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MEMORANDUM

May 1, 2007

TO: Mark Grueskin and Mike Feeley

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #21, concerning amendment 41 modifications/ lobbyist tax

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 section 2 of article XXIX of the Colorado constitution (article XXIX) by adding definitions of "official act," "private gain," and "personal financial gain" to the article;
2. To amend section 3 of article XXIX by specifying that the prohibitions in subsections (1) and (2) of section 3 of article XXIX do not apply to any public officer, member of the General Assembly, local government official, or government employee (covered individual) who solicits, accepts, or receives a gift, thing of value, money, forbearance, or forgiveness of indebtedness that does not reflect a breach of the public trust for private gain, as set forth in

sections 1 and 6 of said article;

3. To amend section 5 of article XXIX by specifying that:

- a. Implementation of the independent ethics commission (commission) established in section 5 of article XXIX shall adhere to the following requirements:
 - i. The commission shall be established in the office of administrative courts in the department of personnel, or any successor office, created in section 24-30-1001, Colorado Revised Statutes, or any successor provision;
 - ii. For individuals appointed after January 1, 2008, the appointment of a commission member by the senate shall be effective upon the approval of a majority of the members elected to the senate, and the appointment of a commission member by the house of representatives shall be effective upon the approval of a majority of the members elected to the house;
 - iii. Members may be but are not required to be affiliated with a major political party, and the house and senate appointees are not required to be members of different political parties. The commission may appoint any qualifying individual to be the member who is a local government official or local government employee and shall not be limited to lists of eligible individuals provided by members of the General Assembly.
- b. The commission shall dismiss as frivolous any complaint filed under article XXIX that fails to allege a covered individual solicited, accepted, or received any gift or other thing of value for private gain or personal financial gain;
- c. Any final action of the commission concerning a complaint shall be subject to judicial review by the district court for the city and county of Denver;
- d. Notwithstanding any provision of law, a subpoena requiring the attendance of a witness or the production of documents shall be issued by the commission only if a motion to issue any such subpoena has been made by one member of the commission and approved by a majority of the commission's members;
- e. The commission shall prepare a response to a request for an advisory opinion from a covered individual as to whether particular action by such individual satisfies the requirements of article XXIX not more than twenty business days after the request is made to the commission;
- f. Any person who is not a covered individual may submit a request to the commission for a letter ruling concerning whether potential conduct of the person making the request satisfies the requirements of article XXIX. In such case, the commission shall issue a response to the request as soon as practicable;

- g. Each advisory opinion or letter ruling, as applicable, issued by the commission shall be written with the assistance of appropriate staff in the attorney general's office, shall be a public document, and shall be promptly posted on a website that shall be maintained by the commission; except that, in the case of a letter ruling, the commission shall redact the name of the person requesting the ruling or other identifying information before it is posted on the website.
- 4. To amend article XXIX by the addition of new sections specifying that:
 - a. In order to supplement the state's general fund for revenues expended on the commission's interpretation and enforcement of article XXIX, an occupational tax of fifty dollars per year shall be paid by each professional lobbyist. For the fiscal year ending June 30, 2008, the full amount of such occupational tax shall be imposed on any person who acts as a professional lobbyist on or after January 1, 2008. Subject to provisions specified in the section, a professional lobbyist shall pay the occupational tax in any subsequent fiscal year in which he or she lobbies one or more covered individuals.
 - b. For any fiscal year commencing after June 30, 2008, the General Assembly may increase or decrease the rate of the occupational tax, so long as revenue from such tax does not exceed ninety percent of general fund expenditures associated with the commission in that fiscal year. Regarding any increase in the rate of the occupational tax, voter approval of this section at the 2007 general election shall satisfy the requirements for voter approval under section 20 of article X of the Colorado constitution (TABOR).
 - c. The department of revenue shall collect all occupational taxes imposed under this section and shall remit the revenues from such tax to the state's general fund;
 - d. All revenues generated by the occupational tax on professional lobbyists shall be exempt from any restrictions on spending, revenues, or appropriations, including without limitation, the restrictions in section 20 of article X of the Colorado constitution;
 - e. In approving amendments to article XXIX at the 2007 general election, it was the voters' intent that the provisions enacted in the proposed initiative clarify existing law. Those provisions implement the overriding legal standard used in sections 1 and 6 of article XXIX: violation of the public trust for private gain. As such, the provisions of the proposed initiative are intended to be used in interpreting and applying article XXIX in complaints before the commission, advisory opinions and letter rulings, litigation in which one or more parties seek to declare any portion of article XXIX unconstitutional or enjoin or suspend its effect, in whole or in part, and appellate proceedings of any commission or court decision including those initiated prior to the 2007 general election. Further, voter approval of amendments to article XXIX at the 2007 general election shall be deemed to constitute reenactment of sections 1, 2, 3, 5, and 6 of said article, in the event a state or federal court declares

