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MEMORANDUM

April 20, 2007

TO: Richard Hamilton and Phil Doe

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #18, concerning restructuring of responsibilities of Colorado water resources and power development authority

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 to amend the Colorado Revised Statutes:

1. To eliminate the Colorado water resources and power development authority (the "authority");
2. To prevent the issuance of tax-exempt revenue bonds without voter approval;
3. To prevent the use of water rights to secure public debt without the consent of the people;
and

4. To eliminate a perceived redundancy in the development of water development projects and to require legislative approval of water projects.

Comments and Questions

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

Technical questions:

1. The proponents may wish to consult the Office of Legislative Legal Service's Legislative Drafting Manual, which is available online at: http://www.state.co.us/gov_dir/leg_dir/olls/office_publications.htm. To conform with these standard drafting practices, would the proponents consider:
 - a. Using the following enacting clause: "Be It Enacted by the People of the State of Colorado:"
 - b. Using an amending clause on a separate line from the enacting clause:

SECTION 1. Article 95 of title 37, Colorado Revised Statutes, is amended to read:

Alternatively, the following amending clause could be used, in which case all words, other than the section headings, would be in small caps:

SECTION 1. Article 95 of title 37, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

Alternatively, different amending clauses could be used for different sections depending upon whether the entire section is being repealed or amended or if only one or more parts of a section is being amended, e.g.:

SECTION 1. Repeal. 37-95-108, 37-95-109, 37-95-110, 37-95-111, 37-95-112, 37-95-113, 37-95-114, 37-95-115, 37-95-116, 37-95-117, 37-95-118, 37-95-119, and 37-95-120, Colorado Revised Statutes, are repealed as follows:

In this instance, the repealed language would be shown in strike type. Alternatively, if the following amending clause is used, the repealed language would not be shown at all:

SECTION 1. Repeal. 37-95-108, 37-95-109, 37-95-110, 37-95-111, 37-95-112, 37-95-113, 37-95-114, 37-95-115, 37-95-116, 37-95-117, 37-95-118, 37-95-119, and 37-95-120, Colorado Revised Statutes, are repealed.

- c. Using the following general format:
 - i. The section number and headnote should appear in bold-faced type.

- ii. The first subsection, or if there are no subsections, the language of the statute, should immediately follow the headnote rather than starting on a separate line, e.g., "**37-95-103. Definitions.** As used in this article:"
 - iii. Except for the first subsection, all subsections, paragraphs, subparagraphs, and sub-subparagraphs should have a tab indent.
 - d. When striking an entire section, not striking through the section number and headnote. These will remain in the statutes for historical purposes, followed by "Deleted by amendment"; the proponents need not include these words, as they will be inserted by the Revisor of Statutes after passage of the amendment. However, all words in the statute are shown in strike type; for example, in section 37-95-106, "(gg) Repealed." should be shown in strike type because the entire section is being repealed.
 - e. Unless repealing an entire section, not striking through a subsection number. Subsection numbers remain in the statutes after repeal for historical purposes. "Deleted by amendment" will be inserted by the Revisor of Statutes after passage of the amendment. The same rule applies when repealing an entire subsection, paragraph, or subparagraph.
 - f. Showing stricken language before new language, and new language in SMALL CAPS, rather than REGULAR CAPS. Only complete words can be shown in strike type. For example, in subsection (4.8) of section 37-95-103, the word "~~from~~" in the second line is only partially stricken.
 - g. Striking all punctuation with the word that it follows. If necessary, insert new punctuation after the remaining current language or new language. Punctuation that appears just before stricken type can be deleted rather than stricken, or it can be changed to different punctuation. For example, in subsection (1) of section 37-95-102, show the comma after the word "~~convenience~~" in strike type; in subsection (5) (a) of section 37-95-103, delete the comma before "~~municipal corporations~~" and show the comma after it in strike type, after "subdivisions", change the comma to a period.
2. Would the proponents consider showing current law in its entirety, exactly as it appears in the statutes, with strikes and caps added and capitalization changed as necessary? The following is not an exhaustive list:
- a. In section 37-95-101 the word "maybe" should be two words "may be" as shown in current law.
 - b. In section 37-95-102 (1):
 - i. After the word "~~upgrade~~" the comma should be stricken and the word "AND" should be added;
 - ii. There is a tabbed indent in the middle of the paragraph, followed by the letter "~~(a)~~". This is not in current law. The tab and the "~~(a)~~" should be removed.
 - c. In section 37-95-103 (2), there should be commas after the words "storage", "~~treatment~~", and "application".
 - d. In section 37-95-103 (4), there should be a period after "authority".
 - e. In section 37-95-103 (4.8), in the stricken type at the end of the subsection, the phrase "~~Safe Drinking Water Act~~" appears. The word "Act" is not capitalized in current law.
 - f. In section 37-95-104 (7), one of the words "by" should be in strike type in the phrase

