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Colorado General Assembly

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MEMORANDUM

TO: Michael Fields and Suzanne Taheri

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 2, 2024

SUBJECT: Proposed initiative measure 2023-24 #279 concerning Eliminate Title Board
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 change to the **Colorado Revised Statutes** appear to be:

1. To eliminate the title board that currently determines whether each statewide initiative to amend the Colorado constitution or change the Colorado Revised Statutes (initiative) has a single subject as required by section 1 (5.5) of article V of the Colorado constitution and sets the ballot title for each initiative that has a single subject.

2. To require the proponents of an initiative to submit a draft ballot title for the initiative when they submit the initiative to the legislative research and drafting offices of the General Assembly.
3. To require the ballot title for an initiative to be drafted in plain language at no more than an eighth grade reading level and in accordance with existing requirements that the initiative repeals and reenacts that are intended to help voters understand the true intent and meaning of an initiative and the effect of a "yes" or "no" vote on an initiative.
4. To allow the proponents of an initiative to amend both the initiative and the draft title of the initiative in response to comments received at the review and comment meeting.
5. To allow the proponents of an initiative, after the review and comment meeting, to submit a final initiative and draft title for the initiative to the legislative research and drafting offices of the General Assembly for a determination as to whether the initiative has a single subject and, if so, for the revision of the draft title and setting of a title as necessary to comply with the provisions of section 1-40-105, C.R.S., as partly repealed and reenacted, with amendments, by the proposed initiative, and article V of the Colorado constitution.
6. To require the review and comment meeting for an initiative to be held no later than the third Wednesday in May, rather than no later than the first Friday in April, in the year in which the initiative is to be voted on.
7. To allow any proponent of an initiative and any registered Colorado elector who disagrees with a determination of the legislative research and drafting offices of the General Assembly as to whether the initiative has a single subject or regarding the ballot title to appeal the decision to the Colorado Supreme Court within seven days of the determination, and to require the Colorado Supreme Court to decide such an appeal within twenty-one days.
8. To require fiscal summaries to be prepared only for initiatives that are determined to have a single subject rather than for all initiatives submitted for the setting of a title.

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. With respect to the initiative generally:
 - a. Pursuant to section 1 (4)(a) of article V of the Colorado constitution, the proposed initiative will take effect "from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed." This would occur sometime in late December of 2024 or early January of 2025. How, if at all, would the proposed initiative affect a proposed initiative for the 2025 November election or the 2026 general election for which the title board set a title in December of 2024?
 - b. Are the legislative research and drafting offices of the General Assembly (offices), respectively, the legislative council staff and the office of legislative legal services? If so, consider using these official agency names, which are used in portions of section 1-40-105, C.R.S., that are not being repealed and reenacted by the proposed initiative and in repealed and reenacted section 1-40-105 (b), C.R.S., throughout the proposed initiative.
 - c. Certain provisions of the Colorado Revised Statutes that reference the title board and, in some cases, title board rehearings, are not repealed or amended by the proposed initiative. Consider whether the proposed initiative should include conforming amendments to sections 1-40-106.5 (3), 32-9-119.4 (4), 32-13-105 (7)(a), and 32-15-107 (2), C.R.S.
 - d. Certain provisions of the Colorado Revised Statutes that reference sections of the Colorado Revised Statutes that are repealed by the proposed initiative are not repealed or amended by the proposed initiative. Consider whether the proposed initiative should include conforming amendments to sections 1-5-407 (7), 1-11-203.5 (1), 1-40-108 (1), 1-40-124.5 (1)(b)(IV), 1-45-117 (1)(a)(I)(A), 24-77-202 (2), 32-9-119.4 (4), 32-13-105 (7)(a), 32-15-107 (2), 39-28-401 (3), and 39-28-502, C.R.S.
3. With respect to proposed section 1-40-105 (a), C.R.S., in section 1 of the proposed initiative:
 - a. What does the phrase "in plain language at no more than an eighth grade reading level" mean?

- b. Do the proponents have specific standards or methodology in mind that would be used to determine whether a title is drafted "in plain language at no more than an eighth grade reading level"?
 - c. Who would determine whether the ballot title for a proposed initiative is drafted "in plain language at no more than an eighth grade reading level"?
 - d. The Colorado Supreme Court has held that the power of initiative is a fundamental right. Could the requirement that a ballot title be drafted "in plain language at no more than an eighth grade reading level" infringe upon this fundamental right, especially with respect to a complex or highly technical initiative?
 - e. Who determines whether the title for a proposed initiative expresses the true intent and meaning of the initiative? What standards would be applied to make this determination?
4. With respect to proposed section 1-40-105 (b), C.R.S., in section 1 of the proposed initiative:
- a. If the proponents of a proposed initiative amend the proposed initiative in response to comments of the directors of the offices, would they be required to submit with the final draft a highlighted or otherwise marked draft that indicates the amendments as is currently required when a final draft of a proposed initiative is submitted to the secretary of state pursuant to section 1-40-105 (4), C.R.S.?
 - b. If the proponents of a proposed initiative make changes to the proposed initiative or draft title that are not in response to comments made by the directors of the legislative council and the office of legislative legal services, would the proponents be required to resubmit the proposed initiative for another review and comment meeting, as is currently the case when such nonresponsive changes are made before a proposed initiative is submitted to the title board? If not, how would the public be apprised of the changes?
 - c. Would the offices "review and comment" regarding the proposed ballot title that the proponents submit with a proposed initiative or would the "review and comment" process be limited to the proposed initiative?
5. With respect to proposed section 1-40-105 (c), C.R.S., in section 1 of the proposed initiative:

- a. Currently, title board meetings provide the individuals charged with setting the title for an initiative, the designated proponents of the initiative, and other interested persons an opportunity, in a public meeting held in accordance with statutory open meeting requirements, to have an interactive discussion about the initiative. Would the single subject determination and title setting process provided for in the proposed initiative allow such interactive discussion in an open meeting or would the offices simply make single subject determinations about and set title for proposed initiatives to the best of their ability without such a meeting or opportunity for direct interaction with the designated proponents and other interested persons? If it is the latter, might the new process potentially infringe upon the proponents' fundamental right of initiative?
- b. The title board includes representatives of both the executive and legislative branches of government, and the executive branch representatives represent independent statewide elected officials. Does eliminating the title board and instead vesting the power to make single subject determinations and set titles for proposed initiatives exclusively in legislative branch staff agencies concentrate this power in a way that could prove detrimental to the right of the people to exercise the initiative power?
- c. In determining whether a proposed initiative has a single subject, would the offices be required or encouraged:
 - i. As the title board currently is by the expression of legislative intent in section 1-40-106.5, C.R.S., to "apply judicial decisions construing the constitutional single-subject requirement for bills"?
 - ii. To apply the much larger body of judicial decisions construing the constitutional single subject rule for initiatives?
- d. If not, what standards would the offices apply?
- e. If the offices determine that a proposed initiative does not have a single subject, would the proponents be able, as appears to be required by section 1 (5.5) of article V of the Colorado constitution, to have the offices reconsider that decision without resubmitting the proposed initiative for review and comment, by simply removing provisions from or making only other non-substantial changes to the proposed initiative?

- f. Is the authority of the offices to revise the draft title for a proposed initiative that is submitted by the proponents of the initiative limited to the minimum amount of revision necessary to comply with the provisions of proposed section 1-40-105, C.R.S., and article V of the state constitution or would the offices have broader discretion to revise the title:
 - i. To comply with other requirements, such as the specific ballot title language requirements set forth in section 20 (3)(c) of article X of the state constitution and the requirement that certain ballot titles include a table set forth in proposed section 1-40-105.5 (2)(b), C.R.S.; or
 - ii. To conform to the general stylistic practices of the General Assembly used in the drafting of bill titles?
 - g. Currently, the last date on which a review and comment meeting for a measure to be voted on in the same year can be held is the first Friday in April. What is the intent of the proponents' in extending this deadline to the third Wednesday in May? Would this extension create any challenges for proponents with respect to petition circulation or for the secretary of state or other election officials with respect to the administration of elections?
6. With respect to proposed section 1-40-105 (d), C.R.S., in section 1 of the proposed initiative, if the Colorado Supreme Court were to either reverse a determination by the offices that a proposed initiative has multiple subjects or determine that the language of a title set does not meet required standards:
- a. How would a title be set?
 - b. Would the court set the title itself?
 - c. Would it remand the proposed initiative back to the offices for setting of a title?
 - d. If the latter, how much time would the offices have to set a new or revised title?
7. With respect to proposed section 1-40-105.5 (1.5)(d), C.R.S., as amended in section 2 of the proposed initiative, existing statutory language referencing modification of a fiscal summary "in accordance with section 1-40-107" is left intact, but section 4 of the proposed initiative repeals section 1-40-107, C.R.S. Given this inconsistency:

- a. Can a fiscal summary be modified if the proposed initiative becomes law?
 - b. If so, under what circumstances and when would modification occur?
8. With respect to section 3 of the proposed initiative, which repeals section 1-40-106, C.R.S., several provisions of section 1-40-106, C.R.S., include specific language requirements for ballot titles that are not inherently tied to whether the title board or the office sets titles. While the proposed initiative preserves the substance of some of these provisions in the Colorado Revised Statutes by reenacting them in section 1 or adding them in section 2, others do not appear to be preserved. Is it the proponents' intent to eliminate the following requirements related to ballot title language:
 - a. The brevity, lack of conflict with other titles, yes/no question form, and unambiguous principle statement requirements set forth in section 1-40-106 (3)(b), C.R.S.?
 - b. The different phrasing requirements for titles for a proposed initiative that changes the Colorado Revised Statutes and a proposed initiative that amends the Colorado constitution set forth in section 1-40-106 (3)(c), C.R.S.?
 - c. The requirement that a ballot title for a statewide referred measure be in the same form as a ballot title for an initiative set forth in section 1-40-106 (3)(d), C.R.S.?
 - d. The requirements that certain language be included in the ballot title of a proposed initiative that affects tax revenue through a tax revenue change set forth in section 1-40-106 (3)(e) through (3)(g), C.R.S.?

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 Colorado Revised Statutes generally refer to the Colorado General Assembly as the "general assembly". Use this term instead of "legislature" throughout the proposed initiative when referring to the Colorado General Assembly.

2. In proposed section 1-40-105, C.R.S., insert subsection numbers (i.e. "(2)" and "(4)") to indicate how subsections (2) and (4) are being repealed and reenacted. Specifically, insert "(2)" directly before "(a)" after the headnote and insert "(4)" directly before the statutory subdivision where you intend to transition from subsection (2) to subsection (4).
3. On the last line of the introductory portion of proposed section 1-40-105 (c), C.R.S., replace "OFFICE" with "OFFICES".
4. On the first line of proposed section 1-40-105 (c)(I), replace "SSHALL" with "SHALL".
5. In proposed section 1-40-105, C.R.S., remove the **bold** type face for the roman numeral subparagraph numbers for subsections (c)(I), (II), and (III).
6. Because there is already an existing section 1-40-105.5 (2)(b), C.R.S., in proposed section 1-40-105.5 (2)(a) of the proposed initiative, add "(I)" after "(2)(a)" and replace "(b)" with "(II)".
7. On the last line of proposed section 1-40-105.5 (2)(b), replace "(A)" with ("a)".