all or part of such sections to be unconstitutional or enjoins or suspends their effect, in whole or in part, before these clarifying amendments are adopted.

- f. The proposed initiative shall take effect on either January 1, 2008, or by proclamation of the governor, whichever occurs earlier.

Comments and Questions

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

Technical questions:

1.
 - a. To conform to standard drafting practices, would the proponents correct the form of the amending clauses specified below so that such clauses read as follows:
 - i. On page 1, line 3 and 4: "Article XXIX of the constitution of the state of Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:";
 - ii. On page 1, line 15 and 16: "Section 3 of article XXIX of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:";
 - iii. On page 1, line 24 and 25: "Section 5 of article XXIX of the constitution of the state of Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:"; and
 - iv. On page 2, line 27 and 28: "Article XXIX of the constitution of the state of Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:"?
 - b. Further, the proponents can delete the amending clauses to "**SECTION 5**" and "**SECTION 6**", as the provisions within those sections will be covered by example (d), listed above.
2. Would the proponents add the appropriate headnotes to the constitutional sections amended in the proposed initiative as follows:
 - a. On page 1, line 6, before (3.5), add "**Section 2. Definitions.**";
 - b. On page 1, line 18, before (3.5), add "**Section 3. Gift ban.**";
 - c. On page 1, line 27, before (2.5), add "**Section 5. Independent ethics commission.**"?

3. Would the proponents replace the incorrect reference to section "24-18-107 (7)" (page 1, line 7) with section "24-18-102 (7)"?
4. Would the proponents write out any references to Colorado Revised Statutes to replace the abbreviation "C.R.S."?
5. Would the proponents correct the form of subsection (2.5) of the proposed initiative by using an introductory portion for the subsection and lettered paragraphs for the subsequent provisions in the same form as the following:

"(2.5) NOTWITHSTANDING ANY PROVISION OF LAW, IMPLEMENTATION OF THE INDEPENDENT ETHICS COMMISSION SHALL ADHERE TO THE FOLLOWING REQUIREMENTS:

(a) THE COMMISSION SHALL BE ESTABLISHED IN THE OFFICE OF ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL, OR ANY SUCCESSOR OFFICE, CREATED IN SECTION 24-30-1001, COLORADO REVISED STATUTES, OR ANY SUCCESSOR PROVISION.

(b) FOR INDIVIDUALS APPOINTED AFTER JANUARY 1, 2008, THE APPOINTMENT OF A COMMISSION MEMBER BY THE SENATE SHALL BE EFFECTIVE UPON THE APPROVAL OF A MAJORITY OF THE MEMBERS ELECTED TO THE SENATE, AND THE APPOINTMENT OF A COMMISSION MEMBER BY THE HOUSE OF REPRESENTATIVES SHALL BE EFFECTIVE UPON THE APPROVAL OF A MAJORITY OF THE MEMBERS ELECTED TO THE HOUSE.

(c) MEMBERS MAY BE BUT ARE NOT REQUIRED TO BE AFFILIATED WITH A MAJOR POLITICAL PARTY, AND THE HOUSE AND SENATE APPOINTEES ARE NOT REQUIRED TO BE MEMBERS OF DIFFERENT POLITICAL PARTIES.

(d) FURTHER, THE COMMISSION MAY APPOINT ANY QUALIFYING INDIVIDUAL TO BE THE MEMBER WHO IS A LOCAL GOVERNMENT OFFICIAL OR LOCAL GOVERNMENT EMPLOYEE AND SHALL NOT BE LIMITED TO LISTS OF ELIGIBLE INDIVIDUALS PROVIDED BY MEMBERS OF THE GENERAL ASSEMBLY."?

