APPENDIX G

INITIATIVES

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Policy of the Committee on Legal Services Concerning Use of Staff to Draft Initiatives

Applicable statutory provisions. Section 2-3-504, Colorado Revised Statutes, requires the staff of the Office of Legislative Legal Services (OLLS") to draft or aid in drafting of legislative bills and other documents as required in the legislative process. Article 40 of title 1, C.R.S., assigns duties to the OLLS in connection with the review and comment process for initiated measures, and to the Director of the OLLS in his capacity as a member of the Ballot Title Setting Board. The OLLS has no statutory authority to draft initiative measures for the proponents of initiatives.

Use of OLLS staff - policy. Members may request and the OLLS staff shall prepare referred bills and concurrent resolutions in the form appropriate for introduction in either house of the General Assembly. however, members should not ask OLLS staff to provide drafting assistance for an initiative measure, whether the member is a named proponent or is working with nonlegislators who are the named proponents, and whether the drafting assistance would be provided before, at, or after the review-and-comment hearing. When exercising the right to initiate legislation, a member is acting primarily in his or her capacity as a private citizen rather than as a member of the General Assembly.

This policy recognizes the attorney-client relationship that exists between the General Assembly as an institution and staff attorneys in the OLLS. Staff attorneys employed by the OLLS should provide bill-drafting services to member in a manner that is consistent with the preservation and protection of the legislative prerogative of exercising legislative power in an elected representative body.

OLLS staff members are encouraged to inform members of this policy.

Adopted December 14, 1998

Top ~~Ten~~ Twelve Things to Avoid In Initiative Review-and-comment Memos

12. Forgetting to note that there is no enacting clause.

11. Assuming that the proponents' numbering of constitutional or statutory sections is correct. Have they used a section number already used in an amendment approved by the voters at the last general election but not in the statute books yet?

10. Failing to explain why the proponents' opportunity to select the numbering for their measure is important. Naturally, the memo will note if the proponents haven't designated where their measure is to be placed in the constitution or the statutes. But the memo should tell the proponents why they should use the chance to designate the placement. In *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996), the placement of Amendment No. 1's election provisions in Article X of the state constitution influenced the Supreme Court's decision that those provisions could be applied only to revenue issues.

9. Neglecting to deal with definitions. Illustrate why the measure may need definitions by using examples of different interpretations. Ask whether the measure assumes that existing definitions would apply. Should it repeat existing definitions or refer to them? Do the proponents want to create their own definitions?

8. Being legalistic. (You should consider your audience here. If you know the proponents are lawyers, you can probably get away with more legal terminology, but the memo should still be understandable to non-lawyers. One of the purposes of the review-and-comment process is to inform the public about what's pending.)

7. Trying to get everything into one looooooooong question. You may be able to shorten the actual question by stating your assumptions about the measure in separate sentences at the beginning of a paragraph, then asking your question.

6. Being too theoretical. Consider describing a concrete situation in one or more short sentences, then asking, "How would this measure affect this situation?" or "What if....?"

5. Asking questions about possibilities that are highly remote. If there's no chance your situation will occur in real life, reconsider your question.

4. Asking questions without laying a foundation. Example: "What does the term 'local government' mean?" Explain that there are several forms of local government in Colorado and why applying the measure to municipalities makes sense but applying it to school districts may not.

Another example- Don't just ask, "What are the Equal Protection Implications of this provision?" State the applicable legal standard ("Courts will usually ask whether there is a rational basis for the way the class of persons has been defined"), and ask for the policy basis behind the proponents' decision to distinguish between one group and another.

3. Being confrontational. In the example above, don't ask, "Doesn't this provision violate the Equal Protection Clause?"

2. Assuming proponents couldn't possibly mean what they've said. Our job is to help the proponents decide whether their language accomplishes their purpose, not to tell them what they ought to want. It's easy to fall into the trap of assuming that every proponent of a recurring issue takes the same position on key aspects of the issue.

1. Failing to focus questions appropriately. Will the question solicit the information you intended? One common mistake is to ask a question that can be answered by "Yes" or "No" without an explanation of the proponents' reasons. Phrase questions so that the real issue cannot be avoided in the review-and-comment meeting.

Original Submission - Notice

Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

NOTICE
PUBLIC INITIATIVE HEARING
Monday, February 26, 2001

The Colorado Constitution authorizes the registered electors of Colorado to propose changes in the state Constitution and the laws by petition. The original draft of the text of proposed initiated constitutional amendments and laws must be submitted to the General Assembly's legislative research and legal services offices for review and comment. Pursuant to the requirements of Article V, Section 1 (5), Colorado Constitution, the offices must submit comments to proponents at a meeting open to the public.

The directors of the Legislative Council Staff and the Office of Legislative Legal Services will hold a meeting with the proponents of the attached initiative proposal, unless the proposal is withdrawn by the proponents prior to the meeting.

Proposal Number: **2001-2002 #8**

Time and Date of Meeting: 9:00 AM, Monday, February 26, 2001

Place of Meeting: House Committee Room 0111, State Capitol

Topic of Proposal: Planning for a Fixed Guideway System

Original Submission - Page 1

Initiative Petition for the Colorado Intermountain Fixed Guideway Authority

Submitted:

1. William V.K. Macy
Chairman, Colorado Alliance for a Rapid Transit Solution
PO Box 2083
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Residence: 2315 Virginia Street, Idaho Springs, CO 80452

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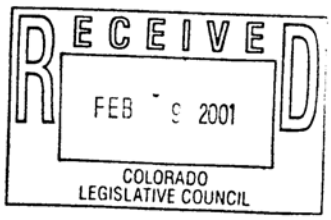


5:12 pm.

BE IT ENACTED BY THE PEOPLE OF COLORADO:

Section 32-16-106 C.R.S. is amended to add new paragraphs (d) and (e) as follows:

(d) TO EXPEND A TOTAL OF $50 MILLION OF 2001 TAX REFUND REVENUES OVER A PERIOD OF THREE YEARS ENDING DECEMBER 31, 2004, TO FUND A HIGH-SPEED MONORAIL TECHNOLOGY TESTING AND PLANNING PROGRAM, INCLUDING FEDERAL CERTIFICATION AT THE TRANSPORTATION TECHNOLOGY CENTER IN PUEBLO, COLORADO, AND PLANNING STUDIES FOR THE CONSTRUCTION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT TO EAGLE COUNTY AIRPORT;

(e) TO EXPEND STATE REVENUES TO CARRY OUT THE PURPOSES OF THIS ARTICLE;

Section 32-16-106 C.R.S. is amended to renumber the existing paragraphs of that section.

