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Colorado General Assembly

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MEMORANDUM

TO: Mark Surls and Carol Monaco
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: October 4, 2023
SUBJECT: Proposed initiative measure 2023-2024 #91, concerning Prohibiting Trophy Hunting

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 prohibit the intentional killing of, wounding of, entrapping of, or discharging or releasing of a deadly weapon at a mountain lion, lynx, or bobcat; and

2. To establish penalties for the intentional killing of, wounding of, entrapping of, or discharging or releasing of a deadly weapon at a mountain lion, lynx, or bobcat.

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. Subsection (2)(a) of section 1 of the proposed initiative defines "entrap" as "trapping, stalking, or pursuing a mountain lion, bobcat, or lynx."
 - a. What is the difference between "stalking" and "pursuing" in this context?
 - b. Should the term "pursuing" be defined or further clarified?
3. Subsection (2)(a) of section 1 of the proposed initiative provides an exception to the prohibition against trophy hunting for actions that are "conducted as provided in section 33-6-206 (a), (c), and (d)." Use of the conjunctive word "and" before "(d)" implies that all of the purposes (i.e., bona fide scientific research, relocation in accordance with the rules of the parks and wildlife division (division), and the medical treatment of the animal being captured) must be satisfied for the exception to apply. For the exception to apply for only one or some of the purposes incorporated by reference, proponents might consider changing "and (d)" to "or (1)(d)."
4. Do the proponents intend for the attempted killing of, wounding of, entrapping of, or discharging or releasing of a deadly weapon at a mountain lion, bobcat, or lynx to be unlawful as well?
5. In regard to the exceptions to the definition of "trophy hunting" in subsection (2)(c) of section 1 of the proposed initiative:
 - a. Subsection (1) of section 1 of the proposed initiative states that "trophy hunting is practiced primarily for the display of the animal's head, fur, or other body parts, rather than for utilization of the meat."
 - i. To be consistent with the declaration, should there be an exception for the intentional killing, wounding, or entrapping of

a mountain lion, lynx, or bobcat for the utilization of the animal's meat?

- ii. If an exception for the utilization of the animal's meat should not be added, the proponents might consider changing the defined term to something other than "trophy hunting," because the definition of "trophy hunting" in subsection (2) of section 1 of the proposed initiative is broader than the description of the practice of trophy hunting provided in subsection (1) of section 1 of the proposed initiative.
- b. Subsection (2)(a) of section 1 of the proposed initiative appears to allow the entrapment of a mountain lion, lynx, or bobcat for the purpose of medical treatment. Should there also be an exception that allows a licensed veterinarian acting in the scope of the veterinarian's duties to euthanize a mountain lion, lynx, or bobcat?
- c. Should the phrase "appropriate nonlethal methods" used in subsection (2)(c)(I) of section 1 of the proposed initiative be defined or further clarified?
- d. What is the proponent's intent in using the phrase "to the extent such methods are consistent with actions needed to defend human life" in subsection (2)(c)(I) of section 1 of the proposed initiative?
- e. Subsection (2)(c)(I) of section 1 of the proposed initiative appears to give the parks and wildlife commission (commission) the authority to adopt rules in regard to acts "in the defense of human life, livestock, real or personal property, or a motor vehicle." Is the proponent's intent to only grant the commission rule-making authority in this specific area (i.e., defense of life or property) or is the intent for the commission to have more general rule-making authority in regard to the prohibition against trophy hunting?
- f. Did the proponents intend to use the conjunctive word "and" after "commission;" at the end of subsection (2)(c)(I) of section 1 of the proposed initiative? Use of an "and" between subsections (2)(c)(I) and (2)(c)(II) would require that both circumstances described in subsection (2)(c)(I) and (2)(c)(II) be met, thus allowing an exception only if an authorized employee of the division or the United States department of agriculture is the individual who engages in the killing of, wounding of, entrapping of, or discharging or releasing of a deadly weapon at a