6. Would the proponents add "INDEPENDENT ETHICS" before the word "COMMISSION" on page 1, line 42; page 2, lines 2, 7, 10, 17, 21, 32, 43; and page 3, line 17 of the proposed initiative?
7. Would the proponents use correct citations to the Colorado constitution in the proposed initiative as follows:
 - a. Page 1, line 43, before "ARTICLE", insert "THIS", and strike "XXIX";
 - b. Page 2, line 13, before "ARTICLE", insert "THIS", and strike "XXIX";
 - c. Page 2, line 18, before "ARTICLE", insert "THIS", and strike "XXIX";
 - d. Page 2, line 32, before "ARTICLE", insert "THIS", and strike "XXIX";

- e. Page 2, line 46, strike "THE COLORADO" and substitute "THIS";
 - f. Page 3, line 7, strike "THE COLORADO" and substitute "THIS";
 - g. Page 3, line 12, before "ARTICLE", insert "THIS", and strike "XXIX";
 - h. Page 3, line 13, strike "SECTIONS 2(3.5), (4.5) AND 3(3.5) OF ARTICLE XXIX" and substitute "SECTIONS 2 (3.5) AND (4.5) AND 3 (3.5) OF THIS ARTICLE ";
 - i. Page, 3, line 15, before "ARTICLE", insert "THIS", and strike "XXIX";
 - j. Page 3, line 17, before "ARTICLE", insert "THIS", and strike "XXIX";
 - k. Page 3, line 19, before "ARTICLE", insert "THIS", and strike "XXIX";
 - l. Page 3, line 22, before "ARTICLE", insert "THIS", and strike "XXIX"; and
 - m. Page 3, line 23, strike "THAT" and substitute "THIS".
8. Would the proponents use initial capitalization when referencing "DENVER" on page 2, line 3 of the proposed initiative?
 9. In the proposed Section 10 starting on page 2 of the proposed initiative, would the proponents change the component paragraphs into subsections and further conform the paragraph references to subsection references as shown below:
 - a. Page 2, line 31, strike "(a)" and substitute "(1)";
 - b. Page 2, line 36, strike "(b)" and substitute "(2)";
 - c. Page 2, line 40, strike "(b)" and substitute "(2)";
 - d. Page 2, line 44, after "SUBSECTION", insert "(2)";
 - e. Page 3, line 1, strike "(c)" and substitute "(3)"; and
 - f. Page 3, line 4, strike "(d)" and substitute "(4)".
 10. Would the proponents correct the reference to "\$50" on page 2, line 33 of the proposed initiative to "FIFTY DOLLARS"?
 11. Would the proponents use gender neutral language on page 2, line 37 of the proposed initiative and insert "OR SHE" after "HE"?
 12. Section 10 of the proposed initiative, uses the phrase "REVENUES EXPENDED ON THE COMMISSION'S INTERPRETATION AND ENFORCEMENT OF ARTICLE XXIX" (page 2, line 31 and

32) when explaining the purpose of the occupational tax. It seems more clear and direct to simply state that the tax is imposed to supplement the state's general fund "for revenues expended on the commission". Would the proponents consider making this change?

13. In proposed and reformatted section 24-18.5-102 (2) (b), Colorado Revised Statutes, on page 2, line 41 of the proposed initiative, would the proponents consider modifying the text so that it reads "the rate of the occupational tax imposed under [or pursuant to] subsection (1) of this subsection"?
14. Would the proponents consider modifying and, arguably, clarifying the meaning the effective date clause contained in section 12 (page 3, lines 31 through 35) so that it simply reads as follows:

"Section 12. Effective date. THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT ON EITHER JANUARY 1, 2008, OR AS PROVIDED BY SECTION 1 (4) OF ARTICLE V OF THIS CONSTITUTION, WHICHEVER DATE OCCURS EARLIER."?

