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MEMORANDUM

April 7, 2008

TO: Ernest Duran and Bradley Johnston

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #96, concerning cost-of-living wage increases

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.

Purposes

The major purposes of the proposed amendment appear to be:

1. To require all employers to provide to their employees an annual wage or salary increase to account for an increase in the cost of living, as measured by the consumer price index used for Colorado;
2. To allow the wage increase to be based upon a calendar year, anniversary year, fiscal year,

or other basis, so long as it is provided at an annual interval;

3. To require such wage or salary increases to be in addition to any other increases provided by the employer pursuant to its policy or practice, agreements with employees or labor organizations, other government requirements, or any other reason; and
4. To state that in no event shall an employer reduce the wages or salaries of employees because of a decrease in the consumer price index.

Comments and Questions

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

Technical questions:

1. In Colorado, when a proposed measure adds new language to the Colorado Revised Statutes, new language is generally shown in small capital letters [THIS IS AN EXAMPLE OF NEW LANGUAGE IN SMALL CAPITAL LETTERS]. Would the proponents consider indicating the proposed new language with small capital letters? Note that this would **not** include changing the language of the enacting clause, the amending clause, or the section 8-2-124 heading, as those should remain in regular type as they already appear in the proposed initiative. Also, note that if the proponents make such a change, the first letter of the first word of each sentence should be capitalized, the first letter of the first word at the beginning of each new subsection should be capitalized, and the first letter of the word "COLORADO" should be capitalized.
2. On lines 9 and 10, would the proponents consider changing the amending clause as follows, to conform to standard drafting format:

Part 1 of article 2 of title 8, Colorado Revised Statutes, is
amended BY THE ADDITION OF A NEW SECTION to read:
3. It is standard drafting practice to capitalize only the initial letter of words that are proper nouns or the first word of a sentence. To conform to this style, would the proponents change:
 - a. On line 12, "**Cost-of-Living Wage Increase.**" to "**Cost-of-living wage increase.**";
 - b. On lines 14 and 23, "Consumer Price Index" to "consumer price index".
4. On line 12 in the section heading and on line 14, the proposed initiative refers to the "wage increase", but throughout the rest of the initiative, it refers to a "wage or salary increase". Would the proponents add "or salary" to lines 12 and 14 of the proposed initiative?

5. On lines 25 and 26, it is standard drafting format to not include "C.R.S." in a citation if the section being referred to is within the same title as where the citation occurs. Also, it is standard drafting format to use the word "section" instead of the section symbol "§". For proper citation format, would the proponents consider changing "C.R.S. § 8-4-101" to "section 8-4-101"?

Substantive 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. The draft initiative refers to the "Consumer Price Index". Do the proponents mean the Consumer Price Index published by the Bureau of Labor Statistics in the United States Department of Labor? Would the proponents consider clarifying the source?
3. The Consumer Price Index ("CPI") measures changes over time in the costs of consumer goods and services. However, according to the Bureau of Labor Statistics website, the CPI is not a pure cost-of-living index, because it doesn't account for governmental, environmental, and other social changes that are more difficult to quantify, yet may affect a worker's quality of life. How did the proponents decide that the CPI should be used to calculate cost-of-living adjustments? Do the proponents feel that the CPI is the best method to achieve their objectives?
4. The draft submitted by the proponents mandates that employers base annual cost-of-living increases on the Consumer Price Index "used for Colorado".
 - a. Because there is no Consumer Price Index for Colorado, would the proponents consider clarifying to what they refer? There is a "Regional CPI" calculated from northwestern and western states that is commonly used for the individual western states. There is also a CPI for the Denver-Boulder-Greeley metropolitan area.
 - b. Do the proponents feel that a calculation based on the region or metropolitan area mentioned above sufficiently reflects the cost of living in Colorado? Will use of either index disparately impact Coloradans who live in areas where the cost of living may be lower or higher than the average stated in the index?
5. The CPI establishes spending patterns for two urban population groups (urban consumers and urban wage earners/clerical workers).
 - a. Do the proponents intend to use one population group or another, or to use both groups, in calculating the proper cost-of-living adjustments for these two groups?
 - b. Do the proponents intend to use the CPI to base wage increases in rural areas?

6. The Consumer Price Index publishes data about a variety of regions and with varying frequency. For example, national figures are released monthly, but information about the Denver-Boulder-Greeley geographic area is released on a semiannual basis. Should employers be required in statute to use the most-recently published Consumer Price Index? Or, would the proponents specify that the annual CPI, the CPI for the first half of the year, or the CPI for the second half of the year, should apply? Since the employer may elect to base the cost-of-living adjustment on "any calendar year, anniversary year, fiscal year, or other basis, so long as it is provided at an annual interval", could the employer choose the half-year CPI?
7. What penalties shall be imposed, and by whom, for an employer's noncompliance with the statute that this initiative creates? If an employee disagrees with his or her employer's calculation of the annual cost-of-living wage increase, what avenues of redress, if any, will be available to that employee? What relief will be possible? The mere difference in wages? Punitive damages?
8. What if the cost of living does not increase, but remains the same? In such situations, are employers required to issue a notice to the impacted employees?
9. Does the proposed initiative incentivize employers to terminate the employment of at-will employees, in order to evade the annual cost-of-living increase and hire cheaper labor?
10. The measure states that the cost-of-living increases "shall be in addition to any other wage increases provided by the employer pursuant to its policy or practice, agreements with employees or labor organizations, other governmental requirements, or any other reason".
 - a. For labor union and other employee contracts that are currently in effect, would this adjustment be required above what is already provided if the contract already provides for an adjustment for inflation?
 - b. Does this provision prohibit an employer from changing policies or practices currently in effect?
11. Article XVIII, section 15 of the Colorado constitution sets the minimum wage for Colorado and requires annual adjustments for inflation. Would the proponents please explain how their measure would work with the minimum wage provision already in the Colorado constitution? Would cost-of-living wage increases be in addition to annual adjustments in the state minimum wage?