

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Mark Strickland and John Rush

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 17, 2019

SUBJECT: Proposed initiative measure 2019-2020 #102 concerning Eliminate State Emissions Testing Program

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 purpose of the proposed amendment appears to be to eliminate some or all of the state emissions testing program for motor vehicles.

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 phrase should be added to the beginning of the proposed initiative.
2. 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?
3. What will be the effective date of the proposed initiative?
4. Under section 1-40-105.5, Colorado Revised Statutes (C.R.S.), the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and, if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.
5. Under section 1-40-105 (1), C.R.S., the draft submitted to the directors of the legislative council and the office of legislative legal services for review and comment should be typewritten. The rules adopted by the legislative council further require that: "A petition must be typewritten and legible, **contain the text of the initiated measure**, and provide the names and mailing addresses of two persons representing the proponents in all matters pertaining to the initiative."
6. Section 1-40-105 (1), C.R.S. also encourages initiative proponents to write the drafts of their proposed measures "in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning

that are understandable to the average reader." For more information, please see the "Guidelines for the Use of Plain Language" in chapter 5 of the Colorado Legislative Drafting Manual, which is online at the following link:

<http://leg.colorado.gov/publications/legislative-drafting-manual>.

7. "Air Care Colorado" is a privately owned emissions testing service. Parts 3 and 4 of article 4 of title 42, C.R.S., contain the requirements that motor vehicles be inspected for emissions. Would the proponents be willing to show the repeal of those provisions that the proponents intend to repeal?
8. Federal law, 42 U.S.C. sec. 7401 et seq., requires Colorado to submit a state implementation plan to achieve air quality standards. The emission inspection program is one of the methods Colorado uses under the state implementation plan to meet these standards. Under 42 U.S.C. sec. 7509, the federal government may sanction Colorado for failing to follow the state implementation plan. These sanctions may include the loss of federal highway funds. Have the proponents considered this possibility?
9. If the state does not have an adequate state implementation plan, in addition to sanctions, the federal environmental protection agency may be required under federal law to adopt and enforce a federal implementation plan for Colorado, which likely would include an automobile emissions inspection program very similar in scope to the state program that you propose to repeal. Have the proponents considered this possibility?

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. Sections and numbering:
 - a. An initiative proposal should indicate where the text of the proposed measure will be located in the C.R.S. The text should be placed in a location that is suitable for the subject of the measure, and the measure should be divided into numbered subdivisions and given section headings as appropriate.

- b. The C.R.S. are organized by subject into 44 titles, from Title 1 (Elections) to Title 44 (Revenue: Regulations of activities). Each title is divided into articles. Some articles are further divided into parts, and each article or part contains sections that can be further divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs. The purpose of this sectioning hierarchy is to organize the statutes by topic and separate individual provisions into relatively short sections that are easy for readers to locate and read.
- c. Each section in the C.R.S. has a three-part number. The first number specifies in which of the titles the section is located. The second number indicates the article within that title, and the third number is the number of the section itself. For example, the statute on the procedure for filing an initiative petition is section 1-40-105, C.R.S. This number indicates that the statute is section 105 within article 40 (Initiative and Referendum) of Title 1 (Elections).
- d. Within a section, the text may be divided into subsections with numbers [(1), (2), (3)...], paragraphs with lower case letters [(a), (b), (c)...], subparagraphs with Roman numerals [(I), (II), (III)...], and sub-subparagraphs with upper case letters [(A), (B), (C)...]. A section may use all, some, or none of these internal divisions, as appropriate. For an example of a section that uses these divisions down to the subparagraph level, see section 1-40-106.5, C.R.S.
- e. A proposal to amend the state statutes should specify the title, article, and section to be modified or added. When amending a provision smaller than a section, state the section number before the "**amend**", "**add**", or "**repeal**" instruction. When amending a section or larger, state the "**amend**", "**add**", or "**repeal**" instruction before listing the provision to be amended. This may be done with an "amending clause".
- f. If the proposed initiative modifies an existing statute, the amending clause may be in this form:

In Colorado Revised Statutes, **repeal** 42-4-301 as follows:

In Colorado Revised Statutes, 42-4-301, **amend** (1) as follows:

- g. If the proposed initiative adds a new provision to the statutes, the amending clause may be written as in one of the following examples, depending on whether the proposal adds a new section, part, or article:

In Colorado Revised Statutes, **add** part 3 to article 40 of title 1 as follows:

In Colorado Revised Statutes, **add** 1-40-207.6 as follows:

In Colorado Revised Statutes, **add** article 5.5 to title 1 as follows:

- h. The number of each section in the C.R.S. is followed by a descriptive headnote in boldface type. The headnote may contain multiple descriptive words or phrases, separated by dashes, describing each of the main provisions in the section.
- i. Please note that under section 2-5-113 (4), C.R.S., the placement, headings, and numbers of statutory provisions are not "part of the legislative text but ... only for the purpose of convenience, orderly arrangement, and information."
- j. At the beginning of the amending clause, number each section, part, etc. that is being amended, added, or repealed with a section number (e.g., **SECTION 1.**, **SECTION 2.**). For example:

SECTION 1. In Colorado Revised Statutes, **repeal** part 3 of article 4 of title 42 as follows:

- k. The C.R.S. are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

2. How to show proposed changes in the law:

- a. New language to be added to the state constitution or statutes by the proposed initiative should be indicated in small capital letters. THIS IS AN EXAMPLE OF SMALL CAPITAL LETTERS. Language to be deleted from an existing constitutional or statutory provision should be shown in strike type. ~~This is an example of strike type.~~
- b. If an entire section or other subdivision is deleted by a proposed measure, a "repealer clause" may be used instead of an amending clause. The repealer clause may simply refer to the deleted provision, or the repealed language may be shown in strike type. For example:

In Colorado Revised Statutes, **repeal** 1-40-101.

Or:

In Colorado Revised Statutes, **repeal** 1-40-101 as follows:

1-40-101. Legislative declaration. ~~The general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.~~

3. Conforming amendments:

- a. If a proposed initiative amends or repeals an existing constitutional or statutory provision, it may be necessary to make conforming amendments to other provisions that refer to or are affected by the provision being amended or repealed. Cross references are found by searching the online database of the state constitution and the C.R.S.: <http://www.michie.com/colorado>.
- b. Depending on what provisions in parts 3 and 4 of article 4 of title 42, C.R.S., the proponents wish to repeal, the initiative may need to have conforming amendments to the following provisions:
 - i. 25-7-106 (4)(a);
 - ii. 25-7-106.3 (1);
 - iii. 25-7-106.7;
 - iv. 25-7-122 (1)(b);

- v. 25-7-122.1 (1)(a) and (1)(b);
- vi. 25-7-133 (7)(b);
- vii. 42-1-217 (1) introductory portion;
- viii. 42-2-127 (6)(c);
- ix. 42-3-109;
- x. 42-3-113 (8)(a)(I);
- xi. 42-3-304 (18)(c), (19)(a) introductory portion, (19)(a)(I), (19)(a)(III), and (19)(c);
- xii. 42-4-110 (4)(a);
- xiii. 42-4-301 (1), (2)(a)(I), and (2)(b)(I);
- xiv. 42-4-302;
- xv. 42-4-304 (1), (3)(a)(I), (3)(b)(I), (3)(b)(II), (3)(d), (3.5), (5), (7)(a), (8), (10), (15), (16)(b)(I), (17)(a), (18), and (19)(b)(I);
- xvi. 42-4-305 (3), (7), (8), (9), (10)(a), and (10)(b);
- xvii. 42-4-306 (3)(b)(V)(A), (5), (6)(a), (7)(a)(II)(B), (7)(a)(II)(G), (8)(a), (8)(b), (9)(a)(II), (11)(b)(I), (11)(b)(II), (14)(a), (16)(a)(I), (17)(f), (18), and (23)(a);
- xviii. 42-4-307 (3), (8)(b), (10)(a), and (10)(b);
- xix. 42-4-307.5 (1) and (2)(a);
- xx. 42-4-308 (1)(b), (4)(b), and (4)(c);
- xxi. 42-4-309 (1)(a), (2)(a), (3)(a), (6)(a), and (7);
- xxii. 42-4-310 (1)(a)(II)(C), (1)(b)(I)(B), (1)(b)(I)(C), (1)(d)(II)(A), (1)(d)(IV), (1)(d)(VI), (1)(d)(VIII)(A), (3)(a), (3)(b), (3)(d), and (5)(a);
- xxiii. 42-4-311 (2)(b), (4)(a)(II), (4)(b), (5), (6)(a), and (6)(b);
- xxiv. 42-4-315;
- xxv. 42-4-404 (2)(a), (2)(b), and (5);
- xxvi. 42-4-406 (2)(a);

- xxvii. 42-4-407 (1);
- xxviii. 42-4-411;
- xxix. 42-4-412 (3)(b);
- xxx. 42-4-413 (1)(a) and (2)(b)(II);
- xxxi. 42-4-414 (2)(b)(I);
- xxxii. 42-4-1701 (4)(c)(II)(A) and (4)(c)(IV);
- xxxiii. 42-9-111; or
- xxxiv. 42-12-101;

4. Other clauses:

- a. It may be appropriate to include certain other provisions in a proposed initiative, including:
 - i. *Effective date clause*: An effective date clause specifies when the proposed measure will take effect. For example, "This section takes effect January 1, 2009."
 - ii. *Applicability clause*: An applicability clause indicates a time period or event to which the changes in the law will apply. Depending on the proposal, an appropriate applicability clause might specify that the changes enacted by the initiative apply to fiscal years or tax years beginning on and after the effective date, or to offenses committed, civil actions filed, or transactions entered into on and after the effective date.
 - iii. *Statement of intent*: It may be desirable to include a statement in the text of a proposed initiative describing the general purpose and intent of the measure. Such statements can be helpful to courts when attempting to resolve any ambiguities in the meaning of the constitutional or statutory provisions.