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Colorado General Assembly

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MEMORANDUM

TO: Jon Caldara and Hilleary Waters
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 27, 2023
SUBJECT: Proposed initiative measure 2023-2024 #24, concerning title board review of statewide referred measures

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 require title board review of a constitutional or statutory amendment that is referred to a vote of the people by the general assembly; and

2. To require the title board to set the title for a constitutional or statutory amendment that is referred to a vote of the people by the general assembly.

Substantive Comments and Questions

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

1. Section 1 (5.5) of article V 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 change to the Colorado Revised Statutes, the general assembly could modify or repeal the proposed initiative if it is approved. Is that your intention?
3. Section 1 of article V of the Colorado constitution generally vests the legislative power in the general assembly and reserves to the people "the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly." In other words, while the Colorado constitution reserves the right of the people to create laws independently of the general assembly through the initiative process and to reject laws or portions of laws enacted by the general assembly through the referendum process, it does not appear to reserve any right of the people to alter constitutional amendments or laws being considered by the general assembly prior to their enactment and transmission to the governor or referral to the people. Accordingly:
 - a. By subjecting constitutional and statutory measures to a title set by the title board, the general assembly is deprived of the legislative power to set those titles. Do the proponents believe that the proposed initiative, which is a change to the Colorado Revised Statutes rather than an amendment to the Colorado constitution, can alter the constitutional requirement that the general assembly have power to craft its own legislation?
 - b. Similarly, the title board is composed of members who are not legislators. Do the proponents believe that the proposed initiative can authorize a person who is not a member of the general assembly to alter legislation being enacted by the general assembly?
4. What is the meaning of the phrase "statewide referred measures" as used in the proposed initiative?

5. Does the term "herein" as used in the proposed initiative refer to section 1-40-106, C.R.S., generally or 1-40-106 (d), C.R.S., specifically? Does it mean all of article 40 of title 1, C.R.S.?
6. What is the meaning of the phrase "proper fair title" as used in the proposed initiative?
7. At what point in the legislative process would title board review of and title setting for a statewide referred measure occur?
8. Who would represent the general assembly at a title board hearing on a statewide referred measure? Would those persons be "designated representatives of the proponents" of the measure for purposes of article 40 of title 1, C.R.S.?
9. Would an initial fiscal impact statement have to be prepared for a statewide referred measure being reviewed by and submitted for title setting by the title board? If so, would the fiscal note for the statewide referred measure suffice to meet the initial fiscal impact statement requirement?
10. In setting a title for a statewide referred measure, would the title board be required to follow the requirements set forth in section 1-40-106 (3), C.R.S., that specific language be included in titles for measures that include specific substantive content?

Technical Comments

1. 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. It is standard drafting practice to include the subsection number before the paragraph being amended. In section 1 of the proposed initiative, "(3)" should be inserted before "(d)".
2. The following guidelines for statutory citations should be used within the Colorado Revised Statutes:
 - a. When referencing a different subsection within the same section, begin with the word "subsection," followed by the subsection number, then the phrase "of this section." For example:

- i. In section 1 of the proposed initiative, "paragraph (c) of this subsection (3)" should instead be shown in strike-type and rewritten in small capital letters as follows: "~~paragraph (c) of this subsection (3)~~ SUBSECTION (3)(c) OF THIS SECTION" to conform to the current C.R.S. style.
3. It is standard drafting practice to avoid using archaic terms. In subsection (3)(d) of the proposed initiative, instead of using "herein", use "in this section" or something similar if "section" is not the statutory subdivision to which "herein" is intended to refer.