

STATE OF COLORADO

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MEMORANDUM

December 6, 2007

TO: Jon Caldara and Nancy Spence

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #53, concerning limitation on public payroll deductions

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 amend the state constitution by the addition of a new article XXIX specifying that:
 - a. In the interest of advancing simple, ethical, and efficient government, public payroll systems should not be utilized to benefit private organizations and special interests.
 - b. The requirements of the article must apply to all public employers, including all local governments and political subdivisions of the state.
 - c. "Public employee" means any person who is an employee of a public employer.
 - d. "Public employer" means the state of Colorado, including any institutions of higher education; any local governmental entity, including cities, towns, cities and counties, and counties; and any other governmental entities, including school districts and political subdivisions of the state.
 - e. "Public employer" shall not include any foreign country, the federal government, the government of any other state, any entities and subdivisions organized under federal law or under the laws of other states or foreign countries, or any private entity providing services to a public employer through the private entities' own employees and contractors
 - f. "Public payroll system" means the payroll system used by any public employer for payment of wages, earnings, or other compensation to public employees, regardless of whether the system is administered directly by the public employer or by a third party.
 - g. "Charitable deduction" means a payroll deduction for contribution to a charity or other organization exempt from federal income tax under section 501 (c) (3) of the "Internal Revenue Code of 1986".
 - h. A public payroll system shall not take any payroll deduction from the payroll compensation of any public employee except for deductions required by federal law, including but not limited to, social security and medicare; tax withholdings; judicial liens and garnishments, including court-ordered child support, domestic support; and maintenance obligations and payments; health and life insurance; individual and group benefit plans and pensions ;and other retirement plans, as established by law for such public employee; and charitable deductions.
 - i. The provisions of the article are self-executing and severable, and supersede conflicting state constitutional, state statutory, local charter, ordinance or resolution, and other state and local provisions

- j. The article shall take effect upon proclamation of the governor.

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 such an enacting clause at the beginning of the proposed measure?

- 2. It is standard drafting practice to use an amending clause indicating the specific section of the law where new language will be added.

- a. Would the proponents consider adding the following amending clause, to be placed after the enacting clause:

"The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:"

- b. In connection with the above change, would the proponents consider deleting the word "NEW" from the article heading?

- 3. Since article XXIX of the Colorado constitution already exists, would the proponents add a new article XXX instead?

- 4. In Colorado, when a proposed measure adds new language to the state constitution, new language (except the headnotes of each section) is generally shown in small capital letters [THIS IS AN EXAMPLE OF NEW LANGUAGE IN SMALL CAPITAL LETTERS]. Would the proponents consider using small capital letters for the text of the proposed measure?

- 5. To be consistent with standard drafting practices in Colorado, would the proponents:

- a. Type the article heading in bold-faced type?

- b. Capitalize only proper names, such as "Colorado", and the word at the beginning of

a sentence, i.e., "State" should be "state", "Article" should be "article", "Governor" should be "governor", "Public Payroll System" should be "public payroll system", etc.

- c. Delete the blank lines after "Article" in sections 2 (1) and 4 of the proposed measure?
 - d. Put the definitions in section 2 of the proposed measure in alphabetical order?
 - e. Place a comma before the last item in a series of three or more? For example, in section 2 (2) of the proposed measure, add a comma after the phrase "cities and counties"; in section 2 (3) of the proposed measure, add a comma after the word "earnings"; and in section 3 of the proposed measure, add a comma after the phrase "domestic support".
 - f. Delete the comma after the phrase "school districts" in section 2 (2) of the proposed measure, since it is a series of two and a comma is not necessary?
 - g. In section 2 (4) of the proposed measure, for correct citation to the internal revenue code, change "Sec. 501 (c)(3) of the Internal Revenue Code of 1986." to "section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended."
6. In section 3 of the proposed measure, it is unclear if the series of items listed refers back to the "except for" clause at the beginning of the section or if the series refers back to the "including by way of example but not limitation" clause at the beginning of the section. For reader-friendly purposes, and so the meaning intended by the proponents is clear, would the proponents consider reorganizing the section one of the two following ways:

Section 3. Allowable public payroll deductions. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PUBLIC PAYROLL SYSTEM SHALL TAKE ANY PAYROLL DEDUCTION FROM THE PAYROLL COMPENSATION OF ANY PUBLIC EMPLOYEE EXCEPT FOR:

- (a) DEDUCTIONS REQUIRED BY FEDERAL LAW, INCLUDING BY WAY OF EXAMPLE BUT NOT LIMITATION, SOCIAL SECURITY AND MEDICARE;
- (b) TAX WITHHOLDINGS;
- (c) JUDICIAL LIENS AND GARNISHMENTS, INCLUDING COURT-ORDERED CHILD SUPPORT, DOMESTIC SUPPORT, AND MAINTENANCE OBLIGATIONS AND PAYMENTS;
- (d) HEALTH AND LIFE INSURANCE;
- (e) DEDUCTIONS FOR INDIVIDUAL AND GROUP BENEFIT PLANS AND PENSIONS AND OTHER RETIREMENT PLANS, AS ESTABLISHED BY LAW FOR SUCH PUBLIC EMPLOYEE; AND
- (f) CHARITABLE DEDUCTIONS.

OR

- (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PUBLIC PAYROLL SYSTEM SHALL TAKE ANY PAYROLL DEDUCTION FROM THE

PAYROLL COMPENSATION OF ANY PUBLIC EMPLOYEE EXCEPT FOR DEDUCTIONS REQUIRED BY FEDERAL LAW, INCLUDING BY WAY OF EXAMPLE BUT NOT LIMITATION:

- (a) SOCIAL SECURITY AND MEDICARE;
- (b) TAX WITHHOLDINGS;
- (c) JUDICIAL LIENS AND GARNISHMENTS, INCLUDING COURT-ORDERED CHILD SUPPORT, DOMESTIC SUPPORT, AND MAINTENANCE OBLIGATIONS AND PAYMENTS;
- (d) HEALTH AND LIFE INSURANCE;
- (e) DEDUCTIONS FOR INDIVIDUAL AND GROUP BENEFIT PLANS AND PENSIONS AND OTHER RETIREMENT PLANS, AS ESTABLISHED BY LAW FOR SUCH PUBLIC EMPLOYEE; AND
- (f) CHARITABLE DEDUCTIONS.

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. Section 3 of the proposed measure allows for "deductions for individual and group benefit plans and pensions and other retirement plans, *as established by law* for such Public Employee" (emphasis added). What is the intended meaning of "as established by law"? For example, do the proponents intend to include only required deductions or required deductions and voluntary deductions as authorized by law?