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MEMORANDUM

TO: Jon Caldara and Amy Oliver Cooke
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 2, 2016
SUBJECT: Proposed initiative measure 2015-2016 #110, concerning school board elections

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.

Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to move school board elections to even-year elections in order to increase voter turnout and ensure that school board candidates fully disclose their donors.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Are the proponents aware of this possibility?
3. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state? If enactment of the proposed initiative may lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?
4. Has the occurrence of candidates not fully disclosing their donors been a recurring problem in school board elections across school districts? How will the proposed initiative "ensure that school board candidates fully disclose their donors"?
5. General elections are held on the Tuesday succeeding the first Monday of November in each even-numbered year. Is it the proponents' intent to make school board elections part of regular general elections?
 - a. Currently, county clerks and recorders conduct a school board election as part of a coordinated election or pursuant to a contract with a school district's board of education. If school board elections will be conducted as a part of regular general elections, is it the proponents' intent that county clerk and recorders, rather than an election official designated by the board of education of each school district pursuant to section 22-31-103, Colorado Revised Statutes, be responsible for conducting regular biennial school elections?
 - b. If not, would the proponents consider clarifying that regular biennial school board elections are to be separately conducted?
6. The proposed initiative takes effect January 1, 2018. How do the proponents intend that the initiative be implemented, vis-à-vis school board director terms that are due to be filled at odd-numbered elections after that date? Or is it the proponents' intent, with the amendments to sections 22-31-105 (1) (a) and 22-

31-105 (1) (b), Colorado Revised Statutes (sections 4 and 5, respectively, of the proposed initiative), that the General Assembly address the implementation issue?

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 sections 2 through 6, the subsection, paragraph, subparagraph, or sub-subparagraph numbers or letters should be included with the amended language. For example:

22-31-104. Regular biennial school elections. (1) Except as provided...

2. For sections 2 through 6, please consider adding the existing headnote (the bold language that briefly describes the content of each statute) to each section of current law being amended.
3. When amending current law, it is standard drafting practice to include all language as it currently exists in statutes (with small capital letters and/or strikethroughs, as necessary, to show amended text). Please consider making the following changes:
 - a. In section 1-1-104 (39), Colorado Revised Statutes, the language should read "first Tuesday *in* November" instead of "first Tuesday *of* November". (*Emphasis added.*)
 - b. In section 22-31-105 (1) (a), Colorado Revised Statutes, the word "term" should be inserted before "length".
 - c. In section 22-31-105 (1) (b), Colorado Revised Statutes, the word "the" before "five director districts" should be omitted.
4. Please consider combining sections 4 and 5 since they are both amending section 22-31-105. The amending clause should then read: "In Colorado Revised Statutes, 22-31-105, **amend** (1) (a) and (1) (b) as follows:".
5. The term "regular biennial school election" is defined in section 22-31-101, Colorado Revised Statutes, to mean the election "held at the time specified in

section 22-31-104". That section 22-31-104, Colorado Revised Statutes, as amended by the proposed initiative, further cross-references the definition of the amended term in section 1-1-104, Colorado Revised Statutes. Because the 22-31-104 definition applies throughout article 31 of title 22, Colorado Revised Statutes, (unless the context otherwise requires) and, by cross-reference, means an election had in even-numbered years, it is not necessary to repeat that fact in sections 4 and 5 of the proposed initiative. Similarly, it is not necessary to reference the section 1-1-104, Colorado Revised Statutes, definition in section 6 of the proposed initiative, since the proposed initiative amends section 22-31-104, Colorado Revised Statutes, to cross-reference the definition contained in the "Uniform Election Code of 1992", articles 1 through 13 of title 1, Colorado Revised Statutes.