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MEMORANDUM

TO: Jon Caldara and Amy Oliver Cooke

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 17, 2016

SUBJECT: Proposed initiative measure 2015-2016 #121, concerning the use of public monies to aid and incentivize the film industry

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 #108, was the subject of a memorandum dated March 2, 2016. Proposed initiative 2015-2016 #108 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 prohibit the state from using public monies to aid and incentivize the film industry while public education is underfunded.

Substantive Comments and Questions

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

1. In 24-48.5-116 (5), section 2 of the proposed initiative, you add "and as provided by law," to the first time you mention the "fully funded" concept. Was this language added to ensure that the Colorado Supreme Court's decision in *Dwyer v. State of Colorado*, 2015 CO 58 (2015), is incorporated? If so, why is that additional language not included after "the state constitution" the other times you reference the "fully funded" concept in the remaining new language?

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. Although the text of the proposed initiative should be in small capital letters, unless it is existing language, 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.
2. In 24-48.5-116 (5), section 2 of the proposed initiative, the paragraph letters should not be shown in small capitals, but instead should be shown in lowercase lettering. In particular, please note the "(c)".

3. In 12-47.1-701, section 3 of the proposed initiative, it is standard drafting practice to refer to the current statutory provision as "this subparagraph (VI)" and not "this section (2) (a) (VI)".
4. 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). In section 12-47.1-701, section 3 of the proposed initiative, please consider making the following changes:
 - a. The name of the office is the "Colorado office of film, television, and media *operational* account cash fund" (emphasis added); and
 - b. After "section 24-48.5-115, C.R.S." there should be a stricken "and". For example, "section 24-48.5-115, C.R.S. ~~and~~". A small capped "and" should be added at the end of the new language.
5. It is not standard drafting practice to use the word "However" in law. It is more appropriate to start your new language with "except that". Please consider making that change.