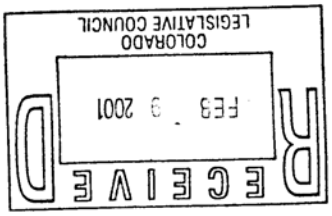
Section 32-16-109 (1) C.R.S. is amended as follows:
This article is repealed effective January 1, *2005*.

Original Submission - Page 2

TO FUND A MONORAIL TESTING AND PLANNING PROGRAM ALONG THE I-70 CORRIDOR

1.A. The citizens of Colorado authorize the Colorado Intermountain Fixed Guideway Authority, or any successor entity, to expend over a period of three years ending December 31, 2004, a total of $50 million of 2001 tax refund revenues to fund a high-speed monorail technology testing and planning program. The Colorado Intermountain Fixed Guideway Authority, or any successor entity, shall use these revenues for the testing of a high-speed monorail transportation system, including federal certification, at the Transportation Technology Center in Pueblo, Colorado, and for planning studies for the construction of a 160 mile fixed guideway system connecting Denver International Airport with Eagle County Airport. The monorail system is intended to provide benefits to Colorado residents, Front Range metropolitan areas, and the mountain communities by reducing transportation related environmental impacts, increasing transportation capacity within the I-70 corridor, improving public safety and providing a reliable high-speed transportation alternative for the State of Colorado.

1.B. The Colorado Intermountain Fixed Guideway Authority is authorized to expend State revenues.



5:12 p.m.
KATM

OLLS Memo - Page 1

STATE OF COLORADO

Colorado General Assembly

Charles S. Brown, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
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Denver, Colorado 80203-1782
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MEMORANDUM

February 23, 2001

TO: William V. K. Macy, Mary Jane Loevlie and Melanie Kelley

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2001-2002 # 8, concerning planning for a fixed guideway system.

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 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 obtain the approval of the citizens of Colorado for the board of directors of the Colorado intermountain fixed guideway authority (hereinafter referred to as "CIFGA") to have authority to:

   a. Expend a total of fifty million dollars of 2001 tax refund revenues over a period of three years ending December 31, 2004, to fund:

      i. A high-speed monorail technology testing and planning program; and

OLLS Memo - Page 2

ii. Planning studies for the construction of a fixed guideway system connecting Denver international airport to Eagle county airport.

b. Require the high-speed monorail technology testing and planning program to include federal certification at the transportation technology center in Pueblo, Colorado.

c. Expend state revenues for its statutorily specified purposes.

2. To change the repeal date for the statutory provisions relating to CIFGA from January 1, 2004 rather than January 1, 2005.

3. To clarify that the fixed guideway system (also referred to as the "monorail system") that will connect Denver international airport to Eagle county airport is intended to provide benefits to Colorado residents, front range metropolitan areas, and the mountain communities by reducing transportation related environmental impacts, increasing transportation capacity within the I-70 corridor, improving public safety and providing a reliable high-speed transportation alternative for the state of Colorado.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. To ensure compliance with Article V, section 1 (8) of the Colorado constitution, would the proponents consider changing the enacting clause from "BE IT ENACTED BY THE PEOPLE OF COLORADO" to "Be it Enacted by the People of the State of Colorado:"?

2. To conform to the style in which existing law and amendments to existing law are written, would the proponents consider:

a. Changing the first amending clause of the proposed initiative from "Section 32-16-106, C.R.S. is amended to add new paragraphs (d) and (e) as follows:" to "Section 32-16-106 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:";

b. Removing the second amending clause of the proposed initiative (the clause that states "Section 32-16-106, C.R.S. is amended to renumber the existing paragraphs of that section.")?

c. Changing the third amending clause of the proposed initiative from "Section 32-16-109 (1), C.R.S. is amended as follows:" to "Section 32-16-109 (1), Colorado Revised Statutes, is amended to read:"?

OLLS Memo - Page 3

d. Inserting the section number and head note of section 32-16-106, C.R.S., and the existing introductory portion of section 32-16-106 (1), C.R.S. between the first amending clause and paragraph (d) of the proposed initiative as follows:

> "**32-16-106. Board of directors - powers and duties.** (1) In addition to any other powers specifically granted to the board in this article, the board shall have the following duties and powers:"?

e. Inserting the section number and head note of section 32-16-109 after the third amending clause of the proposed initiative as follows:

> "**32-16-109. Repeal of article.**"

f. Changing the last sentence on the first page of the proposed initiative from "This article is repealed effective January 1, *2005*" to "This article is repealed January 1, ~~2004~~ 2005." so that persons voting on the proposed initiative will be able to determine the nature of the statutory change that is being made?

g. Either changing the lettering of paragraphs (d) and (e) of the proposed initiative to lettering followed by a decimal point and a numeral that would locate those provisions between paragraphs (d) and (e) of subsection (1) of section 32-16-106, C.R.S, as it currently exists (e.g., "(c.5)", "(c.7)" . . .) or showing the text of all of the existing paragraphs that are to be renumbered with ~~strike type~~ through the existing lettering so that voters are aware of the changes being made?

Substantive questions:

1. Does the phrase "tax refund revenues" mean excess state revenues that must be refunded by the state pursuant to article X, section 20 of the Colorado constitution (the "TABOR" amendment) unless the voters of the state allow the state to retain the revenues? If not, what is the meaning of the phrase "tax refund revenues"?

2. Is it the proponents' intent that excess state revenues that must otherwise be refunded to the people of the state pursuant to article X, section 20 of the Colorado constitution be retained for use by CIFGA for the purposes set forth in the proposed initiative?

3. Article X, section 20 of the Colorado constitution limits the amount of revenues that the state may collect during any state fiscal year and requires any excess state revenues collected to be refunded during the next state fiscal year. Since the state fiscal year does not coincide with the calendar year, but instead begins on July 1 and continues until the following June 30, the precise meaning of the phrase "2001 tax refund revenues" is unclear. Do the proponents intend that CIFGA be allowed to retain "tax refund revenues" collected during the fiscal year commencing on July 1, 2000 and ending June 30, 2001, "tax refund revenues" collected during the fiscal year commencing on July 1, 2001 and ending June 30, 2002, or some other "tax refund revenues"?