15. In all instances in the proposed initiative in which the proponents use the phrase "[n]otwithstanding any provision of law," would the proponents consider inserting the word "other" between the words "any" and "provision" so as not to arguably negate the effect of the "notwithstanding clause" on the subject provision?
16. To promote clarity, would the proponents consider adding a group definition that could be used throughout the proposed initiative to refer collectively to public officers, members of the General Assembly, local government officials, and local government employees such as "covered individuals"?
17. With respect to the applicability section (section 11 on page 3, lines 12 through 26) of the proposed initiative;
 - a. In the first sentence, the reference to "existing law" (page 3, line 14) may become unclear if this language is codified. To address this concern, would the proponents substitute the phrase "the law in existence on and before the effective date of this article" for the phrase "existing law"?
 - b. The second sentence use of the phrase "Those provisions" (page 3, line 14) and the colon (page 3, line 15) makes the sentence unclear and awkward. Would the proponents consider restating the sentence as follows: "Sections 24-18.5-101 (1) and 24-18.5-102 (5) are intended to implement the overriding legal standard used in sections 1 and 6 of article XXIX directed at violations of the public trust for private gain"?
18. Proposed sections 24-18.5-102 and 24-18.5-103, Colorado Revised Statutes, (page 2, line 45 and page 3, line 32), reference the "2007 GENERAL ELECTION." However, section 1-1-104 (17), Colorado Revised Statutes, defines "general election" to mean "the election held on the Tuesday succeeding the first Monday of November in each even-numbered year." Thus, it

does not appear that an election held in 2007 could be described as the 2007 general election consistent with the operative definition under state election law. To conform to existing legal definitions, would the proponents change the name used to describe the 2007 election such as "THE 2007 ODD-YEAR ELECTION"?

19. In section 2 of the proposed initiative (page 1, line 18), would the proponents substitute "shall not" or "may not" for the words "do not"? In addition, the comma on page 1, line 22, appears to be unnecessary.
20. In section 3 of the proposed initiative, the phrase "SHALL ADHERE TO THE FOLLOWING REQUIREMENTS" (page 1, lines 28) seems vague and awkward. To be more clear and direct, would the proponents consider modifying the text so that the operative clause reads something like the following: "IN [PERFORMING ITS POWERS AND DUTIES], THE COMMISSION SHALL: (a)...; (b)...; AND (c)...."
21. With respect to the text of the proposed initiative found on page 1, line 31, once the commission has been established in the office of administrative courts, the commission has obviously been established in said office and there is no need to include a reference in the Colorado constitution to any "successor provision" to the statute creating said office. Accordingly, would the proponents delete the words "or any successor provision" as found in the text of the proposed initiative?
22. On page 1, line 35 of the proposed initiative, would the proponents consider substituting the phrase "MAY BE BUT SHALL NOT BE REQUIRED TO BE" for the phrase "MAY BE BUT ARE NOT REQUIRED TO BE"?
23. On page 2, line 5 of the proposed initiative, would the proponents consider substituting the word "COMPELLING" for the word "REQUIRING"?

Substantive questions:

1. What is the single-subject of the proposed initiative? How does a proposed initiative that creates a new occupational tax on professional lobbyists (with possible accompanying modifications to the provisions of TABOR) and that implements the provisions of article XXIX constitute a single-subject?
2. How does the passage of Senate Bill 07-210 affect the viability of the proposed initiative? Many of the provisions the proposed initiative would add to the Colorado constitution have now been codified in a new article 18.5 to title 24, Colorado Revised Statutes. Accordingly, is it the proponents' intent that the proposed initiative supersede the provisions of Senate Bill 07-210? If so, would the proponents consider adding language specifying that its provisions will supersede and replace those of Senate Bill 07-210, or, which provisions of Senate Bill 07-210 are intended to be replaced and superseded? If not, how are all of these provisions to be integrated if the proposed initiative were also to become law?
3. In connection with the definitions of "official act," "private gain," or "personal financial

gain" in section 1 of the proposed initiative (to be codified as new subsections (3.5) and (4.5) of section 2 of article XXIX:

