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MEMORANDUM

TO: Omar Malik and Christopher Fine
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 6, 2022
SUBJECT: Proposed initiative measure 2021-2022 #135, concerning Local Approval Requirements for Expanded Liquor Licensing.

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 require the local licensing authority's approval to expand the types of alcohol beverages that a license holder may sell;

2. To condition this expansion approval on meeting the needs and desires of the neighborhood;
3. To condition this approval on meeting the greater of the distance requirements in law or 1,500 feet from a school, daycare center, church, or liquor store, or other license holder who sells alcohol beverages for consumption off the licensed premises;
4. To require the local licensing authority's approval to renew a license that authorizes the sale of alcohol beverages for consumption off the licensed premises; and
5. To condition this renewal approval on serving the public interest and the license holder's operating history.

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. Proposed subsection (1) begins with the introductory portion that reads, "Notwithstanding any law to the contrary, ...".
 - a. Is the word "law" intended to apply to laws promulgated by the federal government or a local government?
 - b. Is there a law to the contrary?
 - c. If a statutory law is to the contrary, what happens if that law begins with the phrase "Notwithstanding any law to the contrary, ..."?
 - d. If a statutory law were to the contrary, would the proponents consider clarifying what statute controls?
 - e. If a statutory law is not to the contrary, would proponents consider deleting the "notwithstanding" phrase in the introductory portion?
3. Current law requires a license to operate retail establishments, manufacture alcohol beverages, import alcohol beverages, sell alcohol beverages at wholesale, etc.

- a. Section 44-3-401, Colorado Revised Statutes, uses the term "class" to refer to each type of license. Do the proponents intend for the use of the word "class" in subsection (1) to refer to each type of license or only to retail licenses?
 - b. Do the proponents intend for proposed section 44-3-314 to apply to all licenses or strictly to apply to retail licenses?
 - c. If the intention is to apply only to retail licenses, would the proponents consider narrowing the proposed provision to clarify the intention?
4. It is not clear what entity is subject to the prohibition in proposed subsection (1). If the intention is to prohibit the state licensing authority from expanding a license without local licensing authority approval, would the proponents consider rewriting the provision to clarify that the state licensing authority is subject to the prohibition? Here is an example:

The state licensing authority shall not convert, modify, or expand a retail sales license that authorizes retail sales of alcohol beverages to include another type of alcohol beverage unless the local licensing authority expressly finds that: ...

5. Subsection (1)(B) of the proposed initiative uses the phrase "will comply" when the local licensing authority is determining the distance requirements. The word "will" is typically understood as future tense. This makes it unclear whether the clause is referring to a condition of changing the license or what will happen after the license is issued. Would the proponents consider changing the phrase "will comply" to the phrase "would comply"?
6. The introductory portion of proposed subsection (1)(B) reads, "...the licensed premises... will comply with the following distance requirements, whichever is greater in the instance of any conflict or inconsistency:"
- a. What is the phrase "in the instance of any conflict or inconsistency" intended to communicate?
 - b. The phrase "whichever is greater" would only apply if there's a conflict or inconsistency. Under current law, distance requirements are minimum distances.¹ If the proponents want the licensed premises to simply be the

¹ See §§ 44-3-301 (12) or 44-3-313 (1).

greater of the two distances, would the proponents consider deleting "in the instance of any conflict or inconsistency"?

7. Proposed subsection (1)(B)(I) reads, "The distance limitations...." The word "limitation" implies that the distance restriction is a maximum. Is that the proponents' intention?
8. The following language in the introductory portion of proposed subsection (2) is unclear: "No license may be renewed to continue authorization for sales at a license premises of any alcohol beverages in sealed containers for off-premises consumption:"
 - a. It is not clear what entity is subject to subsection (2).
 - i. Is the intention for it to apply to the state licensing authority? If so, would the proponents consider revising in the manner suggested in (8)(b)(ii) below?
 - ii. If that is not the intention, to what entity is this provision intended to apply?
 - b. Typically, the word "may" is used to authorize a person to do something. For purposes of the Colorado Revised Statutes, the word "shall" is defined in section 2-4-401 (13.7), and it means, "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
 - i. Is the intention of this provision to prohibit license renewal unless the circumstances listed in paragraphs (I) and (II) of subsection (2) are met?
 - ii. If the intention is to prohibit automatic license renewal or require the express finding before renewing, would the proponents consider rephrasing the provision to use "shall" or "must"? Here are examples:

The state licensing authority shall not renew a license authorizing the holder to sell alcohol beverages in sealed containers... unless ...

The state licensing authority shall not renew a license authorizing the sale of alcohol beverages in sealed containers for off-premises consumption by operation of law.

To renew a license authorizing the holder to sell alcohol in sealed..., the local licensing authority must expressly find that the renewal will serve the public interest...

9. In proposed subsection (2)(I), what does "by operation of law" mean?
10. In proposed subsection (2)(II), what does "is warranted in light of the licensee's operating history" mean? Would the proponents consider clarifying what standard the local authority should apply?

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 Colorado Revised Statutes 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

- a. Paragraphs (a) and (b) of proposed subsections (1) and (3) appear to be written in small capital letters, which may cause confusion as to whether

they are paragraphs "(a)" and "(b)" or sub-subparagraphs "(A)" and "(B)". Would the proponents consider removing the small caps on these paragraph letters?

- b. Subsection (2) does not have paragraphs but does have subparagraphs. Normally subparagraphs are nested under paragraphs as seen above. Please consider revising accordingly.
2. The definition of "alcohol beverage" appears to be unnecessary. "Alcohol beverage" is defined in current law in section 44-3-103 (2), Colorado Revised Statutes, which reads:

44-3-103. Definitions. As used in this article 3 and article 4 of this title 44 ... "Alcohol beverage" means fermented malt beverage ..."

This provision by its terms applies to article 3, and the proposed section 44-3-314 is in article 3. So the phrase "alcohol beverage" is already defined for the proposed section.
3. The definition of "person" is unnecessary because the term "person" is used only in the definition of "person" in the proposed initiative.
4. In the amending clause, standard drafting language includes a period, not a colon, after the section number and does not include the word "the". Please consider revising accordingly.
5. The only letter that should be initial capitalized in the headnote for proposed section 44-3-314 is the first letter of the first word.
6. The effective date provision states that it takes effect "on the date of the proclamation by the governor certifying the vote at the November, 2022 general election. This implies it takes effect regardless of what the vote is. The provision should clarify that it takes effect only if approved by the people at the general election: "the act does not take effect unless approved by the people at the general election to be held in November 2022."