

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Jon Caldara and Vanessa Rutledge  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** March 20, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #251, concerning titles for 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.

An earlier version of this proposed initiative, proposed initiative 2023-2024 #182, was the subject of a memorandum dated February 15, 2024. Proposed initiative 2023-2024 #182 was discussed at a public meeting on February 22, 2024. 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 constitution appear to be:

1. To require that "[a]ll measures referred to a vote of the people by the general assembly by bill, resolution or similar process" have a title that is "fixed by the title board in accordance with the same process and procedures that govern the fixing of a title of a proposed initiative measure";
2. To allow legislation to be enacted to "facilitate the operation" of the requirement for the titles of all measures referred by the general assembly to be fixed by the title board in accordance with the same process and procedures applicable to proposed initiatives, but prohibit any legislation that would "limit or restrict" that requirement as set forth in the proposed initiative; and
3. To expressly preempt and render "inapplicable" any existing state statutes "in conflict or inconsistent with" the requirement for the titles of all measures referred by the general assembly to be fixed by the title board in accordance with the same process and procedures applicable to proposed initiatives.

## **Substantive Comments and Questions**

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

1. For purposes of better understanding the new language in subsection (12)(b) in section 2 of the proposed initiative:
  - a. What are some examples of legislation that would "facilitate the operation" of subsection (12) of the proposed initiative and therefore be permissible for the general assembly to enact?
  - b. What are some examples of legislation that would "limit or restrict" the provisions of subsection (12) of the proposed initiative and therefore be impermissible for the general assembly to enact?
2. Regarding the language in new subsection (12)(c) in section 2 of the proposed initiative:
  - a. Since a state statute that conflicts with the state constitution would be unconstitutional, the language in subsection (12)(c) stating such a statute would be "preempted and inapplicable to the matters covered by and

provided for in this section" is not legally accurate and could be confusing. Consider revising or removing that language.

- b. What is the intended meaning and scope of the phrase "inconsistent with this section (12)"?
- c. Are there particular state statutes that you believe are inconsistent with subsection (12) of the proposed initiative such that they would be "preempted and inapplicable to the matters covered by and provided for in this section (12)"? If not, what are some examples of the kind of statute that you believe would come within the scope of this language regarding "inconsistent" state statutes in the new subsection (12)(c)?
- d. How do you envision subsection (12)(c) being implemented? By the general assembly through legislation? By judicial determination of conflict or inconsistency after a lawsuit is filed? Some other method?

## **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 section number and headnote for section 1 of article V of the state constitution is missing before subsections (11) and (12) in sections 1 and 2 of the proposed initiative. The following should be added before subsections (11) and (12):

### **Section 1. General assembly - initiative and referendum.**

2. Subsection (11) in section 1 of the proposed initiative contains paragraphs (1) and (2), but paragraphs (1) and (2) should be relettered as paragraphs (a) and (b), respectively, for proper style and format.
3. In subsections (12)(b) and (12)(c) in section 2 of the proposed initiative, there are references to "this section (12)," but those references should be reworded as "this subsection (12)" for the correct way to reference the provision.