- "by ~~an act passed by~~" and, after "general assembly", insert "on condition that".
- g. In section 37-95-105 (3), at the end of the paragraph, insert: "~~in the authentication of any such contract or transaction.~~"
 - h. In section 37-95-106 (1):
 - i. In paragraph (k) (II), after "~~to designate~~" insert "the", after "~~participating in~~", insert "a", and after "~~the planning~~", insert a stricken comma;
 - ii. In paragraph (w), the period at the end of the paragraph is a semi-colon in current law, in paragraph (x), "~~note holders~~" is one word in current law, in paragraph (z), "~~note holders~~" is one word in current law and the word "~~therefore~~" is spelled "therefor" in current law.
 - i. In section 37-95-107 (3) (f), the word "~~greed~~" is "agreed" in current law.
 - j. In section 37-95-107.6 (1) (a), after "~~created in~~", insert "the authority", after "~~stated in this section~~", insert "the authority".
 - k. In section 37-95-107.6 (2) (c), insert a comma after "GENERAL ASSEMBLY".
 - l. In section 37-95-107.6 (3) (a):
 - i. In the phrase "Each loan by ~~the authority~~ COLORADO WATER POLLUTION CONTROL REVOLVING FUND," the word "~~the~~" should not be stricken.
 - ii. After "terms and conditions thereof", insert a comma;
 - iii. In the phrase "TO PROVISIONS ADOPTED BY THE GENERAL ASSEMBLY" the word "TO" is current law and should be shown in lowercase type.
 - m. In section 37-95-107.6 (4) (c), in the phrase "~~list approved by the general assembly~~" the word "~~list~~" should not be stricken.
 - n. In section 37-95-107.6 (6), the word "~~therefore~~" should be "therefor".
 - o. In section 37-95-107.6 (7), after "~~written approval of~~", insert "the department of health, is", and after "SHALL BE" the word "~~is~~" should be deleted.
 - p. In section 37-95-107.8 (1), after "~~administer for the purposes~~", insert "stated".
 - q. In section 37-95-107.8 (2) (c) (II), the word "Making" should not be capitalized.
 - r. In section 37-95-107.8 (4) (b), after "developed by the", insert "water quality control commission".
 - s. In section 37-95-107.8 (6), the word "~~therefore~~" should be "therefor".
 - t. In section 37-95-115, insert a comma after "authority" and insert a period at the end of the paragraph.
 - u. In section 37-95-117, in the headnote, the first word should be "Services" not "Service".
 - v. In section 37-95-118, "24-75-601", "75", and "24" should not be underlined.
 - w. Section 37-94-123 should be numbered as section 37-95-123 (section 37-94-123 does not exist in current statute) and "37-95-102" should not be underlined.
3. In section 37-95-103 (5), the letter "(a)" should be stricken if the "(b)" is stricken.
 4. In section 37-95-103 (15):
 - a. The word "THE" at the beginning of the sentence should be deleted. Definitions begin with the word or phrase being defined;
 - b. The phrase "that state governmental section" is used. Does this refer to the water resources and power development division created in section 37-95-104.1? If so, please use the correct name and cite the section in which it is created. Similarly, in

section 37-95-104.1, the headnote says "Creation of the Colorado Water Resources and Power Development *Section . . .*", however in subsection (1) the "water resources and power development *division*" is created. Would the proponents consider being consistent in the use of terms?

5. In section 37-95-105:
 - a. In subsection (1), after "REMAIN", insert the word "A" for correct grammar;
 - b. In subsection (4), there is the phrase "THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY CONTINUING PUBLIC RECORD SHALL ALSO INCLUDE *OF ALL AND ANY OTHER PROCEEDINGS . . .*". The words "OF ALL AND" appear to be out of context in this sentence.

6. In section 37-95-107.6 (1):
 - a. A word cannot be amended by adding letters to it. The word "authority'S" should be shown in small caps;
 - b. Would the proponents consider using the correct form of statutory citation? Instead of using "- AT TITLE 25, ARTICLE 8, SECTION 309 -", use "IN SECTION 25-8-309, C.R.S.".
 - c. Sections 37-95-107.6 (2) (a), (2) (b), (2) (c), and 37-95-107.8 (2) (c) (II), (3) (a), (7), and (9) refer to the "COLORADO GENERAL ASSEMBLY". Virtually all existing statutory references are to the "general assembly". Would the proponents consider referring instead to the "general assembly"?

