

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

February 6, 2008

TO: Holly Tarry and Lisa Shapiro

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #64, concerning farm animal confinement

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 prohibit confinement of specified farm animals in a way that unacceptably restricts the animals' movements for the greater part of any day;
2. To create exceptions from this prohibition for certain circumstances;
3. To penalize those acting in violation of this law; and

4. To delay the effective date of this law until such time as is believed to allow persons to implement changes in order to conform to the 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"

To comply with this constitutional requirement, would the proponents remove the italics from the enacting clause in the proposed initiative and capitalize the first letter in the word "enacted"?

2. Would the proponents consider changing references in the proposed initiative of "this act", "this Act", or "this chapter" to "this article" to more precisely identify the portion of the Colorado Revised Statutes to which the proponents refer?
3. Would the proponents consider changing references in the proposed initiative of "regulation" or "regulations" to "rule" or "rules", since it is standard drafting practice to write "rule" rather than "regulation"?
4. To conform to standard drafting practices: (See the example following paragraph d. for examples of each of the following suggestions.)
 - a. Would the proponents consider adding an amending clause in standard amending clause format? The general statement under the enacting clause creates a new article under title 35 of the Colorado Revised Statutes and thus seems to perform as an amending clause. However, it is phrased differently than amending clauses usually are and has small-capitalized words that should be written in regular bolded font. Furthermore, it refers to the "Agriculture Code," whereas cites to statutory titles are normally named by title number (hence, the Agriculture part of the Colorado Revised Statutes is "title 35"). Further, because the proposed initiative consists of a new article (with the effective date section being reproduced in the Colorado Revised Statutes), only one individual **SECTION** heading is necessary. Would the proponents consider eliminating the other section headings (i.e., **SECTION 2.**, **SECTION 3.**, etc.)? Would the proponents consider changing the currently written bolded and underlined *small capital* letters "**SECTION 1.**" to bolded, not underlined,

all-capped letters (to read "SECTION 1.")? If so, SECTION 1. should be placed before the amending clause.

- b. Would the proponents consider changing the article heading so that it is in standard Colorado Revised Statutes format, instead of unbolded and in small capital letters?
- c. Would the proponents consider relocating the text following each bolded section heading to start immediately after the heading (as opposed to being placed below and indented)? And, would the proponents consider adding a period after each bolded section heading?
- d. Would the proponents consider writing the proposed new statutory language in small capital letters? THIS IS AN EXAMPLE OF TEXT IN SMALL CAPITAL LETTERING.

EXAMPLE:

SECTION 1. Title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 57.9
Farm Animal Confinement

35-57.9-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "PREVENTION OF FARM ANIMAL CRUELTY ACT".

35-57.9-102. Legislative declaration. THE PURPOSE OF THIS ARTICLE IS TO PROHIBIT THE CONFINEMENT. . . .

35-57.9-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CALF RAISED FOR VEAL" MEANS

(2) "EGG-LAYING HEN" MEANS

. . . .

- 5. In the proposed Section 1 (35-57.9-101), there appears to be a typographical error. Would the proponents consider changing the word "know" to "known"? Would the proponents consider placing the short title of their proposed initiative in quotation marks (to read: "Prevention of Farm Animal Cruelty Act.")?
- 6. In the proposed Section 3 (35-57.9-103):
 - a. Would the proponents consider changing the introductory sentence from "As used in this article, the following terms have the following meanings:" to "As used in this article, unless the context otherwise requires:"? This change would harmonize this

section with other definitions sections in the Colorado Revised Statutes.

