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MEMORANDUM

May 6, 2008

TO: Shawn Michael Olsen and Richard Evans

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #121, concerning limited gaming

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 authorize, through local elections, the voters of the cities of Central, Black Hawk, and Cripple Creek to revise limits on gaming to extend:
 - a. Hours of limited gaming operation;
 - b. Approved games to include roulette or craps, or both; and
 - c. Single bets up to \$100;

2. To state that limited gaming tax revenues attributable to the operation of the proposed initiative shall be deposited in the limited gaming fund, and the limited gaming control commission shall annually determine the amount of such revenues;
3. To distribute the annual gaming tax revenues that exceed the amount collected in the fiscal year ending June 30, 2007, in the following proportions:
 - a. 22% to the governing bodies of the cities of Central, Black Hawk, and Cripple Creek and Gilpin and Teller counties for local gaming impacts, based on the gaming tax revenues collected in each city or county attributable to the operation of the proposed initiative; and
 - b. 78% to supplement existing state funding for student financial aid programs and classroom instruction programs at the state's public community colleges, junior colleges, and local district colleges, and to state that such revenue shall be distributed to such institutions that were operating on and after July 1, 2008, in proportion to their respective student enrollments as of January 1 of each year;
4. To allow the limited gaming control commission, after July 1, 2009, to implement revisions to limits on gaming approved by voters in the cities of Central, Black Hawk, and Cripple Creek;
5. To state that if local voters in one or more cities revise any limits on gaming as provided in the proposed initiative, any limited gaming control commission action that increases gaming taxes from the levels imposed as of July 1, 2008, shall be effective only if approved by voters at a statewide election held under section 20 (4) (a) of article X of the state constitution;
6. To require that gaming tax revenues attributable to the operation of this subsection be collected and spent as a voter-approved revenue change without regard to any limitation contained in section 20 of article X of the state constitution or any other law.

Comments and Questions

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

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

Would the proponents consider adding "the State of" to the enacting clause on page 1, line 1, of the proposed initiative to comply with this constitutional requirement?

2. It is standard drafting practice to indent the first line of a section, subsection, paragraph, etc. Would the proponents add a "left tab" at the beginning of the following lines: Page 1, lines 3, 6, and 28; page 2, line 1; and page 3, line 4? In addition, it is standard drafting practice to have only one "left tab" and to not further indent paragraphs and subparagraphs. To conform to this style, would the proponents add only one "left tab" to, and not indent, the paragraphs and subparagraphs in subsections (3), (4), (5), and (7) of the proposed initiative?
3. With regard to the amending clauses on page 1, lines 3 and 4, and on page 3, lines 1 and 2:
 - a. In order to conform to standard drafting practice and the standard style and form in which amending clauses are written, would the proponents change such amending clauses, as follows:

SECTION 1. Section 9 (3), (4), and (5) of article XVIII of the constitution of the state of Colorado are amended to read:

SECTION 2. Section 9 of article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:

- b. In the alternative, the proponents can also combine the amending clauses into one amending clause, as follows:

SECTION 1. Section 9 (3), (4), and (5) of article XVIII of the constitution of the state of Colorado are amended, and the said section 9 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

If the proponents combine the amending clauses into one, the proponents would then delete the second amending clause on page 3, lines 1 and 2.

4. It is standard drafting practice to include in an initiative only that constitutional language that is actually being amended. What is the proponents' intent in including language that is not being amended? To conform to standard drafting practice, would the proponents delete the language in the proposed initiative that is not being amended, specifically, paragraphs (a), (b), (c), and (e) of subsection (3), paragraphs (a) and (c) of subsection (4), paragraphs (c), (d), (e), and (f) of subsection (5), and subparagraphs (I) and (III) of paragraph (b) of subsection (5)? Note that deleting the unamended portions in the proposed initiative would change the amending clause for section 1, as follows:

SECTION 1. Section 9 (3) (d), (4) (b), (5) (a), and (5) (b) (II) of article XVIII of the constitution of the state of Colorado are amended[, and the said section 9 is further amended BY THE

ADDITION OF A NEW SUBSECTION,] to read:

5. With regard to section and subsection headings:

- a. It is standard drafting practice to include the section headings of constitutional sections, which summarize the content of the constitutional sections.
 - i. On page 1, line 6, would the proponents add the section heading to section 9 of article XVIII, as follows:

Section 9. Limited gaming permitted. (3) Limited gaming shall be subject to the following . . .

- ii. If the proponents choose to not combine the amending clauses of section 1 and section 2 of the proposed initiative, as indicated in question 3.b. of this memorandum, on page 3, line 4, would the proponents add the section heading to section 9 of article XVIII, as follows:

Section 9. Limited gaming permitted. (7) **Local elections to revise limits applicable to gaming - statewide elections to increase gaming taxes.** (a) THROUGH LOCAL ELECTIONS, THE . . .

