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Colorado General Assembly

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MEMORANDUM

To: Stan VanderWerf and Spencer Thomas

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 28, 2025

Subject: Proposed initiative measure 2025-2026 #35, concerning end wolf reintroduction

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. Ending reintroductions of gray wolves on designated lands by the state by December 31, 2026;
2. Defining "livestock guardian dog" and "working dog" to exclude any animal that is not a dog with respect to determining eligibility for wolf depredation compensation claims; and
3. Prohibiting the importation of wolves into Colorado from out of state.

Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "*Be it Enacted by the People of the State of Colorado:*". To comply with this constitutional requirement, this clause should be added to the beginning of the proposed initiative. Would the proponents consider adding this clause to comply with the Colorado constitution?
2. Other animals, such as donkeys, are used to guard cattle and sheep. Is it the proponents' intention to exclude guard animals that are not dogs?
3. The provision changes the defined term "livestock guardian or herding animal" in section 33-1-128 (1)(c), Colorado Revised Statutes, and uses the newly defined term in section 33-2-105.8 (5)(c), Colorado Revised Statutes, to include the defined terms "working dogs" and "livestock guardian dogs." This raises two questions:
 - a. Is the intention to apply the newly changed definition to section 33-2-105.8, Colorado Revised Statutes? If so, the proposed language will not achieve this intention because the definition in section 33-1-128, Colorado Revised Statutes, applies by its terms to "this section," which is not section 33-2-105.8, Colorado Revised Statutes. To apply the newly changed definition to section 33-2-105.8, Colorado Revised Statutes, the proposal should either:
 - i. Add in the phrase "as defined in section 33-1-128" behind "...WORKING DOGS AND LIVESTOCK GUARDIAN DOGS." in section 33-2-105.8 (5)(c), Colorado Revised Statutes; or
 - ii. Delete the definition in section 33-1-128, Colorado Revised Statutes, and move the definition to section 33-1-102, Colorado Revised Statutes. This option creates a complication because current law uses the term "working dog" in section 33-1-126 (6), so this would arguably affect the law beyond the current scope of the proposed initiative. A solution is to find another phrase that is not used in current law.
 - b. If the intention is to use the defined terms in section 33-2-105.8, Colorado Revised Statutes, then the inclusion of both terms, "working

dogs" and "livestock guardian dogs," in the definition is redundant. The way the definition is changed, the phrases "working dogs" and "livestock guardian dogs" are alternative phrases with the same meaning, so either one of these defined phrases means "an animal that is of the species *canis familiaris* and that is regularly used for herding or guarding livestock." There is a canon of statutory interpretation that requires a judge to give every word meaning, which may lead a court to interpret a redundant list in an unexpected way. Would the proponents consider removing this redundancy?

4. The current definition of "livestock guard or herding animal" in 33-1-128 (1)(b), Colorado Revised Statutes, is used in three other places in section 33-1-128, Colorado Revised Statutes. The proposed initiative changes this defined term to be "livestock guardian dog" or "working dog." If the intention is to use "livestock guardian dog" or "working dog," would the proponents consider updating the following subsections to use one of these new phrases? If so, then the following subsections should be updated:
 - a. 33-1-128 (1)(d), Colorado Revised Statutes: "'Wolf depredation' means that a gray wolf has caused direct physical trauma resulting in the death of or injury to livestock or to a **livestock guard or herding animal**."
 - b. 33-1-128 (3)(a), Colorado Revised Statutes: "Subject to annual appropriation by the general assembly, the division may expend money from the fund to compensate owners of livestock or **livestock guard or herding animals** that suffer damages due to wolf depredation."
 - c. 33-1-128 (3)(b), Colorado Revised Statutes: "For an owner of livestock or a **livestock guard or herding animal** to be compensated from the fund:
 - (l) One or more gray wolves must have killed or injured livestock or a **livestock guard or herding animal** owned by the claimant, as determined by the division; and"
5. The proposed section 33-2-105.10 uses an incorrect citation format. The Colorado Revised Statutes are published by computers and computers think 0.10 is the same number as 0.1 because that is how numbers normally work mathematically. Because of this, the computer is programed to not permit the numbering system to exceed 0.9. This section needs to be renumbered to place it in another section, such as placing it as a new section 33-2-109.

Would the proponents consider placing this proposed section in another section?

6. The proposed section 33-2-105.10 begins with the phrase, "Notwithstanding any provision of state law to the contrary." It is a best practice to avoid this phrase. What is a court to do when two different statutes start with that phrase? Priority will be determined in the same manner as in other statutes. If there is concern about the priority of the proposed section with a specific section, such as section 33-2-105.8, Colorado Revised Statutes, it is a better drafting practice to cite to the specific provisions that it should take priority over. An example would be "Notwithstanding section 33-2-105.8," This ensures that it actually takes priority over that section. Would the proponents consider following this best practice?
7. The proposed section 33-2-105.10 contains a long list of entities and individuals that come under the proposed prohibition. Section 33-1-102 (33), Colorado Revised Statutes, defines the term "person" for title 33 to mean "any individual, association, partnership, or public or private corporation, any municipal corporation, county, city, city and county, or other political subdivision of the state, or any other public or private organization of any character." So the list may be more elegantly reduced to something like this: "A person or the state of Colorado." It is also generally considered a best practice to use the defined terms when they apply. Would the proponents consider using the word "person" instead of using the long list of entities and individuals?
8. It is considered a best practice to draft statutes in the singular when reasonable. A statute that applies to each person individually applies to two or more people acting together because it applies to them individually. A statute that is written in the plural may potentially be construed to not apply to individuals. Would the proponents consider drafting the proposed section 33-1-105.10 in the singular?
9. Subsection (2) of the proposed section 33-1-105.10 raises two questions:
 - a. It is generally considered a best practice to include a citation in a prohibition to the exceptions of the prohibition. For example, "Except as provided in subsection (2) of this section, a person" Would the proponents consider adding a citation in subsection (1) of the proposed section 33-1-105.10 to make the statutes more usable?

- b. The exception in subsection (2) could be made more precise by citing to the provision that contains the importation prohibition. For example, the phrase "this wolf importation prohibition" would become "the wolf importation prohibition set forth in subsection (1) of this section." Would the proponents consider including this citation?

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. Changes to amending clauses should be implemented as follows:
 - a. In section 1 of the proposed initiative, the amending clause should read:
SECTION 1. In Colorado Revised Statutes, 33-2-105.8, **amend** (2)(d), (5)(b), and (5)(c) as follows:
 - b. In section 2 of the proposed initiative, a comma is needed after "Statutes" in the amending clause; and
 - c. In section 3 of the proposed initiative, the amending clause should read:
SECTION 3. In Colorado Revised Statutes, **add** 33-2-105.10 as follows:
 2. In section 1 of the proposed initiative, section 33-2-105.8 (2)(d), Colorado Revised Statutes, "December 31, 2023," is language in current law and should be in regular, not small caps, type.
 3. The following words should begin with a capital letter:
 - a. In section 1 of the proposed initiative, the first words of section 33-2-105.8 (5)(b) and (5)(c), Colorado Revised Statutes ("Gray" and "Livestock," respectively); and
 - b. In section 3 of the proposed initiative, the first word of section 33-2-105.10 (2), Colorado Revised Statutes ("THE").
 4. In section 1 of the proposed initiative, section 33-2-105.8 (5)(b), Colorado Revised Statutes, should end with a period.

5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. In section 3 of the proposed initiative, section 33-2-105.10 (2), "section" should be added before "33-2-106 (3)."