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MEMORANDUM

TO: Gregory Brophy and Dan Gibbs

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 12, 2016

SUBJECT: Proposed initiative measure 2015-2016 #94, concerning the Threshold for Voter Approval of Initiated Constitutional Amendments

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 state constitution appear to be:

1. To make it more difficult to amend the state constitution by requiring an initiated constitutional amendment that adds words or numbers to the state constitution to be approved by at least 55% of the votes cast thereon; and

2. To make it more difficult to amend the state constitution by requiring a constitutional amendment that is referred to the people by the General Assembly and that adds words or numbers to the state constitution to be approved by at least 55% of the votes cast thereon.

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. Does the phrase, "In order to make it more difficult to amend this constitution . . ." in section 1 and 2 of the proposed measure have any legal effect? Is it just a statement of intent?
3. Section 1 of the proposed measure requires an initiated constitutional amendment that adds words or numbers to be approved by at least 55% of the votes cast thereon to become law. Does the provision in Section 1 of the proposed measure apply only to initiated measures and not to measures referred to the people by the General Assembly?
4. Section 2 of the proposed measure requires a constitutional amendment that adds words or numbers and that is proposed by the General Assembly to be approved by at least 55% of the votes cast thereon to become law. It seems that Section 2 of the proposed measure includes referred measures, which are excluded in Section 1. If this is correct, why does Section 1 apply only to initiated measures rather than to all measures to amend the state constitution, whether initiated by the people or referred by the General Assembly? The changes in both Section 1 and Section 2 of the proposed measure are necessary to achieve your intended result, but there a reason why you did not make the language in both sections consistent?
5. By using the phrase "words or numbers" in Section 1 and Section 2 of the proposed measure, is it your intent to specify that an amendment to the constitution that adds new text to existing constitutional provisions is subject to the 55% requirement?
6. Both Section 1 and Section 2 of the proposed measure specify that the 55% requirement applies only to constitutional amendments that that add words or numbers to the constitution. Is it your intent that some amendments to the

constitution would not be subject to the 55% requirement? If so, what is the nature of the amendments that would not be subject to the 55% requirement? Is there any type of amendment other than a measure that repeals language that would meet this exception?

7. In the case of a constitutional amendment that is not subject to the 55% percent requirement, would the constitutional amendment need to be approved by a majority of the votes cast thereon? If not, what percentage of the votes would such a measure need to receive to become law?
8. For amendments to the state constitution, it is preferred drafting practice to use the phrase "; except that" rather than "; provided that".
9. The proposed initiative does not apply to initiated or referred statutory changes, correct?
10. What will be the effective date of the proposed initiative?

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. Each constitutional section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, section 1 of article V, **amend** (4) as follows:".
3. It is standard drafting practice to use SMALL CAPITAL LETTERS rather than ALL CAPS to show the language being added to the state constitution.

4. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
5. It is preferred drafting practice to use the phrase "that adds words or numbers..." rather than "which adds words or numbers..."