- b. In addition, as indicated in the above example, on page 3, lines 4 and 5, the subsection heading for subsection (7) should be lower case, not small capped. Such headings are considered to be editorial rather than statutory and should, therefore, not be small capped. Note that the "(7)" should not be bolded. Note as well that paragraph (a) of subsection (7) should immediately follow the subsection heading on the same line, rather than on a separate line. Would the proponents consider making such changes in order to conform the initiative to standard drafting format?

6. With regard to the statutory references in the proposed initiative, would the proponents:

- a. On page 1, lines 24 and 37, and on page 2, lines 3 and 19, add "OF THIS SECTION" after "SUBSECTION (7)" for proper citation format and to indicate that subsection (7) is within section 9?
- b. On page 3, lines 17, 26, and 44, add "(7)" after "SUBSECTION" for proper citation format?
- c. On page 3, line 39, add "OF THIS SUBSECTION (7)" after "PARAGRAPH (a)" for proper citation format and to indicate that paragraph (a) is within subsection (7)?
- d. On page 3, line 39, add "OF THIS SECTION" after "SUBSECTION (5)" for proper citation format and to indicate that subsection (5) is within section 9?

- e. On page 3, line 41, change "20(4)(a)" to "20 (4) (a)" (with spaces in between each number and letter) for proper citation format?
 - f. On page 3, lines 42 and 46, change "THE CONSTITUTION" to "THIS CONSTITUTION" for proper citation format and to indicate that section 20 of article X is within the state constitution?
7. On page 1, line 24, would the proponents change "a.m," to "a.m.," for standard format?
 8. With regard to the words "SUCH ~~Such~~" on page 2, line 3, it is unnecessary to strike through a word if the only change to the word has to do with capitalization. To conform to this style, would the proponents change the sentence as follows: "SUBJECT TO SUBSECTION (7) OF THIS SECTION, such percentage"
 9. On page 2, line 4, the proponents added a comma after the word "commission". What is the proponents' intent in adding the comma? Would the proponents consider removing it, as it is unnecessary?
 10. On page 3, line 7, would the proponents change "HAWK" to "HAWK" for proper capitalization?
 11. It is standard drafting format to set off a year with commas. On page 3, line 21, would the proponents add a comma after "2007"? On page 3, line 40, would the proponents add a comma after "2008"?

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. This measure empowers "the voters of the cities of Central, Black [H]awk, and Cripple Creek" to make certain changes to the rules governing limited gaming. (See subsection (7) (a) on page 3.) Is it your intent that the voters of each of these cities be allowed to make changes to the rules applicable to that city individually, or do you intend to require that the voters of all three cities, acting in concert, make uniform changes applicable to all three?
3. Paragraph (a) of subsection (7) allows voters to "extend" the limits on gaming.
 - a. May they also tighten the limits? For example, if the voters of Cripple Creek wanted to eliminate the use of slot machines, would they be allowed to do so under this measure? Would it make a difference if the voters sought to tighten a limit that had previously been "extended", for example, by eliminating roulette after adopting it in a prior election?
 - b. Is there a limit on the number of local elections authorized by this proposal?

- c. What would be the process for putting proposed revisions of gaming limits on the ballot within each jurisdiction? Would each city council have to place a proposal on the ballot, or could a proposal be initiated by a citizen of the jurisdiction? (Is there currently an authorized process in each jurisdiction for citizens to initiate proposals for the jurisdiction's voters?)
4. Under subsection (7) (a) (II), the list of approved games may be expanded "to *include* roulette or craps, or both". (Emphasis added.) May any games other than roulette and craps be approved?
5. Paragraph (b) on page 3 states that the limited gaming control commission "shall annually determine" the amount of limited gaming tax revenues "attributable to the operation of this [proposal]".
 - a. Is this determination intended to separately account for the revenues generated within each of the three cities? (See also question 6 below.) If so, do you wish to so specify?
 - b. Is this determination intended to separately account for the revenues generated by each specific type of change (hours, games, maximum bet)? If so, how should the commission determine how much revenue is attributable to each type of change?
 - c. Do you intend the commission's determination to be reviewable in any way, such as by the state auditor? If so, do you wish to so specify?
 - d. Why attempt to separately account for changes in revenue "attributable to the operation of this [proposal]" when all increases in revenue over 2007 levels is distributed under paragraph (c) anyway?
6. Paragraph (c) on page 3 appears to divide the total amount of limited gaming tax revenue into two streams, and then subdivide it according to two different formulas. Amounts up to a specified benchmark level -- "the amount collected in the fiscal year ending June 30, 2007" -- are distributed under the existing formula set forth in subsection (5) (b) of section 9. Revenues exceeding this benchmark level are distributed under subparagraphs (I) and (II) of the proposed new subsection (7) (c), with 22% going to local governments and 78% to educational purposes.
 - a. Is this a correct statement of the proposal's intended effect?
 - b. What relationship does this division of tax revenues have, if any, to the distinction between revenues attributable to the extension of limits on gaming pursuant to a local vote, under subsection (7) (a) of this proposal, and the revenues attributable to limited gaming under current constitutional provisions? In other words, does the new distribution formula in paragraph (c) apply *only* to additional revenue collected due to locally approved extensions of the gaming limits, or to *all* revenues that exceed the 2006-07 fiscal year benchmark level?

