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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: December 20, 2023
SUBJECT: Proposed initiative measure 2023-2024 #113, concerning Funding for Law Enforcement

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. To create a peace officer training and support fund to assist in recruiting, training, and supporting peace officers and their families;

2. To provide a death benefit of one million dollars to the surviving family of an officer who dies while on duty;
3. To appropriate \$350 million from the general fund to municipal and county law enforcement agencies to increase pay; provide hiring, retention, or merit bonuses to attract, retain, and reward exceptional law enforcement officials; and to hire additional police and law enforcement officials;
4. To appropriate \$20 million from the general fund for initial and continuing education for law enforcement; and
5. To appropriate \$50 million from the general fund in grants to local law enforcement agencies, school districts, or schools to protect students at pre-K to twelfth grade schools.

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. What will be the effective date of the proposed initiative?
3. Section 2 of the proposed initiative creates a peace officer training and support fund. The following questions are related to section 2 of the proposed initiative:
 - a. What money is in the fund? Should the initiative transfer or require the General Assembly to appropriate money into the fund?
 - b. The General Assembly can only appropriate money to state agencies and cannot appropriate money directly to local governments. Would the proponents consider requiring the General Assembly to continuously appropriate money in the fund to a state agency, which would then distribute the money as grants to local governments? If so, the purposes for which the agency can spend the money would likely be to award grants, and the initiative could then describe permissible uses for local governments to use a grant award.
 - c. What is the proponents' intent in subsection (2) to require increasing the continuously appropriation of the money in the fund each year? A continuous appropriation cannot be increased annually because "continuous appropriation" means that the state agency with permission

to spend the money may spend any amount of money in the fund at any time without a further appropriation.

- d. The proposed initiative states that funds shall be continuously appropriated and shall increase at the rate of the Denver Boulder CPI +1% each year. The proposed initiative does not appropriate any money to fund so how will the annual increase be calculated? What is the "Denver Boulder CPI," are the proponents actually referring to the "United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood"? Would the proponents clarify this reference? Please clarify the intent of the +1% language.
 - e. The proposed initiative states the funds may only be used for bona fide peace officer functions and not programs for other human service functions. What do the proponents mean by "bona fide peace officer functions" and "other human service functions"? Would the proponents consider defining those phrases?
 - f. The proposed initiative states the funds must supplement and not supplant appropriations and provides a chief of police or sheriff who has reasonable cause to believe the funds are supplanting total funding for the jurisdiction the authority to seek relief in a district court and requires relief to be provided upon a reasonable showing that funds were supplanted. Does the chief of police or sheriff need to seek relief with a district court within its jurisdiction or can the chief of police or sheriff seek relief in any district court in the state? What constitutes a "reasonable showing"? What type of relief can the court provide?
4. Section 3 of the proposed initiative requires the head of the department of public safety to, within 30 days of an officer's on-duty death, pay the surviving spouse or children 1 million dollars in death benefits. The following questions are related to section 3 of the proposed initiative:
- a. Are the proponents referring to the executive director of the department of public safety when referring to the head of the department of public safety? If so, please use the correct reference, if not, identify which position constitutes the head of the department of public safety.
 - b. The proposed initiative creates a duty for the head of the department of public safety to pay the death benefit within 30 days of an officer's on-duty death. It then states, "In no case shall it take longer than 30 days for the payments to be made." It appears that both sentences require the same thing, what is the intent of the second sentence?

- c. The proposed initiative requires the death benefit to be paid in the event of an officer's on-duty death. Would the proponents consider defining the term "officer"? What constitutes an "on-duty death"? Would an officer who happens to die of natural causes while on-duty receive the death benefit? Would the proponents consider defining "on-duty death" or use a more descriptive phrase?
 - d. The proposed initiative requires the death benefit to be paid to a surviving spouse or children. What happens in a case in which an officer does not have a surviving spouse or children?
 - e. The proposed initiative states "these funds shall be due survivors of any state or local law enforcement official killed in the line of duty" Is the term "state or local law enforcement official" the same as "officer" used earlier in section 3 of the proposed initiative? If so, would the proponents consider using consistent terminology? Does the phrase "killed in the line of duty" refer to the same thing as "on duty death" used earlier in section 3 of the proposed initiative? If so, would the proponents consider using consistent terminology?
 - f. The proposed initiative requires the death benefit to be paid to state or law enforcement officials killed in the line of duty back to 2000. Section 11 of article 2 of the Colorado Constitution prohibits retrospective legislation. Does this provision violate the Colorado Constitution?
 - g. The proposed initiative requires the death benefit to be paid to state or law enforcement officials killed in the line of duty back to 2000 and requires the death benefit to be paid within 30 days of officer's death. In the case of the retrospective death benefit the 30-day requirement cannot be met. Does a different timeline apply to the retroactive benefits?
 - h. What is the significance of going back to the year 2000 as opposed to providing the benefit to all surviving families of a law enforcement official killed in the line of duty?
5. Is any of the money required to be appropriated in section 4 of the proposed initiative the same as the money in the fund described in section 2 of the proposed initiative?