- mountain lion, bobcat, or lynx in defense of human life, livestock, real or personal property, or a motor vehicle. Is this the proponents' intent?
- g. Subsection (2)(c)(II) of section 1 of the proposed initiative provides an exception for "an authorized employee" of the division. Should the term "Colorado wildlife officer" defined in section 33-1-102 (4.3) be used instead?
 - h. Subsection (2)(c)(II) of section 1 of the proposed initiative appears to give an exception to authorized employees of the United States department of agriculture. Should there also be an exception for persons that are acting in compliance with federal law?
 - i. Subsection (2)(c)(III) of section 1 of the initiative provides an exception for the "accidental wounding or killing of a mountain lion, lynx, or bobcat by a motor vehicle, vessel, or train." This exception is not necessary because the proposed initiative would only prohibit the *intentional* killing, wounding, or entrapping of a mountain lion, lynx, or bobcat.
 - j. Section 33-4-102 (2)(a), (2)(i), and (13), C.R.S., authorize the division to issue special licenses for scientific research, wildlife sanctuaries, and zoological parks, respectively. These special licenses may involve the killing, wounding, or entrapping of a mountain lion, lynx, or bobcat by the licensee. Should the language of the proposed initiative clarify how the prohibition against trophy hunting affects the division's ability to issue these types of special licenses?
 - k. Similar to article XVIII, section 12b (2)(a) of the Colorado Constitution and section 33-6-205, C.R.S., should there also be an exception for the intentional killing of, wounding of, entrapping of, or discharging or releasing of a deadly weapon at a mountain lion, lynx, or bobcat by federal, state, county, city and county, or city departments of health for the purpose of protecting human health or safety?
6. It is a standard drafting practice to use the term "unlawful" when designating a particular action or omission as a crime. In addition, mountain lions, lynx, and bobcats are already included in the definition of "trophy hunting" in subsection (2)(b) of section 1 of the proposed initiative. Therefore, proponents might consider changing the language of subsection (3) of section 1 of the proposed initiative to "Trophy hunting is unlawful."

7. Subsection (2)(c)(I) of section 1 of the proposed initiative provides an exception to the prohibition against trophy hunting for "the defense of human life, livestock, real or personal property, or a motor vehicle." Section 3 of the proposed initiative removes bobcats from the list of animals that may be hunted, trapped, or taken if the animal is "causing damage to crops, real or personal property, or livestock." Because there appears to be a conflict between the two provisions, proponents might consider adjusting the language of subsection (2)(c)(I) of section 1 of the proposed initiative or section 3 of the proposed initiative.
8. Subsection (4)(a) of section 1 of the proposed initiative provides that a person who engages in trophy hunting commits a class 2 misdemeanor and incorporates by reference the penalties set forth in section 18-1.3-501, C.R.S., which are 120 days of imprisonment, no more than a \$750 fine, or both. Section 4 of the proposed initiative would subject a person who engages in trophy hunting to a fine of one thousand dollars for the illegal hunting, taking, or possession of a mountain lion, lynx, or bobcat, which is more than the \$750 threshold set forth in section 18-1.3-501, C.R.S. Because there appears to be a conflict between the two provisions, proponents might consider adjusting the language of subsection (4) of section 1 of the proposed initiative or section 4 of the proposed initiative.
9. Subsections (4)(b) and (4)(c) of section 1 of the proposed initiative provide that a person who holds a wildlife license and engages in trophy hunting shall not hold or exercise the privileges of the license for five years for one offense or for life for two or more offenses, respectively.
 - a. Section 4 of the proposed initiative provides that a person that engages in the illegal hunting, taking, or possession of a mountain lion, lynx, or bobcat is subject to an assessment of 15 points, which does not in itself authorize the suspension of a wildlife license for any period of time because, pursuant to section 33-6-106 (1)(a), C.R.S., the commission may only suspend a person's license if the person has violations totaling 20 or more points. Because there appears to be a conflict between the two provisions, proponents might consider adjusting the language of subsections (4)(b) and (4)(c) of section 1 of the proposed initiative or section 4 of the proposed initiative.
 - b. Section 33-1-106 (1), C.R.S., states that the "commission, or a hearing officer who has been delegated authority by the commission, has the exclusive authority to suspend the privilege ... conferred by any or all

licenses issued by the division for a period not to exceed five years, except as otherwise provided in articles 1 to 6 of this title." The proponents might consider adding language to expressly exempt subsections (4)(b) and (4)(c) of section 1 of the proposed initiative from the discretion afforded the commission or a hearing officer under section 33-1-106 (1).

10. Should mountain lions be removed from the definition of "big game" in section 33-1-102 (2), C.R.S., to avoid a conflict with section 1 of the proposed initiative? Similarly, should there be an express statement in the definition of "big game" that exempts mountain lions, lynx, and bobcats from classification as big game by the commission?
11. Section 35-40-101 (2)(c), C.R.S., allows the commissioner of agriculture to allow state employees and owners of agricultural products to control depredating animals. Further, section 35-40-101 (2)(d), C.R.S., allows the commissioner of agriculture to allow the use of nonlethal methods or preventive activities such as the use of guard dogs and snaring devices. "Animal," as defined in section 35-40-100.2 (1)(a), C.R.S., expressly includes a mountain lion and bobcat. Should the language of the proposed initiative clarify how the prohibition on trophy hunting affects the activities permitted by section 35-40-101 (2), C.R.S.?
12. Along with the provision specifying the effective date of the proposed initiative, proponents might consider adding a provision to section 6 of the proposed initiative that clarifies that the proposed initiative only applies to offenses committed on or after the effective date of the proposed initiative.