OLLS Memo - Page 4

4. What is the proponents' intent in requiring the fifty million dollars of "2001 tax refund revenues" to be expended "over a period of three years ending December 31, 2004"? Is there a limit on how much of the fifty million dollars may be spent annually?

5. What will happen to any unexpended amounts of the fifty million dollars of "2001 tax refund revenues" on December 31, 2004? Will such amounts be returned to the state? Refunded to the people?

6. Are the fifty million dollars of "2001 tax refund revenues" deposited into any state fund? Are the moneys transmitted directly to CIFGA?

7. Are the fifty million dollars of "2001 tax refund revenues" subject to annual appropriation by the general assembly?

8. What is the meaning of the phrase "high-speed monorail technology testing and planning program"? What are the elements of such a program?

9. The phrase "federal certification" is referenced in the proposed initiative, which raises the following questions:

   a. What type of "federal certification" must be included in the testing and planning program?

   b. What federal agency would provide the certification?

   c. If federal certification could not be obtained, would CIFGA still have authority to retain 2001 tax revenues"?

10. What is the "transportation technology center in Pueblo"?

11. Is it the proponents' intent that CIFGA be permitted to conduct its testing and planning program only at the transportation technology center in Pueblo, or could CIFGA do any testing and planning at other locations?

12. The proposed initiative states that tax refund revenues are to be used to fund both a "high-speed monorail technology testing and planning program" and "planning studies for the construction of a fixed guideway system," which raises the following questions:

   a. Would CIFGA only be allowed to conduct a technology testing and planning program with respect to high-speed monorail technology or could other fixed guideway technologies be included in a testing and planning program?

   b. Do the proponents intend that planning studies be limited to high-speed monorail technology?

   c. Do the proponents believe it is possible that a technology other than high-speed

OLLS Memo - Page 5

monorail technology might eventually be used to construct a fixed guideway system between Denver international airport and Eagle county airport?

13. What is the meaning of the term planning studies? Are such studies to be conducted by CIFGA alone or in conjunction with other agencies or entities responsible for transportation planning such as the Colorado department of transportation? Must such studies be conducted or may the entire fifty million dollars of 2001 tax refund revenues be used for the testing and planning program? Would CIFGA have authority to contract with private entities to conduct the studies?

14. Is the fixed guideway system that will be the subject of planning studies to be located in the Interstate highway 70 corridor between Denver international airport and Eagle county airport? It not, what alternative route might be used?

15. Article X, section 20 of the state constitution requires any "district" to refund any revenues collected that exceed the district's fiscal year spending limit, which raises the following questions:

    a. Do the proponents believe that CIFGA is a district that is subject to the fiscal year spending limit specified in article X, section 20 of the state constitution?

    b. If CIFGA is a district that is subject to the fiscal year spending limit specified in article X, section 20 of the Colorado constitution, is it the proponents intent that the fifty million dollars in "2001 tax refund revenues" that would be expended by CIFGA as authorized by the proposed initiative be counted against CIFGA's state fiscal year spending limit?

    c. If it is the proponents' intent that any "2001 tax refund revenues" received by the district be exempted from the fiscal year spending limits set forth in Article X, section 20 of the Colorado constitution? If so, would the proponents consider adding language exempting such revenues from the fiscal year spending limits to the proposed initiative?

16. Are the "state revenues" referred to in paragraph (e) of the proposed initiative the same as "2001 tax refund revenues referred to in paragraph (d) of the proposed initiative? If not, what state revenues do the proponents anticipate being expended by CIFGA?

17. The text on the second page of the proposed initiative does not appear to modify the Colorado Revised Statutes or the Colorado constitution, which raises the following questions:

    a. What is the proponents' intent with respect to the text on the second page of the proposed initiative? Is the text a ballot title? A declaration of intent? Something else?

    b. Is it the proponents' intent that the text on the second page of the proposed initiative be added to the Colorado Revised Statutes or the Colorado constitution? If so,

OLLS Memo - Page 6

would the proponents consider adding and amending clause to specify where the text should be placed?

c. Is it the proponents' intent that the title board consider the text on the second page of the proposed initiative when setting the ballot title for the proposed initiative?

Notice from Secretary of State

DEPARTMENT OF STATE
1560 Broadway - Suite 200
Denver, Colorado 80202

DONETTA DAVIDSON
Secretary of State

Administration	(303) 894-2200
Corporations	(303) 894-2251
Uniform Commercial Code	(303) 894-2200
Elections	(303) 894-2680
Licensing & Enforcement	(303) 894-2680
TDD	(303) 894-2389
FAX	(303) 894-2242
FAX	(303) 894-7732

March 8, 2001

NOTICE OF HEARING MEETING

You are hereby notified that the Secretary of State,

Attorney General, and the Director of the Office of the Legislative

Legal Services will meet for a hearing

for a proposed initiative concerning

2001 - 2002 #8 - Planning for a Fixed Guideway System

Wednesday, March 21, 2001, at 2:00 p.m.

Secretary of State Conference Room

1560 Broadway, Suite 200

Denver, Colorado

You are invited to attend.

Donetta Davidson

Donetta Davidson
Secretary of State

AGENDA ITEMS NOT COMPLETED AT THE END OF THE DAY WILL BE CONTINUED TO A DATE, TIME, AND PLACE TO BE DETERMINED ON WEDNESDAY, MARCH 8, 2001.

Initiative Filed With Secretary of State After Review and Comment Meeting Page 1

RECEIVED
MAR 0 8 2001
ELECTIONS / LICENSING
SECRETARY OF STATE
12:45 pm

Proposed Initiative 2001-02 #8
Initiative Petition for the Colorado Intermountain Fixed Guideway Authority

Submitted:

1. William V.K. Macy
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303/567-4809
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Residence: 2315 Virginia Street, Idaho Springs, Colorado 80452

2. Mary Jane Loevlie
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303/567-4605 - fax
Residence: 110 Montane Drive, Idaho Springs, Colorado 80452

3. Melanie Kelley
Executive Director, Colorado Alliance for a Rapid Transit Solution
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970/468-2100
970/468-7997 - fax
Residence: 730B Lagoon Drive, Frisco, Colorado 80443, mailing address P.O. Box 23613, Silverthorne, Colorado 80498

Short Title—To Fund a Fixed Guideway (Monorail) Testing and Planning Program Along the I-70 Corridor

Be It Enacted by the People of the State of Colorado:

SECTION 1. Section 32-16-106(1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

32-16-106. Board of directors - powers and duties. (1) In addition to any other powers specifically granted to the Board in this article, the Board shall have the following duties and powers:

Initiative Filed With Secretary of State After Review and Comment Meeting
Page 2

(l) (1) TO CREATE A FIXED GUIDEWAY DEVELOPMENT FUND TO BE ADMINISTERED BY THE AUTHORITY AND TO BE CALLED THE "FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND" FOR THE PURPOSE OF RECEIVING AND EXPENDING FUNDS FROM THE STATE OF COLORADO PURSUANT TO SUBSECTION (l)(2) BELOW.