6. Section 4 of the proposed initiative makes several appropriations. Each of the required appropriations should include the year or years for which the appropriation must be made, the source of the money for the appropriation, the amount of the appropriation, the state agency to which the appropriation is made, and the purposes for which the state agency can spend the appropriated money. Relating to the appropriations required section 4 of the proposed initiative:
 - a. For what year is the General Assembly required to make each appropriation in section 4? For example, the General Assembly might make an appropriation "for the 2025-26 fiscal year" or, for recurring appropriations, "for the 2025-26 fiscal year and each fiscal year thereafter."
 - b. When an amount of an appropriation is specified in section 4, is the proponents' intent to require the General Assembly to appropriate only the specified amount, or can the General Assembly appropriate more than the amount specified? If these are minimum required appropriations, can the proposed initiative specify the amounts as minimum amounts?
 - c. The General Assembly can only appropriate money to state agencies and cannot appropriate money directly to local governments. Would the proponents consider requiring the General Assembly to appropriate money to a state agency for each required appropriation, that would then distribute the money as grants to local governments?
 - d. If the money is appropriated to a state agency, the purposes for which the agency can spend the money would likely be to award grants to local governments and not for the purposes currently included in the proposed initiative. The initiative could then describe permissible uses for local governments to use a grant award, such as those listed in section 4.
7. Section 4 of the proposed initiative requires the General Assembly to appropriate \$350 million from the general fund in recurring operating funds. What are recurring operating funds? Would the proponents consider defining the phrase?
8. The \$350 million appropriation in section 4 of the proposed initiative states it is for municipal and county law enforcement agencies. How does the money get distributed to those agencies? Does each such agency in the state receive a distribution? Who determines how much an agency receives?

9. Section 4 of the proposed initiative requires the General Assembly to appropriate \$20 million from the general fund for initial and continuing law enforcement education and training. To whom is this appropriation made? Who has the authority to use this money and how is that determined?
10. Section 4 of the proposed initiative requires the General Assembly to appropriate such funds from the general fund necessary to pay the surviving spouse or children of police, fire, or other first responders killed in the line of duty. Does this provision refer to section 3 of the proposed initiative? If so, would the proponents refer to that section and use the terminology of that section? How will the General Assembly determine how much to appropriate when it will not know how many people may be killed in the line of duty in a given year considering the payment must be paid within 30 days of the death?
11. Section 4 of the initiative requires the General Assembly to appropriate \$50 million from the general fund to provide grants to law enforcement agencies, school districts, and individual schools to protect students. Who distributes the grants and determines how much a grant recipient will receive? Is there any criteria applied to grant applications in determining which entities receive a grant and how much?
12. Section 4 of the initiative gives priority in receiving grants to protect students to those entities that have comprehensive and regularly updated plans, monitoring systems, and a reporting process demonstrating to parents and the community a comprehensive readiness to deterring and interdicting law enforcement events at Colorado schools. Why is a priority given in those circumstances since the description sounds like those are the places that have protections in place as opposed to providing priority to those who do not have anything in place?
13. Are the appropriations required by section 4 of the proposed initiative one-time appropriations or are they annual requirements?
14. Section 5 of the proposed initiative requires any bill that would modify the proposed initiative be introduced 60-days prior to any legislative hearing or debate. Section 12 of article V of the Colorado Constitution gives each house the power to determine the rules of its proceedings and section 19 of article V of the Colorado Constitution states a bill may be introduced at any time during the session unless limited by action of the General Assembly. Does section 5 of the proposed initiative violate the Colorado Constitution?

15. Section 5 of the proposed initiative does not appear to be a statutory or constitutional change. How do the proponents intend for the provision to be applied and enforced?

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. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." It further states "'must' does not mean that a person has a duty."
2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
3. The proposed initiative uses the term "funds" when referring to money. Standard drafting practice is to use the term "money."
4. Sections 2 and 4 of the proposed initiative add section 24-33.5-535. The proposed initiative should contain one section that creates section 24-33.5-535 and section 24-33.5-536 and designate the language in section 2 as either section 24-33.5-535 or 24 -33.5-536 and the language in section 4 as the other section.
5. The proposed initiative uses numerals; standard drafting practice uses words to express numbers in statute.
6. The proposed initiative uses the phrase, "on duty death," the phrase should be hyphenated, "on-duty death."

7. The enacting clause should be written as follows:
Be it Enacted by the People of the State of Colorado:
8. The proposed initiative capitalizes some common nouns including *sheriff*, *police chief*, and others. Common nouns should not be capitalized; standard practice is to limit capitalization to proper nouns.