how?
 - b. Subsection (3) of the proposal says that the state bank's expenditures and management are not restricted "except upon sound financial and public policy considerations." How is this standard to be interpreted and enforced? Could a person sue in court to challenge a decision of the bank's managers as being contrary to a "sound" financial or public policy consideration? If so, would any Colorado taxpayer have standing to enforce this requirement? Could the General Assembly enact a statute embodying the financial and public policy considerations that the bank's managers should abide by?