(2) TO RECEIVE AND EXPEND FOR ALL LAWFUL PURPOSES A TOTAL OF $50 MILLION OF EXCESS STATE REVENUES FOR STATE FISCAL YEAR ENDING JUNE 30, 2001, TO BE FUNDED AND DEPOSITED INTO THE FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND NO LATER THAN DECEMBER 31, 2001 AND TO BE EXPENDED BY THE AUTHORITY NO LATER THAN DECEMBER 31, 2004. THE $50 MILLION OF EXCESS STATE REVENUES ARE A VOTER-APPROVED REVENUE CHANGE FOR STATE FISCAL YEAR ENDING JUNE 30, 2001. ANY MONIES IN THE FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND NOT EXPENDED BY THE AUTHORITY ON JANUARY 1, 2005 SHALL BE REFUNDED TO THE STATE OF COLORADO.

(3) TO EXPEND FUNDS HELD IN THE FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND FOR THE FOLLOWING:

(A) THE DESIGN AND TESTING OF A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, CONDUCTED, WITHOUT LIMITATION, AT THE TRANSPORTATION TEST CENTER IN PUEBLO, COLORADO;

(B) TO FACILITATE THE ISSUANCE OF SAFETY STANDARDS AND THE RECEIPT OF A RULE OF PARTICULAR APPLICABILITY FROM THE FEDERAL RAILROAD ADMINISTRATION OR OTHER APPROPRIATE FEDERAL AGENCY; AND

(C) PLANNING STUDIES INCLUDING, BUT NOT LIMITED TO, THE DESIGN, FINANCE, CONSTRUCTION AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT.

Initiative Filed With Secretary of State After Review and Comment Meeting Page 3

(m) TO COLLECT, RETAIN AND SPEND ANY AND ALL AMOUNTS RECEIVED BY THE AUTHORITY ANNUALLY FROM ANY REVENUE SOURCE, INCLUDING, BUT NOT LIMITED TO, AMOUNTS RECEIVED AS EXCESS STATE REVENUES, AID, CONTRIBUTIONS, GRANTS AND GIFTS FROM OTHER SOURCES LAWFULLY RECEIVED BY THE AUTHORITY DURING FISCAL YEAR 2001 AND EACH YEAR THEREAFTER FOR AS LONG AS THE AUTHORITY CONTINUES IN EXISTENCE, WITHOUT LIMITATION BY THE REVENUE AND SPENDING LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION.

SECTION 2. Section 32-16-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPH AND LANGUAGE to read:

32-16-103. Definitions. As used in this article, unless the context otherwise requires:

(4) "EXCESS STATE REVENUES" SHALL MEAN THE TOTAL COMBINED AMOUNT OF REVENUES THAT VOTERS STATEWIDE HAVE NOT OTHERWISE, OTHER THAN BY OPERATION OF THIS ACT, AUTHORIZED THE STATE TO RETAIN AND SPEND AND THAT ARE REQUIRED TO BE REFUNDED PURSUANT TO SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

(5) ~~(4)~~ "Fixed guideway system" means a high speed mode of providing transportation for people and goods using fixed guideway technology designed to be compatible with established state and local transportation plans and major investment studies.

(6) ~~(5)~~ "Fixed guideway technology" or "technology" means technology relating to the design, development, and construction of fixed guideways, INCLUDING, WITHOUT LIMITATION, TECHNOLOGY COMMONLY KNOWN AS A MONORAIL. As used in this article, "fixed guideway" has the same meaning as set forth in 49 U.S.C. sec. 5302 (a) (4).

(7) ~~(6)~~ "Territory" means the city and county of Denver, the city of Aurora, and the counties of Clear Creek, Jefferson, Eagle, Garfield, and Summit.

SECTION 3. Repeal.

Section 32-16-105(8), Colorado Revised Statutes, is amended to read:

Initiative Filed With Secretary of State After Review and Comment Meeting Page 4

32-16-105. Board of directors - membership - qualifications. (8) Directors of the board shall receive no compensation for their services but may be reimbursed for their necessary expenses while service as directors of the board ~~but no state funds are authorized to be expended for any purpose~~.

SECTION 4. Repeal.

Section 32-16-109(1), Colorado Revised Statutes, is amended to read:

32-16-109. Repeal of article. (1) This article is repealed, effective January 1, ~~2004~~ 2005.

Suggested Title From Proponents

MAR-08-2001 14:35 ICENOGLE 3037731883 P.02/02

Suggested Title Language for Proposed Initiative 2001-02 #8

SECTION 1. The citizens of Colorado authorize the Colorado Intermountain Fixed Guideway Authority (the "Authority"), or any successor entity, to receive and expend $50 million of excess state revenues for state fiscal year ending June 30, 2001 over a period of three years ending December 31, 2004 to fund a high-speed fixed guideway technology testing and planning program. Any money remaining in the Fund on January 1, 2005 shall be returned to the State. The excess state revenues shall be transmitted directly to the Authority which will place the funds in the Fixed Guideway Technology Development Fund. The Authority, or any successor entity, shall expend the money in the Fund for the design and testing of a high speed fixed guideway transportation system, conducted at the Transportation Test Center in Pueblo, Colorado, and to fund planning studies, including, but not limited to, the design, finance, construction and operation of a fixed guideway system connecting Denver International Airport and Eagle County Airport. Additionally, the Authority will seek the issuance of safety standards and the receipt of a rule of particular applicability issued by the appropriate federal agency. The Authority shall be empowered to collect, retain and spend any and all amounts received by the Authority annually from any revenue source, including, but not limited to, amounts received as excess state revenues, aid, contributions, grants and gifts from other sources lawfully received for fiscal year 2001 and each year thereafter for as long as the Authority continues in existence, without limitation by the revenue and spending limitations of Article X, Section 20 of the Colorado Constitution.

