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MEMORANDUM

March 3, 2014

TO: Phyllis Alleman and Tom Johnson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #77, concerning the Distribution of Lottery Proceeds

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.

Earlier versions of this proposed initiative, proposed initiatives 2011-2012 #57 and 2013-2014 #40, were the subject of memoranda dated February 13, 2012, and April 26, 2013, and which were discussed at public meetings on February 15, 2012, and April 30, 2013. The comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, 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 amendments to the Colorado constitution and Colorado Revised Statutes appear to be to change the distribution of lottery proceeds by:

1. Providing fifty percent of lottery proceeds to Colorado school districts to fund teacher salaries, smaller classroom sizes, extracurricular activities, and infrastructure; and
2. To accommodate this new funding for school districts:
 - a. Decreasing, from forty to twenty-five percent, the amount of lottery proceeds distributed to the conservation trust for parks, recreation, and open space purposes; and
 - b. Decreasing, from fifty to fifteen percent, the amount of lottery proceeds distributed to the great outdoors Colorado conservation trust fund.

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. Numbers should be spelled out (as they sometimes are in the proposed initiative) and should not be restated as numerals (as they sometimes are).
2. It is standard drafting practice to set off parenthetical phrases with commas rather than brackets. For example, in section 33-60-104 (1) (a), the phrase "HEREINAFTER THE "DISTRICT"" should be set off with commas.
3. The word "shall" should be used to indicate that a person has a duty, and should not be used as a future tense verb; use "must" to indicate that a person or thing is subject to a condition. *See* section 2-4-401 (6.5) and (13.7), Colorado Revised Statutes, which define "must" and "shall." Simple present-tense verbs should be used when possible. So, for instance:

- a. In section 34-60-104 (1) (b) (I) and section 3 (1) (b) (I) (A), write "Teacher salaries must be, ... ";
 - b. In section 34-60-104 (1) (b) (IV) and section 3 (1) (b) (I) (D), write "'Extracurricular activities" includes, but is not limited to,"
4. Paragraphs below an introductory portion must logically follow the introductory portion to form a complete sentence. As such, you may want to consider rewording section 33-60-104 (1) (a) and (1) (b) in a manner that is analogous to proposed section 3 (1) (b) (I), as follows:
- (a) FIFTY PERCENT TO THE VARIOUS SCHOOL DISTRICTS, HEREINAFTER THE "DISTRICT," OF THE STATE OF COLORADO, ON A PER CAPITA BASIS ACCORDING TO STUDENT ENROLLMENT IN EACH DISTRICT. THE DISTRICT SHALL DISTRIBUTE SAID FUNDS TO ALL PUBLIC SCHOOLS WITHIN ITS JURISDICTION, K-12, FOR TEACHER SALARIES, EXTRACURRICULAR ACTIVITIES, AND INFRASTRUCTURE. THE FOLLOWING CONDITIONS APPLY:
(I) TEACHER SALARIES MUST . . .
5. The word "Colorado" should be capitalized in section 34-60-104 (1) (b) (IV).

Substantive Comments and Questions

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

1. Subsection (1) of both the proposed statutory and constitutional changes refer to "fiscal year 2013-2014," but because the election for the proposal will not take place until November of fiscal year 2014-2015, the proponents may want to consider whether the reference should be changed to "fiscal year 2015-2016."
2. You may want to consider reconciling the following differences between the proposed statutory language and the proposed constitutional language:
 - a. The introductory portion of paragraph (1) (b) of the proposed statutory amendment refers to charter schools, but the corresponding section of the constitution, (1) (b) (I), does not.
 - b. Section 3 (1) (b) (I) (B) of the proposed constitutional amendment refers to students, but the corresponding section of the statute, (1) (b) (II), does not.

- c. Section 3 (1) (b) (I) (C) of the proposed constitutional amendment states the extracurricular fee limit as "twenty-five dollars [\$25] per **activity** per **student** per year" (emphasis added), while the corresponding section of the statute, (1) (b) (III), states the limit as "\$25 per **student** per **activity** per **school** year" (emphasis added).
- d. Section 3 (1) (b) (I) (E) of the proposed constitutional amendment states "if the district deems **funds** would be better served" (emphasis added), while the corresponding section of the statute, (1) (b) (V), states "if said school district deems **it** would be better served" (emphasis added).