- b. In subsection (2), would the proponents consider changing the term "covered animal" to something else? Use of the word "covered" to modify the intended animals may not be advisable, since the word "covered" could lead to confusion as it is vague.
 - c. In subsection (4), would the proponents consider eliminating the parentheses, which are generally not used in the Colorado Revised Statutes? The parenthetical information could be offset by commas instead.
 - d. In subsection (5), would the proponents consider altering the semicolon to a comma?
 - e. In subsection (6), would the proponents consider changing "his or her" to "its"? If so, the term would also need to be changed throughout the proposed initiative whenever it is used.
 - f. Would the proponents consider concluding subsection (9) with a period?
7. In the proposed Section 4 (35-57.9-104):
- a. Would the proponents consider removing the word "**provisions**" from the section heading? The word is unnecessary in the descriptive heading. Furthermore, would the proponents consider removing the bolded subheadings identifying subdivisions of the proposed section 35-57.9-104 in order to conform more closely to drafting practice? The proponents could perhaps relocate these terms in the section heading, separated by dashes, such as "**35-57.9-104. Farm animal confinement - prohibitions - exceptions.**"
 - b. In subsection (2), would the proponents consider adding the word "during" between the word "apply" and the colon? This would allow the proponents to eliminate the word "during" at the start of each paragraph in subsection (2) and eliminate the phrase "To a pig during" in paragraph (f).
 - c. In subsection (2), would the proponents consider changing the period after each paragraph (except paragraph (f)) to a semi-colon? If so, would the proponents also consider adding the word "or" following the semi-colon in paragraph (e)?
 - d. In paragraph (b) of subsection (2), would the proponents consider adding a comma after the word "treatment"? It is standard drafting practice to add a comma before the conjunction "or" in a list or series of items.
 - e. In paragraph (e) of subsection (2), the proponents refer to the part of the Colorado Revised Statutes governing slaughter of meat animals. In order to conform to typical drafting practice, would the proponents consider:
 - i. Substituting "pursuant to" for the proposed "in accordance with";

- ii. Removing the extraneous words "the provisions of";
- iii. Changing the reference "Article 33 . . . of Title 35" to "article 33 of this title", since it is standard practice to not capitalize references to the Colorado Revised Statutes and since the proposed initiative is within title 35, Colorado Revised Statutes;
- iv. Removing the parentheses and parenthetical information therein (since the entire article is being referred to, it is unnecessary to state the section at which the article begins);
- v. Deleting "of the Agricultural Code" (because titles are not usually referred to by name) and "relating to humane methods of slaughter" (since the content of articles is not typically described);
- vi. Changing the proposed phrase "and other applicable laws and regulations" (which is somewhat vague) to "and rules adopted pursuant to article 33 of this title"?

Taking all of these suggestions, paragraph (e) would read: "The slaughter of a covered animal pursuant to article 33 of this title and rules adopted pursuant to article 33 of this title;"

- 8. In the proposed Section 6 (35-57.9-106), assuming the proponents have agreed to change references of "regulations" to "rules", would the proponents consider changing the first instance of the word "rules" to its singular form (to read: ". . . shall not be construed to limit any state law or rule . . .")?
- 9. In the proposed Section 8 (35-57.9-108):
 - a. The first sentence explains why different effective dates were chosen for this proposed initiative. However, effective date clauses are meant to be concise and operational. Therefore, would the proponents consider deleting this sentence?
 - b. This portion of the proposed initiative states that certain sections of the proposed new article will take effect on certain dates, but does not state when the rest of the sections of the proposed new article will take effect, leading to some ambiguity as to when all provisions of the article are effective. Also, with regard to the words "on or before" in every paragraph of the effective date portion, it would be impossible for the proposed initiative to take effect before a specified effective date, and it is assumed that whatever retrofitting or modifications that would be necessary in order to bring farm enclosures in compliance with this proposed initiative will occur by (or before) that time. Presumably, the proponents intend the article to take effect as soon as possible, but intend to allow farmers time to make whatever modifications are necessary to comply with the article. In order to fix these ambiguities, it is suggested the proponents consider changing the Effective Date section as follows:

35-57.9-108. Effective date - applicability. THIS ARTICLE SHALL TAKE EFFECT UPON PROCLAMATION OF THE GOVERNOR AND SHALL APPLY TO ENCLOSURES USED FOR VEAL CALVES ON OR AFTER

JULY 1, 2011, SHALL APPLY TO ENCLOSURES USED FOR EGG-LAYING HENS ON OR AFTER JULY 1, 2014, AND SHALL APPLY TO ENCLOSURES USED FOR PIGS DURING PREGNANCY ON OR AFTER JULY 1, 2017.

