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COLORADO GENERAL ASSEMBLY



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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

SUBJECT: Safety Clauses and Act-Subject-to-Petition Clauses¹

Executive Summary

Article V, section 1(3) of the Colorado Constitution reserves to the people the power to refer all or a portion of an act to the ballot for voter approval. There is an exception to this power: if an act is necessary 1) "for the immediate preservation of the public peace, health, or safety"; or 2) for appropriations to support and maintain a state department or institution. The General Assembly invokes this exception by including language, referred to as a "safety clause", at the end of a bill. Further, the General Assembly is vested with the exclusive power to determine whether the exception to the referendum power applies, and the courts will not review or call into question the General Assembly's decision.

If an act does not include a safety clause, it is subject to the power of referendum, and an individual has 90 days after the General Assembly adjourns *sine die* to exercise that power by submitting a petition to the Secretary of State's office. Thus, an act that does not have a safety clause must include an act-subject-to-petition clause, and the act cannot take effect until at least 90 days after the General Assembly adjourns *sine die*.

¹ This memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. OLLS memoranda are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

Discussion

1. An act that includes a safety clause is not subject to the power of referendum.

A safety clause is a clause that is placed at the end of an act and that reads as follows:

SECTION ___ . Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

The language of the safety clause is derived from the exception to the referendum power described in article V, section 1(3) of the Colorado Constitution. The use of a safety clause arises out of the provisions of article V, sections 1(1) and 1(3) of the Colorado Constitution (sections 1(1) and 1(3)) relating to the power of the people to use the referendum process to refer an act or a portion of an act passed by the General Assembly to the ballot for voter approval. As originally adopted by the people in 1876, the Colorado Constitution vested the legislative power only in the General Assembly. In 1910, Colorado voters adopted an amendment to the Colorado Constitution that reserved to the people the right to propose laws (the right of the initiative) and the right to approve or reject the laws passed by the General Assembly (the right of the referendum).

Sections 1(1) and 1(3) provide:

Section 1. General assembly - initiative and referendum. (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, **but the people** reserve to themselves 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.**

(3) **The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors** in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election **or by the general assembly.** Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is

demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative. **(Emphases added)**

Sections 1(1) and 1(3) provide for two types of referenda:

- The General Assembly may refer statutes to the voters in a statewide election by attaching a referendum clause to a bill;² or
- The voters may submit a petition to the Secretary of State, signed by a number of registered electors equal to five percent of the total number of votes cast for the office of Secretary of State in the previous general election,³ requesting a referendum vote against an act or item, section, or part of an act adopted by the General Assembly.

The type of referendum exercised by the voters has been called a "rescission" referendum. This means that a specified number of registered electors can sign a petition and provide the electorate with the opportunity to rescind all or part of an act enacted by the General Assembly.

Section 1(3) provides an exception to this "rescission" referendum if an act is necessary:

- For the immediate preservation of the public peace, health, or safety; or
- For appropriations for the support and maintenance of state departments and state institutions.

2. Courts have held that the General Assembly has exclusive authority to decide the appropriateness of using the safety clause.

Colorado case law is well settled in that a legislative body may prevent a proposed act from being referred to the people by declaring that the exception to the referendum power applies. The courts have also held that the legislative body is vested with exclusive power to determine whether that declaration is appropriate. While the question of whether to use a safety clause in a bill is certainly a matter that legislators may debate in the legislative process, once the legislative body decides that question, that decision stands, and the judiciary will not overturn it.

² Such a bill is often called a "referred bill".

³ This number varies based on the election. For 2023 through 2026, the number of signatures required for a statewide initiative or referendum petition is 124,238.

Specifically, in 1913, the Colorado Senate asked the Colorado Supreme Court whether the General Assembly could lawfully prevent a proposed act concerning the eight-hour-day law for persons employed in mines from being referred to the voters by the use of a safety clause declaring that the act was a law necessary for the immediate preservation of the public health and safety.⁴ The Supreme Court held that the General Assembly had the authority under the constitutional language to make such a determination and that "such declaration is conclusive upon all departments of government, and all parties, in so far as it abridges the right to invoke the referendum."⁵ The General Assembly passed the bill in question with a safety clause.

