

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

May 2, 2007

TO: Arthur Guerrero and Marvin Meyers

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #27, concerning operation and distribution of money from Colorado lottery.

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.

This proposed initiative was submitted for review and comment together with proposed initiatives 2007-2008 #s 25 and 26, which are substantially similar. Accordingly, the questions and comments set forth in the review and comment memoranda for proposed initiatives 2007-08 #s 25 and 26 also apply to this proposed initiative, unless the context otherwise requires, and are incorporated herein.

#### Purposes

The major purpose of the proposed amendment appears to be to amend sections 3 and 5 of article XXVII of the Colorado constitution and to add a new section 6.5 to article XXVII of the Colorado constitution:

1. To create the lottery operating concession board (board) as an independent and temporary board within the government of the state, specify the composition of the board, and identify the conflict of interest restrictions that apply to board members;
2. To authorize the board to enter into a lottery operating concession contract on behalf of the state at any time subsequent to January 1, 2008, and no later than December 31, 2010;
3. To define a lottery operating concession contract as a contract entered into by the board on behalf of the state under which the state obligates itself to a multiple-year financial obligation through the grant of a concession to a qualified private vendor that gives the vendor the right and obligation to operate all lottery programs, receive all gross revenues of lottery programs in a guaranteed amount of not less than one million dollars per year, and pay all lottery operating expenses, including all prizes, and the right to keep all baseline net proceeds and a specified share of the incremental net proceeds for a period of up to seventy-five years in exchange for a lump-sum payment and the retention by the state of a specified share of the incremental net proceeds; except that a lottery operating concession contract may include a further multiple-year financial obligation in the form of an agreement by the state and the vendor to jointly grant a third party the right to receive baseline net proceeds in exchange for valuable consideration;
4. To define the terms "baseline net proceeds," "incremental net proceeds," "qualified private vendor," and "video lottery terminal";
5. To require the board to select a qualified private vendor for a lottery operating concession contract through a competitive bidding process, but to exempt the bidding process from state procurement laws and allow the board to select a responsible bidder other than the bidder whose bid provides the most facially favorable financial terms to the state if the board believes, based on the qualifications, historical performance, or bid submissions of all qualified private vendors submitting bids, that selection of a different qualified private vendor will best serve the public interest;
6. To create the lottery trust fund and require all moneys received by the state under the terms of a lottery operating concession contract to be credited to the lottery trust fund;
7. To specify the manner in which all moneys credited to the lottery trust fund are to be invested therein or distributed therefrom and to specifically require that:
  - a. The entire lump-sum payment received by the state under the terms of a lottery operating concession contract initially be credited to the lottery trust fund;
  - b. The first one billion seven hundred million dollars of the lump-sum payment remain in the lottery trust fund;
  - c. The lesser of either the entire remainder of the lump-sum payment or the next sixty million dollars of the lump-sum payment be transferred and credited to the Colorado state veterans trust fund;

- d. Sixty-five percent of all remaining moneys from the lump-sum payment be transferred and credited to the great outdoors Colorado trust fund for use for the exclusive purpose of making competitive grants to local governments and nonprofit land conservation organizations for specified land acquisition and stewardship purposes and that such moneys be exempted from existing constitutional provisions requiring substantial equality of expenditures of great outdoors Colorado trust fund moneys among four specified purposes and diversion of great outdoors Colorado trust fund moneys in excess of a certain amount to the state general fund;
- e. Thirty-five percent of all remaining moneys from the lump-sum payment be transferred and credited to a newly created hope scholarship trust fund to be allocated by the general assembly in amounts no larger than nine percent of the balance of the fund at the beginning of any fiscal year for the exclusive purpose of providing additional funding for school districts to use to purchase post-secondary courses for students participating in any dual enrollment or post-secondary enrollment program under the "Postsecondary Enrollment Options Act" or the "Fast College Fast Jobs Act" or any similar laws or successor laws thereto and secondarily to increase the amount of stipends provided by the college opportunity fund program or any successor program thereto and to provide need and merit-based scholarships for students attending public institutions of higher education in the state;
- f. The interest and gains generated by the lottery trust fund, subject to such annual limitation as may be adopted by the general assembly, and the state share of the ongoing incremental net proceeds of all lottery programs received by the state under the terms of a lottery operating concession contract be continually appropriated and distributed in a manner consistent with the prudent management of a trust no less frequently than quarterly as follows:
  - i. Forty-two percent to the conservation trust fund for distribution to municipalities and counties and other eligible entities for parks, recreation, and open space purposes;
  - ii. Forty-two percent to the great outdoors Colorado trust fund to be distributed substantially equally among four specified purposes in accordance with a specified existing constitutional provision and to be exempted from an existing constitutional provision requiring diversion of great outdoors Colorado trust fund moneys in excess of a certain amount to the state general fund;
  - iii. Ten percent to the division of parks and outdoor recreation for acquisition, development, improvement, administration, and maintenance of new and existing state parks, recreation areas, and recreational trails;
  - iv. Three percent to the state education fund; and
  - v. Three percent to the state school fund as a contingency reserve;

8. To specify that execution of a lottery operating concession contract does not transfer ownership of any lottery program from the state to a qualified private vendor or any other person or limit or impair the ability of the state to regulate and ensure the integrity of lottery programs as specified by law;
9. To allow a qualified private vendor operating lottery programs to operate any type of constitutionally or statutorily approved lottery game except for a game that uses a video lottery terminal;
10. To generally prohibit the state from operating any lottery program during the term of a lottery operating concession contract, but to allow the state to terminate or suspend the contract and resume operation of lottery programs if the qualified private vendor fails to operate lottery programs in accordance with operating requirements specified in the contract or otherwise substantially breaches the contract;
11. To specify that state employees whose positions relate to the operation or supervision of lottery programs and may be affected by the execution of a lottery operating concession contract and who are classified employees in the state personnel system retain all rights to the personnel system and retirement benefits pursuant to Colorado law, require that any transfers and or abolishment of positions in the state personnel system be made and processed in accordance with state personnel system laws and regulations, and clarify that the proposed initiative does not authorize or require the relocation of the home office, physical facilities, or employees of the Colorado lottery from their present geographic location; and
12. To exempt all moneys received by the state or any other district by operation of the proposed initiative from fiscal year spending limits specified in the Taxpayer's Bill of Rights or any other law.

### **Comments and Questions**

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

#### **Substantive questions:**

1. The Colorado constitution requires each initiative to have a single subject. What is the single subject of the proposed initiative?
2. Why has the definition of "lottery operating concession contract" in section 6.5 (1) (c) of the proposed initiative been modified from the definition of the term used in initiatives 2007-08 #s 25 and 26 to guarantee that the gross revenues of lottery programs that a qualified private vendor is entitled to receive under the terms of such a contract are an "amount of not less than one million dollars per year"?