SECTION 2. As used in Section 1, "excess state revenues" shall mean the total combined amount of revenues that voters statewide have not otherwise authorized the state to retain and spend that are required to be refunded pursuant to section 20 (7) (d) of Article X of the Colorado Constitution. Additionally, "fixed guideway technology" shall include technology known as a monorail.

SECTION 3. The Board of Directors shall continue to receive no compensation for their services and may be reimbursed for necessary expenses while serving as directors of the board but the Board shall be empowered to expend state funds.

SECTION 4. The Authority shall remain in effect until January 1, 2005.

RECEIVED
MAR 08 2001
ELECTIONS / LICENSING
SECRETARY OF STATE

TOTAL P.02

Received Mar-08-2001 14:28 From-3037731883 To-Colo Secretary of St Page 002

Staff Draft Prepared for the Title Board - Page 1

STAFF DRAFT

Ballot Title Setting Board

Proposed Initiative Number 2001-2002 # 8
(Planning a Fixed Guideway System)

The title as designated and fixed by the Board is as follows:

AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE FUNDING OF A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM TESTING AND PLANNING PROGRAM, AND, IN CONNECTION THEREWITH, REQUIRING FIFTY MILLION DOLLARS OF EXCESS STATE REVENUES COLLECTED DURING THE 2000-2001 STATE FISCAL YEAR TO BE CREDITED TO A NEWLY CREATED FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND; AUTHORIZING THE COLORADO INTERMOUNTAIN FIXED GUIDEWAY AUTHORITY TO EXPEND MONEYS FROM THE FUND UNTIL DECEMBER 31, 2004, TO DESIGN AND TEST A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, TO ENSURE THAT THE SYSTEM MEETS FEDERAL SAFETY STANDARDS, AND TO CONDUCT PLANNING STUDIES, INCLUDING STUDIES OF THE DESIGN, FINANCE, CONSTRUCTION, AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT; REQUIRING ANY MONEYS IN THE FUND NOT EXPENDED BY THE AUTHORITY TO BE REFUNDED TO THE STATE ON JANUARY 1, 2005; EXEMPTING THE AUTHORITY FROM CONSTITUTIONAL REVENUE AND SPENDING LIMITATIONS; AUTHORIZING THE AUTHORITY TO EXPEND ANY STATE FUNDS THAT IT MAY RECEIVE; AND DELAYING THE TERMINATION OF THE AUTHORITY BY ONE YEAR.

The ballot title and submission clause as designated and fixed by the Board is as follows:

SHALL THERE BE AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE FUNDING OF A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM TESTING AND PLANNING PROGRAM, AND, IN CONNECTION THEREWITH, REQUIRING FIFTY MILLION DOLLARS OF EXCESS STATE REVENUES COLLECTED DURING THE 2000-2001 STATE FISCAL YEAR TO BE CREDITED TO A NEWLY CREATED FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND; AUTHORIZING THE COLORADO INTERMOUNTAIN FIXED GUIDEWAY AUTHORITY TO EXPEND

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MONEYS FROM THE FUND UNTIL DECEMBER 31, 2004, TO DESIGN AND TEST A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, TO ENSURE THAT THE SYSTEM MEETS FEDERAL SAFETY STANDARDS, AND TO CONDUCT PLANNING STUDIES, INCLUDING STUDIES OF THE DESIGN, FINANCE, CONSTRUCTION, AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT; REQUIRING ANY MONEYS IN THE FUND NOT EXPENDED BY THE AUTHORITY TO BE REFUNDED TO THE STATE ON JANUARY 1, 2005; EXEMPTING THE AUTHORITY FROM CONSTITUTIONAL REVENUE AND SPENDING LIMITATIONS; AUTHORIZING THE AUTHORITY TO EXPEND ANY STATE FUNDS THAT IT MAY RECEIVE; AND DELAYING THE TERMINATION OF THE AUTHORITY BY ONE YEAR?

2

Title Set by the Title Board

Ballot Title Setting Board

Proposed Initiative Number 2001-2002 # 8
(Planning a Fixed Guideway System)

The title as designated and fixed by the Board is as follows:

AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE FUNDING OF A TESTING AND PLANNING PROGRAM FOR A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, AND, IN CONNECTION THEREWITH, REQUIRING $50 MILLION OF EXCESS STATE REVENUES COLLECTED DURING THE 2000-2001 STATE FISCAL YEAR TO BE CREDITED TO A NEWLY CREATED FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND; AUTHORIZING THE COLORADO INTERMOUNTAIN FIXED GUIDEWAY AUTHORITY TO EXPEND MONEYS FROM THE FUND UNTIL DECEMBER 31, 2004, TO DESIGN AND TEST A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, INCLUDING BUT NOT LIMITED TO A MONORAIL SYSTEM, TO ENSURE REVIEW AND APPROVAL OF THE SYSTEM UNDER FEDERAL SAFETY STANDARDS, AND TO CONDUCT PLANNING STUDIES, INCLUDING STUDIES OF THE DESIGN, FINANCE, CONSTRUCTION, AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT; REQUIRING ANY MONEYS IN THE FUND NOT EXPENDED BY THE AUTHORITY TO BE REFUNDED TO THE STATE ON JANUARY 1, 2005; EXEMPTING THE AUTHORITY FROM CONSTITUTIONAL REVENUE AND SPENDING LIMITATIONS; AUTHORIZING THE AUTHORITY TO EXPEND ANY STATE FUNDS THAT IT MAY RECEIVE; AND DELAYING THE TERMINATION OF THE AUTHORITY FROM JANUARY 1, 2004 UNTIL JANUARY 1, 2005.

