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MEMORANDUM

May 5, 2008

TO: Nedra San Filippo and Kenneth Hoagland

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #102, concerning the Colorado housing investment fund

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.

An earlier version of this initiative was the subject of a memorandum dated April 4, 2008. Proposal 2007-2008 #86 was discussed at a hearing on April 4, 2008. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To create the Colorado housing investment fund ("Fund") in the state treasury, which Fund

- shall be administered by the division of housing in the department of local affairs;
2. To specify the sources of moneys in the Fund, permitted uses for the moneys, the method for allocating the moneys, and eligible recipients of the moneys;
 3. To impose a real estate transfer tax on certain real estate transactions to generate revenue for the Fund, which tax shall be imposed at the rate of four cents for each one hundred dollars, or major fraction thereof, of consideration paid for the real property;
 4. To clarify that any revenue collected from the real estate transfer tax and spent pursuant to the article shall be a voter-approved revenue change and shall not be constrained by any limitation contained in section 20 of article X of the state constitution ("TABOR") or any other limit on revenue or spending under state law; and
 5. To require the general assembly to enact laws to further the purpose of the article.

Comments and Questions

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

Technical questions:

1. Section headnotes are normally indented (for example, page 1, line 9). Would you consider indenting all of the section numbers and headnotes?
2. On page 1, line 21, the comma after "UTILITIES" is not necessary. Would you consider removing this comma?
3. Would you consider removing the words "COLORADO HOUSING INVESTMENT" on page 2, line 13? Since the previous sentence refers to the Fund by its full name, it is appropriate to refer to the Fund simply as the "FUND" in the rest of the subsection.
4. The standard format for referencing a subparagraph within the same constitutional section is: "SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION" (page 2, line 44). The reference to "SECTION 3 (3) OF THIS ARTICLE" on page 3, line 14, does not need to change. It is correct, because it is referring to a provision outside of the section. Would you consider making the appropriate changes to conform to these practices throughout the proposed initiative?
5. When two or more numbers or letters denoting new constitutional subdivisions (subsection, paragraph, etc.) appear next to each other, they should be separated by a single space. For example, "(4)(a)" should be written "(4) (a)" (page 3, line 4).
6. Make sure that all font sizes are correct and all language is capitalized properly. Roman numerals denoting subparagraphs should be large capped, as on page 3, line 18.

7. Only proper nouns such as the names of cities and states should be capitalized. Accordingly, refer to the Fund as the "COLORADO HOUSING INVESTMENT FUND" (page 3, line 16).
8. Whenever an internal reference in a constitutional subdivision (section, subsection, paragraph, etc.) refers to that same subdivision, refer to it simply as follows: "...THIS SUBPARAGRAPH (II)" (page 3, line 24).
9. On page 3, line 37, would you consider removing the word "**Generate**" from the headnote? The headnote would still imply that the section addresses how revenue would be raised for the Fund, making the word "**Generate**" unnecessary.
10. On page 4, line 7, the phrase "IN 2009" does not need to be set off with commas. Would you consider removing these commas?
11. Would you consider rewriting the effective date clause to conform more closely with standard drafting practices? For example, section 6 of the proposed initiative could read as follows:

"Section 6. Effective date. SECTION 5 OF THIS ARTICLE SHALL TAKE EFFECT ON JANUARY 15, 2009. SECTIONS 1, 2, 3, AND 4 OF THIS ARTICLE SHALL TAKE EFFECT ON JULY 1, 2009."

Substantive questions:

1. Regarding the definitions of "LOW-INCOME HOUSEHOLD" and "VERY LOW-INCOME HOUSEHOLD" contained in section 2 (6) and (7) of the proposed initiative, does the phrase "OR SUCH OTHER DEFINITION AS MAY BE PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [HUD]" refer to "AREA MEDIAN INCOME," or is it being offered as an alternative definition of "LOW-INCOME HOUSEHOLD" and "VERY LOW-INCOME HOUSEHOLD"? If the former, would you consider removing this language, since the definition of "AREA MEDIAN INCOME" in section 2 (3) already incorporates the definition promulgated by HUD? In the case of the latter, if HUD does promulgate definitions of "LOW-INCOME HOUSEHOLD" and "VERY LOW-INCOME HOUSEHOLD" that differ from your definitions of those terms, how shall it be determined which definition is to be used? In other words, which definition shall take precedence?
2. Section 3 (2) of the proposed initiative requires moneys in the Fund to be used for grants and loans. The text of the proposed initiative does not contain any reference to the interest rate charged on loans from the Fund. Assuming you intend for such loans to carry interest, in what manner will the interest rate be determined?
3. In connection with the provisions of section 3 (3) of the proposed initiative, how often will the public hearings or needs assessments be conducted?
4. With respect to section 3 (4) of the proposed initiative, will the 40/60% split with the accompanying allocation specified in the text of section 3 (4) apply regardless of the amount

of moneys in the Fund?

5. It is presumed that the counties will be incurring some costs to implement the collection of the proposed real estate transfer tax. Is it your intent that such costs be borne by the counties, or is some other arrangement intended? Is this an issue that you anticipate will be addressed in any implementing legislation?
6. Do you intend for there to be a maximum amount of moneys that may be awarded to any one beneficiary by means of a grant? If so, how will any such limitation be codified?
7. How will the determination be made whether an entity receiving moneys from the Fund receives funding in the form of a grant or a loan?
8. Do you intend for more funding to be made through grants or loans, and, if the funding is to favor one over the other, do the proponents have an idea of what the relative division should be between grants and loan funding?
9. With respect to section 3 (4) (c) of the proposed initiative, what is the rationale for requiring the reversion of unused moneys allocated directly to local governments under section 3 (4) (a) (II) but not unused moneys allocated on a competitive basis statewide under section 3 (4) (a) (I)?
10. What is the rationale for the differences in language between proposed initiative 2007-2008 #102 and proposed initiative 2007-2008 #103 in section 4 (2) concerning the collection and spending of revenue generated by the real estate transfer tax as it relates to TABOR?
11. What is the rationale for having the proposed real estate transfer tax take effect on July 1, 2009, instead of on some other date?
12. What is the rationale for having two different effective dates in the proposed initiative? Specifically, what is the rationale for assigning a specific effective date to section 5, as contrasted with the other sections of the proposed initiative, particularly since section 5 already requires the General Assembly to pass implementing legislation on or before December 31, 2009? In addition, how will the proposed initiative be truly operational if the General Assembly is not required to pass implementing legislation until six months after the other provisions of the proposed initiative have taken effect?
13. By referring only to sections 1 to 5 in the effective date clause, is it clear when section 6 becomes effective? Would you consider modifying section 6 of the proposed initiative to read: "SECTION 5 OF THIS ARTICLE SHALL TAKE EFFECT JANUARY 15, 2009, AND THE REMAINDER OF THIS ARTICLE SHALL TAKE EFFECT UPON PASSAGE."?