- a. Would the proponents consider placing an actual definition of "official act" in the text of the proposed initiative, instead of merely referencing the existing statutory definition under section 24-18-102 (7), Colorado Revised Statutes, to avoid relying upon a statutory definition that may be changed or even deleted at some point in the future?
 - b. To what extent does the definition of "private gain" or "personal financial gain" encompass "lawful consideration" for a gift or thing of value received which, as the proponents are aware, is sufficient for making the solicitation, acceptance, or receipt of the gift or thing of value legal under section 3 (1) and (2) of article XXIX?
 - c. If the definition of these terms is limited to gifts or things of value given or offered by a person seeking to influence an official act why is it necessary to further restrict application of article XXIX to official acts "performed in the course and scope of the public duties" of a covered individual? Perhaps stated differently, when is an official act *not* "performed in the course and scope of the public duties" of said individual?
 - d. Over the past several months, there has been a great deal of concern about the application of article XXIX to certain circumstances such as application for receipt of scholarships by the children of government employees, the attempt by government employees to apply for new jobs, the acceptance or receipt of moneys by the families of government employees for financial assistance in the case of emergencies, and the acceptance or receipt of academic prizes by covered individuals. Is it the intent of the proponents that the provision would address, and possibly resolve, those issues? If so, could the proponents explain whether addressing these issues underlays the inclusion of these definitions in the proposed initiative?
 - e. Instead of grafting more definitions and evidentiary requirements on article XXIX's existing structure, if the proponents are already going to amend said article, would it not be easier and less confusing to simply amend section 3 (1) and (2) of said article to add some form of nexus requirement between the solicitation, acceptance, or receipt of the gift or thing of value and a covered act to be performed or undertaken by a covered individual?
4. With respect to section 2 of the proposed initiative (page 1, lines 15 through 22):
- a. What does it mean to say that the prohibitions in article XXIX do not apply to a covered individual who receives a gift or thing of value "that does not reflect a breach of the public trust for private gain." Specifically, how does acceptance or receipt of a gift or thing of value "reflect" or "not reflect" a breach of the public trust for private gain?
 - b. In terms of a breach of the public trust for private gain as stated on page 1, lines 21

and 22, what exactly is "set forth in sections 1 and 6 of this article"? Would the proponents consider stating more exactly what standard is specified in sections 1 and 6 of article XXIX to which this sentence refers?

5. In connection with the placement of the commission in the office of administrative courts (page 1, lines 29 through 31 of the proposed initiative), would the proponents consider modifying the language that would allow the General Assembly (or some other body) to designate the location of the commission if the office of administrative courts were ever abolished or if for some other reason it would be appropriate to move the commission to another office?
6. Why is it necessary to place details of the type and kind specified in section 3 of the proposed initiative (page 1, line 27 through page 2, line 25) in the Colorado constitution, particularly since many of these same provisions will now be codified in article 18.5 of title 24, Colorado Revised Statutes, with the passage of Senate Bill 07-210?
7. With respect to certain provisions of proposed subsection 2.5 of section 5 of article XXIX:
 - a. What is the basis for using January 1, 2008, as the triggering date by which certain appointments are to be made?
 - b. What happens to appointments to the commission made prior to January 1, 2008?
 - c. Is it the proponents' intent that any member of the Senate or House of Representatives may propose the name of a prospective appointee to the commission to be approved by the members of his or her respective legislative chamber?
 - d. Page 1, line 38 of the proposed initiative states that "the commission may appoint" the fifth and final member. To be faithful to the text of section 5 (2) (a) (V) of article XXIX, is it not more accurate to state that the other four members of the commission make the fifth and final appointment? Would the proponents consider modifying the text of the proposed initiative accordingly?
 - e. It appears that the proposed initiative would supersede requirements under Senate Bill 07-210 that legislative appointments to the commission are to be made by the Senate President and Speaker of the House of Representatives, respectively, subject to the approval of two-thirds of the members of the respective body. Is it the proponents' intent to supersede the provisions of Senate Bill 07-210 with respect to these requirements?
 - f. With respect to the language found on page 1, line 38 of the proposed initiative, what is a "qualifying individual". How would such person differ from an "eligible individual" (page 1, line 40)?
8. Would the provisions of proposed subsection (3.5) to section 5 of article XXIX, applies to a complaint brought under the "revolving door" provisions of section 4 of article XXIX. If

not, why not? If so, would the proponents consider modifying the text of the proposed initiative accordingly?