The ballot title and submission clause as designated and fixed by the Board is as follows:

SHALL THERE BE AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE FUNDING OF A TESTING AND PLANNING PROGRAM FOR A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, AND, IN CONNECTION THEREWITH, REQUIRING $50 MILLION OF EXCESS STATE REVENUES COLLECTED DURING THE 2000-2001 STATE FISCAL YEAR TO BE CREDITED TO A NEWLY CREATED FIXED GUIDEWAY TECHNOLOGY DEVELOPMENT FUND; AUTHORIZING THE COLORADO INTERMOUNTAIN FIXED GUIDEWAY AUTHORITY TO EXPEND MONEYS FROM THE FUND UNTIL DECEMBER 31, 2004, TO DESIGN AND TEST A HIGH-SPEED FIXED GUIDEWAY TRANSPORTATION SYSTEM, INCLUDING BUT NOT LIMITED TO A MONORAIL SYSTEM, TO ENSURE REVIEW AND APPROVAL OF THE SYSTEM UNDER FEDERAL SAFETY STANDARDS, AND TO CONDUCT PLANNING STUDIES, INCLUDING STUDIES OF THE DESIGN, FINANCE, CONSTRUCTION, AND OPERATION OF A FIXED GUIDEWAY SYSTEM CONNECTING DENVER INTERNATIONAL AIRPORT AND EAGLE COUNTY AIRPORT; REQUIRING ANY MONEYS IN THE FUND NOT EXPENDED BY THE AUTHORITY TO BE REFUNDED TO THE STATE ON JANUARY 1, 2005; EXEMPTING THE AUTHORITY FROM CONSTITUTIONAL REVENUE AND SPENDING LIMITATIONS; AUTHORIZING THE AUTHORITY TO EXPEND ANY STATE FUNDS THAT IT MAY RECEIVE; AND DELAYING THE TERMINATION OF THE AUTHORITY FROM JANUARY 1, 2004 UNTIL JANUARY 1, 2005?

Hearing March 21, 2001:
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Hearing adjourned 2:58 p.m.

GOVERNMENT AND ADMINISTRATIVE LAW NEWS

The Single-Subject Requirement For Initiatives

by Rebecca C. Lennahan

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As the general election approaches, information about initiatives begins to flood voters. Radio, television, and newspapers carry stories about potential initiative measures. Petition circulators approach voters as they buy groceries and shop at malls. Citizens who are unhappy with the legislature's defeat of bills, or who do not want an issue compromised in the give-and-take of legislative debate, try to take their measures directly to the people through the initiative process. Successfully negotiating the hurdles of the single-subject requirement has become an important aspect of that process.

Colorado's constitution allows citizens to initiate both constitutional amendments and statutes. The legislature must refer constitutional amendments, and may refer statutes, to the voters. Measures placed on the ballot using the initiative or the referendum are not subject to the Governor's veto. On the ballot, citizen initiatives are designated by number, and measures referred by the legislature are designated by letter.

Citizen-proponents who wish to initiate a constitutional amendment or statute must submit a written draft to the legislature's professional research and drafting staffs for review and comment. When the text is final, proponents file it with the Secretary of State, who then convenes the Ballot Title Setting Board ("Board").[1] The Board's function is to draft and adopt a title for the measure, which will appear at the top of petitions and on the ballot if enough signatures are gathered. If anyone--proponents, opponents, or other interested citizens—objects to the Board's work, he or she may appeal directly to the Colorado Supreme Court ("Court"), so title questions can be resolved prior to the election. The recent single-subject cases discussed in this article have arisen out of these expedited proceedings.

This article provides background information about the single-subject requirement, discusses legislative practices and the Court's concern about voter surprise and fraud, and analyzes the Court's single-subject test and how it applies to omnibus measures. The article also discusses the importance of drafting measures carefully and provides tips for initiative proponents.

The Single-Subject Requirement

In 1994, Colorado voters adopted a constitutional amendment that prohibits the submission of any initiative measure that contains more than one subject.[2] The amendment also requires that the single subject be stated clearly in the measure's title. The single-subject requirement has applied to legislative bills since statehood,[3] and the amendment extended the requirement's application to constitutional amendments referred by the legislature.[4]

The amendment represented a reaction to the adoption of the Taxpayer's Bill of Rights ("TABOR"), which was approved in 1992.[5] Most voters probably understood TABOR to be a requirement that they approve new taxes or tax rate increases. However, as state and local governments began to implement TABOR, it became clear that TABOR covered many other matters, including revenue limits and refunds of excess revenues, annual elections on fiscal issues, votes on multi-year financial obligations in addition to debt, and local governments' opting out of state programs delegated to them for administration. The 1994 "Blue Book," the analysis of ballot issues prepared by the legislature's research staff, cited TABOR as a measure that might not have been on the ballot if a single-subject requirement had been in place.[6] Subsequently, the Court has stated expressly that TABOR would have violated the single-subject requirement.[7]

In submitting the single-subject constitutional amendment, the legislature wanted to protect voters from making changes inadvertently, particularly changes that were as sweeping as those made by TABOR. The legislature also was aware of court cases that struck down restrictions on initiative rights,[8] and it did not want the single-subject requirement to be construed as infringing on those rights. Therefore, in its 1994 session, the legislature enacted statutory rules for the application of the single-subject requirement in the event the amendment was adopted. This legislation incorporated the standards the courts and legislature had developed for applying the century-old single-subject requirement for legislative bills.[9]

CRS § 1-40-106.5 first recites the purposes of the single-subject requirement as set forth in the judicial decisions construing it. These purposes are to avoid the treatment of incongruous subjects in the same measure, or subjects having no necessary or proper connection, especially for the purpose of "logrolling" or securing the passage of measures that could not pass on their own merits, and to prevent surprise or fraud on the voters. The statute also provides that the single-subject requirement is to be construed liberally to prevent these practices and still preserve and protect the right of initiative. Finally, the statute states the legislature's intent that the Board apply judicial decisions construing the single-subject requirement for bills and follow the legislature's rules in considering bill titles.

With this blueprint for future application, few expected that applying the single-subject requirement to initiatives would cause any significant change in the initiative process, since the legislature had lived with the requirement for over a century. However, the

Court has developed new single-subject jurisprudence for initiative titles. This result is attributable to the fundamental differences between the initiative and the legislative processes, the Court's concerns about surprise and fraud on the voters, and measures that have pushed and sometimes exceeded the limits of the single-subject rule.