- c. Subparagraph (I) of paragraph (c) allocates 22% of the increased revenues to the three cities and two counties "based on the ... revenues collected in each city or county attributable to the operation of this subsection [(7)]". If the voters in one of the cities decide not to extend the limits on gaming, and revenues increase anyway, does that city (and the county in which it is situated) get a share of the 22% or not? What if they extend the limits, locally attributable revenues increase, but overall (statewide) revenues do not increase above the benchmark level?
 - d. Would the new distribution of limited gaming revenue take effect regardless of whether any of the local governments approve an extension on gaming limits?
 - e. Existing subsection (5) (b) (II) gives 12% to Gilpin and Teller counties, "in proportion to the gaming revenues generated in each county", and 10% to the three cities, "in proportion to the gaming revenues generated in each respective city," for a total of 22%. Should the 22% allocated under this proposal be distributed in the same way? If so, do you wish to so specify? If not, how should the revenues be distributed among the cities and counties?
 - f. The benchmark level of revenue is stated in 2007 dollars. Inflation (or deflation) over time could significantly affect the relative value of the benchmark amount. Do you wish to include any sort of adjustment mechanism to account for this?
7. Under subparagraph (II) of paragraph (c), 78% of the increased revenues are to "supplement existing state funding" for "student financial aid programs and classroom instruction programs" at specified institutions.
- a. Is the term "supplement" intended to imply that existing state funding from other sources cannot be reduced? If so, how would this provision be enforced?
 - b. As between "student financial aid programs" and "classroom instruction programs", how should the money be allocated, and who should be responsible for receiving and disbursing the funds? Do you intend for one of these purposes to have greater priority than the other or receive more than one-half of the revenues? If so, do you wish to specify the allocation formula or designate some person or agency to handle the allocation?
 - c. The revenue is to be distributed based on the "student enrollments" of the institutions. In the case of financial aid programs, should "student enrollment" be measured by the total number of students at an institution, or the number of students at the institution who qualify for financial aid?
8. Subparagraph (II) of paragraph (c) also states that revenue shall be distributed to "institutions that were operating *on and after* July 1, 2008" (Emphasis added.)
- a. Does this mean that an institution established after July 1, 2008, could not receive funding from the proposal?

- b. If an institution was operating on July 1, 2008, but ceased operations before the effective date of this proposal, would it (or its students) be eligible for a share of any increased gaming revenues from fiscal year 2007-08?
 - c. What is the purpose of this time limit on institutions?
9. Paragraph (d) of the proposed new subsection (7) states that the limited gaming control commission "may" implement voter-approved changes to the limits on gaming. Is this intended to imply that the commission may choose *not* to implement the changes? If the commission is required to implement the changes, would the proponents consider changing "may" to "shall" here so as to remove any doubt?
10. Paragraph (d) also appears somewhat ambiguous. The phrase "the commission may implement *revisions to* limits on gaming approved by voters" (emphasis added) could be construed to mean that the limited gaming control commission itself could make revisions to whatever limits the local voters approved. Assuming this is not your intent, would you consider rewording this language to make it clear that the commission can only implement the revisions that were approved by the voters, *as* approved by the voters?
11. Paragraph (e) states that "[i]f local voters ... revise any limits on gaming" under this measure, the limited gaming control commission may only increase gaming taxes above the level in effect on July 1, 2008, with statewide voter approval.
- a. Assuming the level of gaming taxes in effect on July 1, 2008, was 40% (the maximum level allowed under existing subsection (5) (a)), is it the proponents' intent that the commission could increase gaming taxes *above* 40%? If so, what maximum level should there be, if any?
 - b. If local voters do not make any changes, could the commission increase the level of gaming taxes without seeking statewide voter approval?
 - c. What is the purpose of paragraph (e)?
12. Paragraph (f) exempts "[g]aming tax revenues attributable to the operation of this [proposal]" from the revenue and spending limitations of article X, section 20 of the state constitution (a/k/a "TABOR").
- a. What gaming tax revenues should be considered "attributable to" the new subsection (7)? That is, is paragraph (f) intended to apply to: (i) Any gaming tax revenues in excess of the 2006-07 fiscal year benchmark level; (ii) Gaming tax revenues attributable to locally approved extensions on gaming limits; (iii) *All* gaming tax revenues collected after the effective date of this proposal; or (iv) Some combination of the three?
 - b. What is the purpose of paragraph (f)?

13. Would the proponents consider authorizing or directing the General Assembly to adopt implementing legislation? Such legislation might, for example, provide guidance to the department of higher education in funding financial aid and classroom instruction and specify a process for conducting the local elections contemplated in the proposal.