A few years later in *Van Kleeck v. Ramer*,⁶ the Colorado Supreme Court affirmed its 1913 ruling. The Court noted that, except as limited by the federal or the state constitution, the authority of the General Assembly is plenary, and the judicial branch cannot exercise any authority or power except that granted by the Constitution. The Court held that, in deciding whether to invoke the exception to the referendum power, the General Assembly "exercise[s] a constitutional power exclusively vested in it, and hence, such declaration is conclusive upon the courts in so far as it abridges the right to invoke the referendum."

The Court responded to the argument that the people would be deprived of the right to refer a law if the legislature, either intentionally or through mistake, declares falsely or erroneously that the exception to the referendum power applies to a bill. The Court said:

The answer to this proposition is, that under the Constitution the general assembly is vested with exclusive power to determine that question, and its decision can no more be questioned or reviewed than the decisions of this court in a case over which it has jurisdiction.⁷

The *Van Kleeck* case has been cited in several subsequent Colorado cases involving the use of the public exception clause in municipal ordinances or actions taken by a governmental body.⁸

⁴ *In re Senate Resolution No. 4*, 130 P. 333 (Colo. 1913).

⁵ *Id.* at 336.

⁶ *Van Kleeck v. Ramer*, 156 P. 1108 (Colo. 1916).

⁷ *Id.* at 1111.

⁸ See, for example, *Fladung v. City of Boulder*, 417 P.2d 787 (Colo. 1966); *Lyman v. Bow Mar*, 533 P.2d 1129 (Colo. 1975); *Cavanaugh v. State, Dept. of Social Services*, 644 P.2d 1 (Colo. 1982); *Slack v. Colorado Springs*, 655 P. 2d 376 (Colo. 1982) (each citing *Van Kleeck* for the proposition that the inclusion of a safety clause in an ordinance is a legislative determination and is not subject to judicial review).

3. A bill that does not include a safety clause is subject to the power of referendum and therefore cannot take effect until at least 90 days after the legislative session adjourns.

If an act does not include a safety clause, then under section 1(3), an individual may refer all or a portion of the act to the ballot for voter approval. As discussed previously, to refer the act, an individual must collect a specified number of signatures on a petition and file the petition with the Secretary of State's office within 90 days after the regular legislative session adjourns *sine die*. Thus, an act that does not have a safety clause cannot take effect until the 90-day period has passed, in case the act is referred to the ballot.⁹ And if the act is referred to the ballot and approved by the voters, it cannot take effect until the governor declares the final vote following the election.¹⁰

A bill that does not include a safety clause includes the following standard language, referred to as an "act-subject-to-petition clause" or "ASP clause":

SECTION ____ . Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November [next general election year] and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.¹¹

It is the practice of the staff of the Office of Legislative Legal Services to ask a bill sponsor whether the sponsor wants to include a safety clause or an ASP clause in the bill. In determining whether the changes effected by the bill are necessary for the immediate preservation of the public peace, health, or safety, the bill sponsor should consider how quickly the bill needs to take effect in order to accomplish the purposes of the bill. The text of a bill that does not include a safety clause cannot include an

⁹ See *In re Interrogatories of the Governor*, 181 P. 197 (Colo. 1919) (Held: To allow the opportunity for filing a "rescission" referendum petition for 90 days after the legislative session, a bill without a safety clause cannot take effect for 90 days.)

¹⁰ By comparison, an act that includes a safety clause may take effect as soon as the governor signs the act or allows it to become law without a signature. See Colo. Const. art. IV, § 11.

¹¹ An ASP clause may be modified to reflect an effective date that is later than 90 days after the General Assembly adjourns *sine die*.

effective date that precedes the date that is 90 days after the General Assembly adjourns *sine die*.

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