9. With respect to proposed subsection (3.7) to section 5 of article XXIX (page 2, line 2), what do proponents mean by "final action"? Do the proponents intend for the commission's findings to be the equivalent of "final agency action" for purposes of appeals as described in section 24-4-106, Colorado Revised Statutes? Have the proponents considered any potential fiscal impacts of providing for judicial review in this manner?
10. In the interests of promoting clarity and minimizing any lingering confusion, would the proponents consider adding a sentence to proposed subsection (4.5) to section 5 of article XXIX (page 2, lines 5 through 8 of the proposed initiative) that would explicitly state that "individual members of the commission may not [shall not] independently issue such subpoenas"?
11. With respect to the provisions of section 4 of the proposed initiative which concerns the addition of a new section 10 to article XXIX that imposes an occupational tax on professional lobbyists:
 - a. Consistent with the standard drafting practices for the creation of taxes in the Colorado Revised Statutes, would the proponents consider modifying the text of proposed section 24-18.5-102 (a), Colorado Revised Statutes, (page 2, lines 33) so that it reads "a tax of fifty dollars per year is hereby imposed on professional lobbyists..." For actual examples of language showing the imposition of taxes in the Colorado Revised Statutes *see* Section 39-22-104 (1), Colorado Revised Statutes, ("a tax of five percent is imposed on the federal taxable income...."); Section 39-26-104 (1), Colorado Revised Statutes, "(There is levied and shall be collected and paid a tax...as follows...."); Section 39-27-102 (1) (a) (I), Colorado Revised Statutes, "(An excise tax is imposed and shall be collected on all gasoline or special fuel acquired....)".
 - b. What do the proponents mean by an "occupational tax"? Is this term a defined term? If so, would the proponents consider referencing such a definition? If not, why do the proponents use this phrase? What does this term or phrase add to the provisions of this section?
 - c. What do the proponents mean by "professional lobbyist"? For purposes of the proposed initiative, is the term intended to have the same meaning as "professional lobbyist" under section 2 (5) of article XXIX? To promote clarity, would the proponents consider adding a definition of this term to the proposed initiative? How does one "act as a professional lobbyist" (page 2, line 35)?
 - d. The Office of Legislative Legal Services has generally opined that a charge made to defray the cost of a service or regulation, that is reasonably related to the overall cost of the service, and that is made primarily for the purpose of raising revenue for general public purposes is a "fee" and not a "tax". *See e.g.*, Memorandum to

Executive Committee, Legislative Council from the Office of Legislative Legal Services, dated January 6, 1993, Re "Test to be applied in determining what is a tax under Amendment #1 [TABOR]." It appears that the occupational tax is levied only on professional lobbyists to assist in defraying the costs of the operation of the commission and the revenues from the tax, although initially remitted to the state's general fund are to be used exclusively to defray costs associated with the implementation of the Commission. *See* proposed section 10 (a) of article XXIX. In such circumstances, and given the legal argument discussed above, why is the charge to be levied under the proposed initiative a "tax" and not a "fee"?

- e. Similarly, why do the proponents place the revenues from the occupational tax into the general fund instead of creating a special fund, e.g., the "article XXIX implementation fund", into which the revenues would customarily be deposited and used expressly for the implementation of article XXIX? Is that the intent of the proponents?
- f. How will the occupational tax be paid by professional lobbyists? When will the tax be paid? Since the tax is assessed against more individuals than merely registered lobbyists, at what point would the department of revenue enforce and collect the tax? Why is the department of revenue charged with collecting the tax when the regulation of lobbyists in the state is currently within the purview of the department of state?
- g. Why have the proponents placed the new tax under article XXIX instead of under the provisions on revenue contained in article X of the Colorado constitution?
- h. What is the relationship, if any, between the occupational tax and the registration fee currently paid by registered lobbyists codified at section 24-6-303 (1) (a), Colorado Revised Statutes?
- i. How will payment of the tax be enforced? Is the department of revenue also responsible for ensuring compliance with the provisions of this proposed section 10 of article XXIX?
- j. How did the proponents determine the yearly amount of the occupational tax, i.e., fifty dollars?
- k. How will it work for the tax to be increased or decreased for the same fiscal year as the ninety percent requirement is in effect? *See* proposed section 10 (b). Does this provision imply that the tax may be increased or decreased during a particular fiscal year to meet the ninety percent requirement? Further, how did the proponents arrive at the ninety percent figure?
- l. Proposed section 10 (b) appears to suggest that voter approval of the tax at the 2007 general election constitutes permanent authorization for the General Assembly to increase the tax. Is this a correct construction of this provision? Do the proponents

see this provision as an exception to the requirement under section (4) (a) of TABOR that voter approval must be obtained for any tax rate increase or tax policy change directly causing a net tax revenue gain? If not, why not? If so, why does the proposed initiative not contain language making explicit the exception to existing constitutional requirements under TABOR? Is the exception a separate subject for the purposes of section 1 (5.5) of article V of the Colorado constitution?

