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MEMORANDUM

April 28, 2006

TO: Kenneth Wonstolen, L. Hutson, and Sean Gallagher

FROM: Legislative Council Staff and the Office of Legislative Legal Services

RE: Proposed initiated measure 2005-2006 #110, concerning water supply for new residential property

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution, including suggested editorial changes to promote the use of plain language in such proposals. Pursuant to that provision, we are submitting our comments to you regarding the appended proposed initiative.

It is our understanding that the purpose of our comments is to help proponents arrive at language that will accomplish their intent in proposing changes to the constitution or laws of the state and to avail the public of knowledge about 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 proposal appear to be:

1. To find and declare that builders and sellers of residential real property inform the purchaser as to the source of water supplied to such residence for domestic purposes and to guarantee that such water source be an adequate supply of water fit for human consumption.
2. To require the original seller of residential real property, the construction of which

commences on or after January 1, 2007, to append to the contract for purchase information pertaining to the water supply for the property, including, but not limited to, whether the property water supply comes from a water well or a water provider.

Comments and Questions

The form and substance of the proposed amendment raise the following comments and questions:

Technical questions:

1. To conform to standard drafting practice, would the proponents consider adding "**SECTION 1.**" before "Article 35.7 of title 38", so that the separate sections of the proposed initiative could be delineated?

2. To conform to standard drafting practice, would the proponents consider showing substantive new language to be added to the Colorado Revised Statutes by the proposed initiative in LARGE AND SMALL CAPITAL LETTERS?

3. After the headnote for proposed section 38-35.7-103, subsection (1) begins after a hard return, standard drafting practice calls for subsection to begin after the headnote without a hard return. Would the proponents consider removing the hard return between the headnote and subsection (1) of proposed section 38-35.7-103?

4. It appears that the language in subsection (1) of the proposed section 38-35.7-103 is intended to express a legislative declaration, standard drafting practice calls for inclusion of "**legislative declaration**" in the headnote. Would the proponents consider removing "**Legislative Declaration.**" from the language in subsection (1), and adding "**legislative declaration**" to the headnote? Additionally, would the proponents also consider placing the words "Water Supply for New Residential Growth" in lower case and bold face so that the full heading for the section would be listed in the same form as:

38-35.7-105. Water supply for new residential growth - legislative declaration. (1)

5. In a series of three or more, standard drafting practice uses a comma at the end of the series. Thus, in proposed subsection (1), there would be a comma after the word "condominiums". Would the proponents consider adding a comma after the word "condominiums"?

6. Subsection (2) includes a paragraph (a), however there does not appear to be a paragraph (b). Would the proponents consider removing the (a), as there is no subsequent paragraph?

7. Subsection (2) has quote marks, marking the beginning of the form, however the ending quote marks appear to be missing. Would the proponents consider either removing the quote marks from the beginning of the form or adding ending quote marks?

8. To conform to standard drafting practices, would the proponents consider adding "**SECTION 2.**" in place of "(3)" to separate the effective date section from the language that will be added to the Colorado Revised Statutes?

Substantive Questions:

1. The legislative declaration states that it is in the public interest that builders and sellers of real property inform the purchaser as to the source of water, but subsection (2) limits the requirement to new construction of residential real property. To what real property is the proposed initiative intended to apply? Why was commercial real property not included in the proposed initiative?

2. What do the proponents mean by "to guarantee that such water source constitutes an adequate supply of water fit for human consumption"? How would this be guaranteed? Additionally, what constitutes "an adequate supply" and of a quality "fit for human consumption"? How would a seller make this determination?

3. Subsection (2) requires the original seller to append to the contract a warranty of water supply. Do the proponents intend that this subsection only apply the first time the real property is sold? Would the proponents consider adding a definition of "original seller" to the text of the proposed initiative?

4. Subsection (2) states that the original seller shall append a "warranty of water supply". How would this warranty work? What would the seller's obligations be under such a warranty? Would the purchaser have any claim for relief against the seller for any damages to the purchaser resulting from an alleged inadequacy of the property's source of water?

5. If the form, described in subsection (2), indicates that the source of water is a well, a permit number shall be provided, but the form does not require that a water court decree be included if water rights have been adjudicated by a water court. Would the proponents consider adding language requiring the seller to provide a copy of an applicable water court decree to the purchaser as well?