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## MEMORANDUM

**TO:** Mark Waller and Polly Lawrence

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** October 26, 2015

**SUBJECT:** Proposed initiative measure 20115-2016 #47, concerning Iran divestment of public funds

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 #42, was the subject of a memorandum dated September 28, 2015. Proposed initiative 2105-2016 #42 was discussed at a public meeting on September 30, 2015. 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 require the state treasurer, board of directors of the public employees' retirement association, Colorado county officials and employees retirement association, board of directors of the fire and police pension association, and the board of directors of the regional transportation district (public fund) to identify certain Iran-restricted companies and create a list of such companies;
2. To require each public fund to send a written notice to the listed companies with inactive business operations encouraging the companies to continue to refrain from initiating active business operations in Iran;
3. To require each public fund to send a written notice to the listed companies with active business operations informing the companies of its Iran-restricted status and of the possibility of divestment if active business operations continue;
4. To require each public fund to sell, redeem, divest, or withdraw all publicly traded securities of any company that, after 90 days following the public fund's first engagement with the company, continues to have Iran-restricted active business operations;
5. To specify additional procedures for each public fund to follow regarding Iran-restricted companies;
6. To prohibit each public fund from acquiring direct holdings in securities of companies that are on the list of companies with Iran-restricted active business operations;
7. To specify that each public fund that discharges its responsibility for operating a defined contribution plan is required to engage the manager of the defined contribution plan requesting that they consider removing Iran-restricted companies from the investment offerings or create an alternative investment offering devoid of Iran-restricted companies;
8. To specify procedures for each public fund to follow to notify specified private equity asset managers regarding the public policy in Colorado to avoid participation in Iran-restricted companies;
9. To require the public fund to report to the general assembly, attorney general, and state treasurer regarding Iran-restricted companies;

10. To make conforming amendments to separate the existing provisions of article 54.8 of title 24, Colorado Revised Statutes, from the newly added provisions in the proposed initiative.

## **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 24-54.8-203 (2), Colorado Revised Statutes, of the proposed initiative requires certain action by the "first meeting of a public fund". Is your intent to refer to the first meeting of the board of directors or another managing body of the public fund?
3. Section 24-54.8-204 (1) (a), Colorado Revised Statutes, of the proposed initiative requires a public fund to determine the companies on the Iran-restricted companies list in which the public fund owns direct or indirect holdings. However, section 24-54.8-203, Colorado Revised Statutes, seems to imply that the Iran-restricted companies list consists of Iran-restricted companies in which the public fund has direct or indirect holdings. Is a public fund's Iran-restricted companies list a general list of Iran-restricted companies or only the Iran-restricted companies in which the public fund has direct or indirect holdings?
4. Is it possible that each public fund will be creating the same or similar Iran-restricted companies lists? What happens if there are discrepancies between lists?
5. Section 24-54.8-205, Colorado Revised Statutes, of the proposed initiative requires each public fund to submit certain information to the general assembly, the attorney general's office, and the state treasurer's office on an annual basis. However, the state treasurer's office is included in the definition of "public fund" in the proposed initiative. Is it your intent that the other "public funds" are required to submit information to the treasurer's office, which is also subject to all of the requirements in the proposed initiative?
6. Section 24-54.8-205, Colorado Revised Statutes, of the proposed initiative requires each public fund to file a report that includes the Iran-restricted companies within 30 days after it is created. Although the proposed initiative

requires each public fund to update the Iran-restricted companies list every six months, it does not appear that the report has to be updated accordingly each six months. If this is correct, is that your intent?

7. Section 24-54.8-205 (2) (c), Colorado Revised Statutes, of the proposed initiative requires a public fund to include all prohibited investments under section 24-54.8-204 (3), Colorado Revised Statutes, in an annual report. If an investment is prohibited and the public fund did not make the investment, what would be included in the report? Is this a list of all potential investments that the public fund could have made but was prohibited from making pursuant to the requirements 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. The definitions should be in alphabetical order.
2. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-54.8-204 (1) (b)".
3. If the definition section is the first section in the new part 2, it should be numbered as section 24-54.8-201 (rather than 24-54.8-202) and each subsequent Colorado Revised Statutes section should be renumbered accordingly. In addition, internal cross-references in the measure should be amended accordingly.
4. In section 24-54.8-204 (4), Colorado Revised Statutes, it appears that the reference to "other provisions in this article" should instead reference "other provisions in this part 2".
5. In the amending clause for SECTION 2, the "9" should be removed from the instruction to amend "9 (1) (r)".