- m. Proposed section 10 (d) (page 3, lines 4 through 7 of the proposed initiative) appear to exempt all revenues generated by the occupational tax from any restrictions on spending, revenues, or appropriations, including the restrictions under TABOR. Is this a correct construction of this provision? If so, why does the proposed initiative not contain language making explicit the exception to existing constitutional spending, revenue, or appropriations requirements including any derived from TABOR? Is the exception a separate subject for the purposes of section 1 (5.5) of article V of the Colorado constitution?
 - n. The First Amendment to the United States Constitution protects the people's freedom of speech and to petition the government. Section 10 of article II of the Colorado Constitution also states that no law shall be passed impairing freedom of speech. Have the proponents considered whether and to what extent the occupational tax on lobbyists abridges lobbyists' constitutional rights to freedom of speech and to petition the government? *See, e.g., Vermont Society of Association Executives v. Milne*, 172 Vt. 375, 385, 779 A.2d 20, 21 (2001) ("[w]e conclude that the lobby tax plainly warrants heightened scrutiny, under which it cannot pass constitutional muster. Indeed, it would be difficult to conceive of a more distinct, independent tax singling out a discrete group of First Amendment speakers.")
 - o. What is the rationale for placing a disproportionate share of the costs of article XXIX implementation upon lobbyists who receive no special benefit from article XXIX, are explicitly forbidden by its plain terms from giving anything of value to a covered individual and, therefore, presumably will not be driving any disproportionate share of the costs of such implementation?
 - p. Have the proponents considered whether placing a tax on lobbyists abridges the equal protection of other laws guaranteed under the Fourteenth Amendment to the United States Constitution?
 - q. In choosing between constitutional and statutory alternatives, have the proponents considered the fact that a tax placed in the constitution may only be repealed by a subsequent constitutional vote while a statutory tax may be repealed legislatively?
12. With respect to the applicability section of the proposed initiative (section 5), and specifically, page 3, lines 12 through 26:
- a. Some of the commands contained in said section appear to constitute expressions of intent in indicating how the measure is to be construed and, therefore, appear more

appropriate for inclusion in the existing "purposes and findings" section of article XXIX (section 1) than in an applicability section, which generally clarifies the events or transactions to which the new constitutional provisions will apply. Accordingly, would the proponents consider moving these expressions of intent into the existing section 1 of article XXIX?

- b. Section 10 of article I of the United States Constitution prohibits ex post facto laws and section 11 of article II of the Colorado constitution prohibits the General Assembly from passing a law that is ex post facto or retrospective in its operation. The final clause of this section (page 3, lines 16 through 21) appears to give the proposed initiative retrospective effect. Is this the proponents' intent? If so, how will such retrospective effect be given to litigation decided before the proposed initiative could even be approved by the voters?
 - c. What does the language on page 3, lines 21 through 26 of the proposed initiative mean? What is the rationale for having voter approval of proposed initiative constitute "reenactment" of specified provisions of article XXIX? Are the proponents aware of any legal authority permitting such prospective reenactment of constitutional provisions by means of a subsequent measure? Would it not be more prudent to examine the bases of any judicial decisions declaring some or all of article XXIX unconstitutional or that enjoin or suspend some or all of the provisions of said article before prospectively determining that voter approval of the proposed initiative constitutes reenactment of the constitutional provisions at issue?
13. The term "person" is defined in section 2 (4) of article XXIX. The proponents use the term "person" in different places in the proposed initiative, including who may request a letter ruling from the commission. Is it the proponents' intent that each place that the term "person" is used in the proposed initiative, the definition set forth section 2 (4) should apply? If not, would the proponents consider using an alternative word, such as "individual"?