Legislative Practices

If the legislature's rules in considering bill titles are to be applied, all participants in the initiative process need to understand what those rules are. The legislature applies the single-subject rule for legislative bills quite literally. Virtually all bill titles begin with the word "concerning," followed by a statement of the single subject. This helps to ensure that the subject is stated as a thing, a noun. A "subject," as the word implies, should not be an explanation, an argument on behalf of the bill, or a description of what the bill is intended to accomplish. The legislature tries not to use "and" when it states the single subject in titles because "and" implies more than one thing.[10]

Sometimes, in addition to the single subject, the title includes language that describes the contents of the bill in detail, but even then, the single subject appears before the first comma in the title. Legislative practice dictates that this additional language, referred to as the "trailer," is not the single subject itself, but an elaboration on it. The constitutional penalty for inaccurate title drafting is stiff—any subject treated in the bill but not expressed in the title is void.[11]

A legislator may choose a broad or narrow title. A broad title might cover a general subject (for example,"Concerning Motor Vehicles"). A narrow title would be more restrictive (for example, "Concerning an Increase in the Fee for Motor Vehicle Registration"). The choice of a broad or narrow title limits what is in the bill as it is introduced and the amendments that are adopted in the course of the legislative process.

The Court has observed that generality in titles is commendable because it reduces the risk of enacted material being declared void.[12] However, legislators rarely choose to use a broad title unless it is necessary to cover the subject matter of the bill. Legislators do not like to open the door for amendments unrelated to their original goal.

For a legislative bill to satisfy the single-subject requirement, its provisions cannot be disconnected or incongruous, every provision must be germane to the subject as stated in the title, and someone reading the title must be given reasonable notice of what the bill contains.[13] A broad title gives notice that several subdivisions of the subject might be treated. Thus, drafters analyze the provisions of a bill, find a common denominator, and state that common denominator as the single subject in the title.

Voter Surprise and Fraud

The Court's concern about voter surprise in initiatives is both understandable and well founded. TABOR was broad and affected many aspects of state and local government operations. The debate about TABOR before the 1992 election did not bring all of these aspects to the public's attention, and voters undoubtedly have been surprised by TABOR's breadth. The Court has been required to consider important issues of TABOR's effects almost every year since TABOR's adoption.

The possibility of surprise is more inherent in measures adopted via the initiative process than in measures enacted by the legislature. Initiative proponents have total control over the content of their proposal and the final say in its wording. Although the state constitution and the statutes mandate that proponents submit their drafts to legislative staff for review and comment, proponents are not required to incorporate staff suggestions.[14] Review and comment hearings are open to the public, but the public is not allowed to testify. Voters are presented with a "take-it-or-leave-it" proposition. They have little or no opportunity to influence drafting, reduce the scope of the measure, or urge amendments to resolve ambiguities.

In contrast, single-subject cases involving surprise or fraud rarely arise out of legislative bills. The legislative process occurs in the public eye, the media provide daily coverage, and information about bills and legislative schedules is available on the Internet. A bill sponsor may elect to introduce a bill that covers a broad subject; however, the bill will be considered by at least two committees of reference, by all 100 legislators during floor debate, and, if the bill involves spending money, by two appropriations committees. The 450-plus registered professional lobbyists, the volunteer lobbyists, and the citizens they represent can scrutinize the provisions of the bill. Most important, amendments will be offered at every stage to clarify wording, resolve policy issues, and eliminate provisions that cannot be agreed on. If the bill passes, it will be the product of a give-and-take process in which the possibility of surprise is greatly reduced.

Purpose Analysis

The Court has held that the test of whether an initiative measure violates the single-subject requirement is whether: (1) the measure relates to more than one *subject*; and (2) the measure has at least two distinct and separate *purposes* that are not dependent on or connected with each other.[15] Although the state constitution and the implementing legislation do not mention the word "purpose," this second part has its roots in *People ex rel. Elder v. Sours*.[16] This 1903 case construed the constitutional prohibition against the legislature submitting amendments to more than six articles of the constitution at any one election.

The *Sours* case involved a constitutional amendment to consolidate the city and

county governments of Denver with Arapahoe County. The Court quoted at length from a Wisconsin case, which held that the Wisconsin requirement that separate amendments to the state constitution be submitted separately applied only when the amendments had different objects or purposes.[17] Since the main object of the Wisconsin amendment was to change from annual to biennial legislative sessions, the change from one-year to two-year legislative terms was not a separate purpose.

Although *Sours* was not a single-subject case, the Court stated the rule that if a subject is germane to the general subject of a constitutional amendment, it need not be submitted separately. The Court concluded that the challenged provisions, which were constructive amendments or amendments by implication to other sections of the constitution, were germane and related to a single purpose. Accordingly, the Court held that the Denver-Arapahoe constitutional amendment did not violate the six-article limitation.

At first glance, the prohibition of more than one purpose appears to require the Court to engage in a subjective analysis of proponents' goals and intent, in addition to an objective analysis of what the measure covers. However, the Court has determined purpose by examining and analyzing the language of the initiative proposal, much as the inquiry into any statute's purpose begins with an analysis of the document itself.

Statements about the purpose of their measure that proponents make during the review and comment hearing or before the Board appear to carry little weight in determining whether a measure has more than one purpose.[18] For instance, in *In Re Public Rights in Waters II*, the Court determined that a proposal to mandate the adoption of a "strong public trust doctrine" for water and to require additional elections in water conservation and water conservancy districts contained more than one subject. The Board had accepted the proponent's testimony that the two elements were tied together because accountability to the voters was necessary to ensure that the public trust doctrine was implemented. The Court dismissed this argument as unpersuasive, stating that the common characteristic of "water" was not sufficient.[19]

Another example can be found in the more recent decisions made in a series of tax cut measures. Some measures proposed cuts in several different taxes, including property taxes outside TABOR limits that were approved at elections using a particular form of ballot title. The proponent insisted that his purpose in cutting this particular property tax was not to reverse court decisions that had validated similar ballot titles, nullify prior votes, or provide incentives for local governments to stop using such titles, but simply to provide a cut in the amount of another tax. A prior decision indicated that the application of one tax credit to several different taxes did not violate the single-subject requirement.[20] However, the Court held that the measures had two separate purposes: (1) tax cuts and (2) imposing new criteria for voter-approved revenue and spending increases.[21]

These decisions should not be viewed as second-guessing a proponent's purpose, but

as protecting against voter surprise and logrolling. The tax cut initiatives were complex. While the version considered in the initial tax cut case contained only two sentences, it contained 241 words. The first sentence was 157 words long and began with a 27-word introductory portion and a colon, followed by eight clauses separated by semi-colons.[22] Voters might be attracted by the idea of tax cuts, but surprised that their prior votes to retain surplus revenues had been nullified as a result.