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? In connection to the single subject, the new article's short title is "Prevention of Farm Animal Cruelty Act." However, the title is broader than necessary to reflect what the proposed initiative aims to redress (namely, the extreme physical confinement of certain farm animals). Because many other acts and practices could be considered cruel treatment to farm animals, would the proponents consider narrowing the title to more accurately capture the proposal? Or, is it the intent of the proponents that more cruel acts and practices will be added to the new article in the future?
2. Creation of a new article may not be necessary or ideal under the circumstances. Instead, the proposed initiative could be situated in article 42 of title 35, Colorado Revised Statutes, which relates to animal protection. Would the proponents consider placing their proposed initiative in article 42 of title 35, Colorado Revised Statutes? The proposed initiative would fit either in the existing section 35-42-108, Colorado Revised Statutes (governing care of confined animals) or as a new section within article 42, Colorado Revised Statutes (perhaps section 35-42-108.5).
3. Have the proponents considered who would oversee implementation of this proposed initiative? Who would monitor compliance? According to section 35-1-106 (1)(a), Colorado Revised Statutes, the state agriculture commission has the power and duty "[t]o formulate the general policy with respect to the . . . enforcement of regulatory and service laws, rules, and regulations pertaining to agriculture." Would the proponents consider adding language to clarify the role of the department of agriculture and the agricultural commission in the enforcement or implementation of this measure? Currently, there are no administrative procedures, investigation or enforcement provisions, or remedies, and only criminal penalties have been specified. Is it the intention of the proponents to exclude the commissioner and department of agriculture from assisting in the implementation, oversight, and enforcement of the proposed new article?
4. In the proposed Section 2 (35-57.9-102), would the proponents consider removing the phrase "subject to exceptions and commencing as provided"? Usually, exceptions are laid out in the statute. Furthermore, "commencing as provided" is somewhat ambiguous. Do the proponents mean to call attention to when the proposed initiative will go into effect? If so, it is presumed that the proposed initiative will take effect as specified by the proposed initiative or in the Colorado constitution.
5. The proposed Section 4 (35-57.9-104) prohibits tethering or confining "any covered animal, on a farm, *for all or the majority of any day . . .*"(emphasis added)

- a. According to the American Heritage Dictionary, "day" means the period of light between dawn and nightfall and a 24-hour period. Would the proponents consider more specifically defining the length of a day under this measure?
 - b. Would the proponents consider deleting the words "all or" from this sentence, since barring such confinement for the majority of any day would automatically preclude a person from confining an animal for the entire day?
 - c. Furthermore, how is the amount of time animals spend in such enclosures to be accounted for, and by whom? How is compliance with this requirement to be overseen, and by whom?
6. In the proposed Section 4 (2) (35-57.9-104 (2)):
- a. In the proposed paragraph (a), what is meant by "[d]uring scientific or agricultural research"? Do the proponents mean to capture the whole time an animal is kept for such purposes, or only the discrete period of time when research is actually being conducted? Would the proponents consider clarifying what is meant by this phrase?
 - b. In the proposed paragraph (d), what do the proponents mean by "similar exhibitions"? In what ways should they be similar for purposes of qualifying under this exception? Who makes the determination of similarity?
 - c. In the proposed paragraph (f), how is it determined that a pregnant pig is within seven days of giving birth? Who is qualified to make that determination? Must it be so declared by a veterinarian? If so, does this impose an affirmative duty on pig owners to obtain such veterinary care?
7. The following questions apply to the proposed Section 6 (35-57.9-106), which allows a local governing body to adopt and enforce its own animal welfare laws and regulations. The proposed language states that the proposed initiative is not intended to bar local government entities from promulgating their own animal welfare laws and regulations.
- a. According to the Colorado department of local affairs, there are 76 types of local governments in Colorado, including counties, statutory municipalities, home rule municipalities, city and county governments, special districts, and school districts. Would the proponents consider specifying the type of local governing bodies that may enact animal welfare laws and regulation?
 - b. Would a local governing body be allowed to enact *less* stringent animal welfare laws than those specified under this measure? For example, could a local government body exempt a calf raised for veal from the prohibition on confinement?