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## MEMORANDUM

TO: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: November 16, 2015

SUBJECT: Proposed initiative measure 2015-2016 #50, concerning voter registration

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 Revised Statutes appear to be:

1. To amend section 1-2-213, Colorado Revised Statutes, concerning registration at driver's license examination facilities;

2. To specify that any qualified person who applies, or who has applied within the last five years, for the issuance, renewal, or correction of any type of driver's license or identification card is automatically registered to vote unless the person declines;
3. To require the secretary of state to notify each person of the process to decline being registered as an elector and to choose a political party affiliation;
4. To require that the county clerk determine whether each person is a qualified elector and whether the person is already registered to vote;
5. To give a person the opportunity to decline being registered to vote by requiring a twenty-one day waiting period between the time the secretary of state issues notification to the person of the processes to decline registration and affiliate with a political party and the time when the person is registered as an elector; and
6. To require the secretary of state and department of revenue to adopt rules to implement the proposed initiative and specify particular requirements for those rules.

## **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. The proposed initiative automatically registers persons to vote as they obtain or update drivers' licenses or identification cards, and those persons who have made such applications "within the last five years". Does this 5-year provision operate only one time (i.e., when the proposed initiative first takes effect), or does it apply in perpetuity?
3. There could be a number of unregistered, eligible persons who do not transact with driver's license facilities. Do the other available voter registration methods sufficiently serve those without driver's license or identification cards? If not, have the proponents considered implementing automatic or opt-out voter registration via other methods (for example, at public assistance agencies)?
4. Regarding declination to register to vote:

- a. What is the process to decline being automatically registered as an elector? Do the proponents intend for this to be addressed via the rulemaking process?
  - b. If a person declines to register to vote once, will he or she have to do so again each time he or she renews or updates his or her license, or does a one-time declination apply permanently?
5. Regarding the order in which the automatic registration process steps occur:
- a. Subsection (2) requires the secretary of state to provide to county clerks information on *all* persons applying for the issuance, renewal, or correction of any type of driver's license or identification card. Would it be more efficient for the secretary of state to provide information on only those electors qualified, and not already registered, to vote?
  - b. Have the proponents considered whether the option to decline voter registration could be more efficacious if provided at the driver's license facility, rather than subsequent to future correspondence with the secretary of state? Similarly, would any savings be realized by allowing a person to select a political party when applying for his or her driver's license or identification card?
6. Regarding potential costs of the proposed initiative:
- a. How will the state and counties pay for what will certainly be a significant technological (software/hardware) upgrade, as well as the associated costs to update forms, provide necessary staff training, etc.?
  - b. Additionally, depending on the number of new voters registered as a result of the proposed initiative being enacted, the costs of elections could markedly increase (through resulting increases in the number of mail ballots, voter service and polling centers, elections staff, etc.). Have the proponents considered this possibility?

## **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. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
2. In subsection (4), there appears to be a superfluous "or" between "secretary of state" and "provided".