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## MEMORANDUM

**TO:** Jon Caldara and Amy Oliver Cooke  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 22, 2016  
**SUBJECT:** Proposed initiative measure 2015-2016 #119, concerning Public School Collective Bargaining Agreements

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.

An earlier version of this proposed initiative, proposed initiative 2015-2016 #109, was the subject of a memorandum dated March 2, 2016. Proposed initiative 2015-2016 #109 was discussed at a public meeting on March 4, 2016. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purposes of the proposed amendment to the **Colorado Revised Statutes** appear to be:

1. To provide a legislative declaration that public school employees should have a greater ability to ensure that the collective bargaining agreement entered into by an organization that represents them is transparent and responsive to their interests.
2. To require that any board of education for a public school district that enters into a collective bargaining agreement ensures by the terms of the collective bargaining agreement that such existing collective bargaining agreement is ratified by a majority of the members of any group, association, or organization represented in the agreement at least once every two years.
3. To require that the members represented by the collective bargaining agreement vote to ratify the collective bargaining agreement at an election to occur in the month of October of each election year, which is defined as the regular biennial school election.
4. To provide that the proposed amendment takes effect January 1, 2018, and applies to elections held on and after January 1, 2018.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and 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 2 of the proposed measure says that "any board of education entering into a collective bargaining agreement ... shall ensure by the terms of the collective bargaining agreement that such existing collective bargaining agreement is ratified". By using the term "such existing collective bargaining agreement" it appears that the proposed measure only applies to collective bargaining agreements that are in existence on or before the January 1, 2018, effective date of the measure.

- a. Do the proponents intend for the proposed measure to apply only to existing collective bargaining agreements in existence prior to January 1, 2018?
- b. Do the proponents intend for the proposed measure to apply to a new or existing collective bargaining agreement in existence on or after January 1, 2018?
- c. If the intent of the proponents is to require that any new or existing collective bargaining agreement that is entered into or has been entered into by a school board and an organization must be ratified on or after January 1, 2018, the language of the measure should be clarified. A plain meaning reading of the measure is that it only requires a ratification vote for a collective bargaining agreement already in existence prior to the measure.
- d. The phrase "SHALL ENSURE BY THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT THAT SUCH EXISTING COLLECTIVE BARGAINING AGREEMENT IS RATIFIED" implies that the measure only applies to existing agreements. Would the proponents consider replacing the phrase "SUCH EXISTING COLLECTIVE BARGAINING AGREEMENT" with "THE NEW OR EXISTING COLLECTIVE BARGAINING AGREEMENT" or simply "THE COLLECTIVE BARGAINING AGREEMENT"?
- e. Replacing the verb "ENTERING" with the phrase "THAT HAS ENTERED OR THAT ENTERS" would also help clarify the applicability of the proposed measure.

## **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. The phrase "AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (3)" appears at the end of subsection (3). It is standard drafting practice to put an effective date in the statutory text at the beginning of the sentence instead of at the end of the sentence and to write "ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION

(3)". In this case, that would appear before the first word of subsection (3), "ANY".