7. Section 37-95-107.6 (2) (a) refers to the "COLORADO WATER POLLUTION CONTROL DIVISION". This division does not exist in statute. Do the proponents intend to refer to the division of administration?

8. The word "HEREUNDER" is vague in sections 37-95-107.6 (1) (a) and 37-95-107.8 (1). Would the proponents consider using a specific cite such as "in this section" or "in this subsection (1)"?

9. In section 37-95-107.8 (2):
 - a. The language in this subsection is all new. Would the proponents consider deleting the stricken words and showing the lowercased words in small caps?
 - b. Would the proponents consider using the standard form of statutory citation? For example, instead of "- AT TITLE 25, ARTICLE 1.5, SECTION 210", use "SECTION 25-1.5-210, C.R.S.,".
 - c. The term "COLORADO DEPARTMENT OF HEALTH" is used (as well as in section 37-95-107.8 (3) (a)). This is not the name of any Colorado department. Would the proponents consider using specific department names?
 - d. Following the new subsection (2) are paragraphs (a), (b), and (c) that formerly followed subsection (1) of this section. Paragraph (a) appears to be a duplicate of the language in subsection (2) and could be stricken, and paragraph (c) no longer has an introductory portion and is an incomplete sentence. If the proponents wish to keep this in the law, the sentence should be revised to be a complete sentence and to state who is to transfer moneys to and divide moneys between the drinking water

revolving fund and the water pollution control revolving fund. It will also need a new designation such as subsection (3).

- e. The remaining subsections in this section will also need to be renumbered, since a new subsection (2) was added before the current subsection (2).

10. How do the proponents intend to handle references to the "Colorado water resources and power development authority" and the "drinking water revolving fund" in other statutory sections that are not being amended? Would the proponents consider including necessary conforming amendments?

Substantive questions:

1. The proposal "dissolves" the authority, repeals all of its statutory powers and duties, directs a water resources and power development "section" or "division" of the Colorado water conservation board (the "CWCB") to assume "all" the "activities" and "services" of the authority, and places the "legal actions and authorities" of the drinking water revolving fund within the department of public health and environment "division of drinking water management". These provisions raise the following questions:
 - a. What are the "activities" and "services" of the authority? Are they different from the authority's powers, duties, and legal obligations?
 - b. What powers, duties, and legal obligations does the new section or division of the CWCB have; for example, may the new section or division issue bonds or make loans?
 - c. Would the proponents consider specifying whether the new section or division of the CWCB would have a director or other chief executive?
 - d. What do the proponents intend with regard to the authority's existing obligations, for example, existing bonds, loans, or other contracts?
 - e. What are the "legal actions and authorities" of the drinking water revolving fund?
 - f. Have the proponents considered using the "**type 3**" designation specified in section 24-1-105 (3), C.R.S.?

24-1-105. Types of transfers. (3) Under this article, a **type 3** transfer means the abolishing of an existing department, institution, or other agency and the transferring of all or part of its powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds to a principal department as specified under this article.

24-1-105. Types of transfers. (4) When any department, institution, or other agency, or part thereof, is transferred by a **type 2** or **type 3** transfer to a principal department under the provisions of this article, its prescribed powers, duties, and functions, including rule-making, regulation, licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the department, institution, or other agency, or part thereof, has been transferred.

2. The proposed amendment repeals the definition of the authority board in section 37-95-103

- (3), but section 37-95-105 continues to refer to the board. Would the proponents consider resolving this ambiguity?
3. Section 37-95-107.6 (1) directs the general assembly to "dissolve" the existing water pollution control revolving fund and create the fund in section 25-8-309, and section 37-95-107.8 (2) directs the general assembly to "dissolve" the existing drinking water revolving fund and create the fund in section 25-1.5-210. Note that:
 - a. An initiated statute cannot "direct" the general assembly to create the funds, but the proposed language would repeal the funds, which could result in the loss of federal revenues available under the federal Clean Water Act.
 - b. The proposed amendment itself could create the revolving funds.
 4. A fund is inanimate and does not have the ability to take action, such as, in section 37-95-107.6 (1) (b), assuming legal authorities and establish procedures, section 37-95-107.6 (3) (a), contracting loans, section 37-95-107.6 (10), transferring moneys, section 37-95-107.8 (2), establishing procedures, section 37-95-107.8 (2) (a), making deposits, section 37-95-107.8 (3) (a), making loans, and section 37-95-107.8 (9), transferring moneys. A person is needed to perform these acts, such as the director of a board or division. Would the proponents consider identifying an entity that can take the indicated actions?