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MEMORANDUM

TO: Peter Moore and Robert Golden

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 29, 2016

SUBJECT: Proposed initiative measure 2015-2016 #87, concerning Fiscal Impact Statements for Initiated Measures

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 directors of 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 to the Colorado constitution appear to be:

1. Beginning with the odd-year election in 2017, to require legislative council staff, or a successor agency, to prepare a fiscal impact statement for all statewide initiatives that make the ballot; and

2. To require the fiscal impact statement to appear on the ballot along with the initiative's ballot title.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. As a change to the Colorado constitution, the proposed initiative may only be amended by subsequent amendment to the constitution. Is this your intention?
2. Does the measure intentionally exclude all referred measures from the fiscal impact statement requirement?
3. Does the condition that "voters of the entire state will vote on any initiated constitutional amendment or legislation" exclude municipal initiatives from the requirements of the section?
4. Subsections (7.3) and (7.5) of section 1 of article V of the Colorado constitution require the "nonpartisan research staff of the general assembly" to provide a pre-election notice and to prepare the bluebook. Currently, legislative council staff performs these functions. Is legislative council staff the current agency that will be required to prepare the fiscal impact statement?
5. Assuming an initiated measure is not withdrawn, is legislative council staff¹ required to prepare a fiscal impact statement for any initiated measure that is included in the blue book?
6. May legislative council staff include any information in the fiscal impact statement in addition to the description of the projected financial consequences?
7. If possible for printing a ballot, can legislative council staff use charts to describe the projected financial consequences?
8. What are "projected financial consequences"? Specifically,
 - a. Consequences for whom? (For example, the state, local governments, taxpayers, etc.)
 - b. Does it include revenue changes?

¹ As used in questions and comments after this footnote, "legislative council staff" means legislative council staff or any successor agency.

- c. Does it include an increase or decrease in required expenditures?
 - d. What other information does it include?
- 9. For how many years should legislative council staff project the financial consequences?
- 10. If legislative council staff assesses a measure as having no fiscal impact, what information should appear on the ballot?
- 11. Is legislative council staff required or prohibited from using any type of modeling—for example, static or dynamic—to project the financial consequences?
- 12. Other than completing the fiscal impact statement prior to the time that ballots are printed, are there any restrictions on or requirements for legislative council staff's process for preparing a fiscal impact statement? (For example, soliciting public input or holding a hearing.)
- 13. Do proponents or opponents have the opportunity to challenge the fiscal impact statement printed on the ballot?
- 14. Is there any type of judicial or other review of legislative council staff's fiscal impact statement?
- 15. Who determines if the fiscal analysis is "fair and impartial" as required by the measure?
- 16. Could the general assembly require legislative council staff to hold public hearings or otherwise allow public input on the fiscal impact statements? Could it establish a process for judicial review of the fiscal impact statement?
- 17. If the projected financial consequences for an initiative are significantly wrong, could it affect the validity of an initiative approved by a majority of the voters who voted thereon?
- 18. Can the general assembly enact a law that requires a legislative committee to approve the language of the fiscal impact statement or make amendments to it? (For example, under section 1-40-124.5 (1.5) and (1.7) (a), Colorado Revised Statutes, legislative council may modify the blue book draft and the executive committee of legislative council is responsible for fiscal information.)
- 19. Section 1-40-105.5, Colorado Revised Statutes, requires legislative council staff to prepare an initial fiscal impact statement, an abstract of which will appear on petition sections. Section 1-40-124.5, Colorado Revised Statutes, requires

legislative council staff to prepare a fiscal impact statement, an abstract of which is included in the blue book. The following questions relate to these other fiscal impact statements:

- a. How is the ballot fiscal impact statement similar or different? Must they all be the same?
 - b. Is the entire fiscal impact statement, which in these other instances may be multiple pages, printed on the ballot?
 - c. If legislative council staff revises the estimates that are included on the petition under section 1-40-105.5, Colorado Revised Statutes, prior to the printing of the ballot, can the fiscal impact that appears on the ballot be revised?
20. Does "on the ballot" mean "on the same ballot that the initiative for which the fiscal impact statement was prepared appears"?
21. Can the fiscal impact statement be printed anywhere on the ballot? Must it follow the ballot title for the related initiative? How does this constitutional requirement effect the order of content established in section 1-5-407 (5) (a), Colorado Revised Statutes?
22. Are there limitations on the format of the fiscal impact statement this is printed on the ballot? (For example, font size, typeface, etc.)
23. Is the state responsible for paying the additional costs for printing the longer ballots that would result from including fiscal impact statements?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. As the proposed initiative is adding a new subsection to an existing section of the constitution, the section number and headnote should be added in bold prior to (7.6). For example:

Section 1. General assembly – initiative and referendum. (7.6) FOR ALL