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MEMORANDUM

April 2, 2014

TO: Richard Evans, Stephen Roark, and Mark Grueskin

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #139, concerning Local Voter Approval for Gambling

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2013-2014 #138 and 140 to 142. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2013-2014 #138 and 140 to 142, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendment to the **Colorado constitution** appear to be:

1. To prohibit statewide elections to legalize any type of gambling from taking effect without an additional local vote; and
2. To apply the prohibition to any new authorization for gambling approved on or after the November 4, 2014, election.

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. It is standard drafting practice to set off a year with commas. In subsection (2) of the proposed initiative, there should be a comma after "2014."
2. Although some courts have held that punctuation is not a part of a statute, punctuation is, of course, necessary, and the Colorado Supreme Court has, at least on one occasion, interpreted a proposed constitutional amendment on the basis of punctuation (*In re Senate Concurrent Resolution No. 10*, 137 Colo. 491, 328 P.2d 103 (1958)). To conform to standard drafting procedure, a semicolon should be used before the phrase "except that" in subsection (3) of the proposed initiative.

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. "Gambling" is defined in section 18-10-102 (2), Colorado Revised Statutes, as: ... [R]isking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a

sporting event, over which the person taking a risk has no control, but does not include:

(a) Bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries;

(b) Bona fide business transactions which are valid under the law of contracts;

(c) Other acts or transactions now or hereafter expressly authorized by law; [or]

(d) Any game, wager, or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling[.]

- a. Is this the definition you wish to use? If so, would you consider incorporating it by reference or, as an alternative, duplicating it in the constitution so that future statutory changes will not affect the application of this initiative?
 - b. This definition includes the state lottery as well as bingo and raffles, pari-mutuel wagering, and certain types of pinball machines. Is it the intent of the proponents to require voters in a county to vote to authorize all these types of gambling before they can occur in that county, if they were not previously authorized?
3. Subsection (2) of the proposed initiative states that the voter approval requirement applies to “any statewide vote.” Is it accurate to conclude that a statutory change or local ordinance authorizing some form of gambling would not be subject to this requirement, but that a citizen initiative or measure referred from the general assembly would be?
 4. If a single host community wishes to allow a certain type of gambling, the initiative appears to require that voters in the entire county also vote to authorize that type of gambling in their county.
 - a. Is it your intent that this vote also authorize the given type of gambling throughout the county, or could the ballot question be phrased so as to do so?
 - b. Could the county ballot question include more than one host community, while still not authorizing the given type of gambling throughout the county?
 - c. Could the county ballot question authorize more than one type of gambling, even if the host community only proposes to host one type

of gambling? For example, if Windsor chose to authorize slot machines (assuming it were constitutionally permissible), could Weld County vote to allow Windsor to authorize any form of limited gaming so that a second county-wide vote would not be required if Windsor later desired to expand its operation to include poker?