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. Each section in the Colorado Revised Statutes and the Colorado Constitution has a section number followed by a period and a headnote. Headnotes briefly describe the content of the section.

- a. A section number and a headnote should be added to section 1 of the proposed initiative (section 33-4-101.4, C.R.S.) and be in bold-faced type. For example:

33-4-101.4. Trophy hunting prohibited – exceptions – legislative declaration – rules – penalty – definitions.

- b. In section 2 of the proposed initiative, the period after the section number in the headnote is missing and the word "rules" has been deleted from the existing headnote. Because the section gives the commission the power to make rules, the word "rules" should be reinserted in the headnote, even though the portion of the statute being amended in the proposed initiative doesn't include rule-making authority.
- c. In section 3 of the proposed initiative, the period after the section number in the headnote is missing.
- d. Section 4 of the proposed initiative is missing the section number and headnote that is currently in statute. The existing section number and headnote should be added to section 33-6-109, C.R.S.:

33-6-109. Wildlife – illegal possession.

2. When referencing a subsection within a *different* section, begin with the word "section," followed by the section number and then the subsection number, paragraph letter, subparagraph number, and sub-subparagraph letter, as needed. In subsection (2)(a) of section 1 of the proposed initiative, the cross-reference to section 33-6-206 should read "33-6-206 (1)(a), (1)(c), and (1)(d)."
3. In subsection (2)(b)(II) of section 1 of the proposed initiative, the "as defined ..." clause should be set off with commas: "... deadly weapon, as defined in section 18-1-903 (3)(e), ..."
4. When referencing a different subsection within the *same* section, begin with the word "subsection," followed by the subsection number, then the words "of this section." In subsection (2)(c)(II) of section 1 of the proposed initiative, the reference to subsection (2)(b) should read "subsection (2)(b) of this section."
5. When definitions are part of a larger section that has other substantive law, and a defined term is divided into separate points, such as "[defined term] means" and "[defined term] does not include," the provisions should be under the same paragraph letter and divided into subparagraphs. For example, in subsection

(2)(b) of section 1 of the proposed initiative, the definition of "trophy hunting" should be organized as follows:

- (b) (I) "TROPHY HUNTING" MEANS INTENTIONALLY:
 - (A) KILLING, WOUNDING, OR ENTRAPPING A MOUNTAIN LION, BOBCAT, OR LYNX; OR
 - (B) DISCHARGING OR RELEASING ANY DEADLY WEAPON, AS DEFINED IN SECTION 18-1-901(3)(e) AT A MOUNTAIN LION, BOBCAT, OR LYNX.
- (II) "TROPHY HUNTING" DOES NOT INCLUDE:
 - (A) ANY ACT SPECIFIED IN SUBSECTION (2)(b) OF THIS SECTION ...; AND
 - (B) ANY ACT SPECIFIED IN SUBSECTION (2)(b) ...; OR
 - (C) THE ACCIDENTAL WOUNDING OR KILLING OF ... TRAIN.

Note that substantive comment number 3 regarding the use of "and" and "or" in the list of exceptions may change how the list should be organized.

6. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The first letter of the first word of each entry of an enumeration paragraphed after a colon should have an uppercase letter. The word "the" at the beginning of subsection (2)(c)(III) of section 1 of the proposed initiative should begin with an uppercase letter.
7. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. In section 4 of the proposed initiative, the incorrect section is identified in the amending clause. The actual section being amended is section 33-6-109, C.R.S. The amending clause should be changed to amend the correct statutory section.
8. When amending current law, each provision must be copied into the proposed initiative *exactly* as it appears in the Colorado Revised Statutes. In section 5 of the proposed initiative, language in section 33-6-110 (1)(a) and (1)(f), C.R.S., has not been copied exactly.
 - a. In subsections (1)(a) and (1)(c), an equal sign has been substituted for the ellipses that appear in current law. The ellipses should be reinserted and the equal sign should be deleted.
 - b. In subsection (1)(c), the order of the language was changed. The amended subsection (1)(c) should read:
 - (c) For each pronghorn, deer, OR black bear ~~or mountain lion~~ \$500