Moreover, both the water and tax cut measures would have made fundamental changes in the law. When a measure includes more than one such fundamental change, the Court often has found that the measure has more than one purpose. Proponents cannot comply with the single-subject requirement by calling a fundamental change merely an "effect" instead of a separate "purpose."

Resolving questions about when a provision is related to the main purpose or when a provision has enough independent significance to constitute a separate purpose can be difficult, especially when the measure contains multiple provisions relating to a general subject.[23] It is not as easy as finding a common denominator among the provisions and designating that common denominator as the single subject. This dilemma leads to an analysis of the particular issues that "omnibus" measures present.

Omnibus Measures

The second part of the Court's single-subject test requires that the provisions of a measure have a necessary and proper connection *with each other*, which imposes a more stringent requirement than either the implementing legislation or legislative custom and practice. As discussed above, the Court test follows the *Sours* precedent and the Wisconsin decision set forth in *Sours*.[24] The implementing legislation simply requires a necessary and proper connection, without saying what the connection must be *with*, and legislative practices require a necessary and proper connection *with the single subject* as stated in the title.[25] This difference is attributable to a concern about protecting voters against provisions that might be "coiled up in the folds."[26]

In the Court test or in legislative practice, a "necessary" connection between provisions does not appear to mean that every provision is absolutely required (as in indispensable or compelled) to make the measure complete, or that the measure will not make sense or cannot be implemented without one of its provisions. Enacting a measure that makes a number of changes in a single area of the law is permissible.[27] The Court also has held that implementation details for a statutory measure are not in themselves separate subjects.[28]

However, proponents are limited in how far they can go in initiating an omnibus measure that includes miscellaneous changes in a broadly defined area. A limit also exists

for legislative bills. In a 1987 case, the Court held that a bill containing multiple statutory amendments intended to reduce state general fund expenditures, increase revenues, and thereby balance the budget violated the single-subject requirement, even though every item in the bill related to the subject as stated in the bill's title.[29] The subject was too broad, the various features of the bill had no connection with each other, and the danger of forcing the acceptance of undesirable features to secure desirable features was too great.

Examples of the application of the necessary and proper correction requirement in the initiative context can be found in two decisions rendered soon after the single-subject requirement was adopted, as well as in recent decisions on proposals concerning the judiciary. *In Re Public Rights in Waters II* held that "water" was too broad to be a single subject.[30] *In Re Proposed Initiative 1996-4*, a measure to repeal most of TABOR, held that "limiting government spending" was too broad and general a concept to satisfy the single-subject requirement.[31]

Proponents of the measures concerning the judiciary have sought to impose term limits on judges, provide that judges need not be lawyers, require senate confirmation of judges, create a recall process for judges, disseminate information on each judge's case resolution time and criminal sentencing record, and mandate the suspension of any judge who is the subject of an adverse finding by the judicial discipline commission. All of these items relate to judges (or "judicial personnel" because the members of the Supreme Court are technically "justices," not "judges").

However, in several cases, the Court has held that: (1) any change in the powers and duties of the judicial discipline commission, whose members are not judicial personnel, is a separate subject; and (2) any effort to alter the authority of the city and county of Denver over county judges, or of a home rule city over its municipal judges, or to change the jurisdiction of Denver county court judges, is a separate subject.[32] The measures are simply too broad and comprehensive. As the Court noted, if a measure can cover the entire judicial branch, the purposes of the single-subject requirement have been violated.[33]

These decisions need not affect omnibus bills in the legislative process. First, omnibus bills rarely have the broad scope of the 1987 budget-balancing measure or the judicial personnel initiatives. Common examples are the annual bills containing miscellaneous amendments to criminal or election laws or a comprehensive revision of an area such as workers' compensation. Second, as outlined above, the legislative process provides ample opportunities for discussion and compromise on issues, with little possibility of post-enactment surprise.

These decisions do indicate that initiative proponents should be wary of measures that have an especially broad scope. Because TABOR provided the impetus for the single-subject requirement, measures that amend TABOR are likely to receive close scrutiny. Any measure that deals with an entire branch of government may face a difficult challenge. In addition,

a measure that makes several fundamental changes in an area of law or in Colorado's system of government may be suspect. Proponents who advocate such comprehensive changes might consider an incremental approach using a series of measures, each containing a single subject.

On occasion, the Court has hinted that a constitutional amendment may be too broad if it requires changes in several portions of the state constitution.[34] However, proponents should not avoid proposing the amendment of more than one section or article if doing so will enhance clarity. The *Sours* case held that implied amendments of other articles do not create separate amendments as long as they relate to a single, definite purpose;[35] however, amendments by implication often create ambiguities.[36] Good drafting practice dictates that modification of existing law should be handled by express amendment and not left to inference. If a measure is clearly drafted, as discussed below, the Court will not elevate form over substance and can distinguish between conforming amendments made to other parts of the constitution and provisions that truly have separate purposes.

Importance of Drafting Initiated Measures Carefully

The Court has repeatedly stated that it will not engage in the interpretation of initiative measures as part of its review of their titles.[37] Interpretation before a measure has been adopted normally is not appropriate because the issue is not ripe for review and no facts have been presented.

However, one case in the series dealing with tax cut proposals exemplifies how strict adherence to this position became untenable in light of the single-subject requirement.[38] The measure in that case proposed to amend TABOR by cutting several state and local taxes and required state replacement of lost local revenues "within all tax and spending limits." These limits included the TABOR limit on the state's fiscal year spending. The Court found that the state could comply with the replacement requirement only if the state reduced spending on state programs, and that reduction of spending on state programs constituted a subject separate from the tax cuts. Justices Kourlis and Martinez, in dissent, noted that the majority's conclusion depended on an interpretation that, without the quoted language, state revenues used to replace local revenues would not have been subject to TABOR spending limits.[39]

In 1999, the Court acknowledged the need to engage in at least a limited interpretation of initiatives as it reviewed the title setting of yet another tax cut measure. The Board had set a title for the measure, despite statements by Board members that they were confused by the difficulty and complexity of its language and about whether the effects of the measure constituted multiple subjects. The Board believed it had a duty to resolve doubts in favor of proponents in the interests of protecting the right of citizen initiative. The Court reversed the Board's action and held that the Board's duty to protect against voter confusion means that the Board must not adopt a title if it cannot resolve questions about the measure's effects,

even though the consequence is that proponents will not be able to circulate petitions.[40]

The Court resolved the conflict that sometimes arises between a citizen's right to initiate and the public's right to be protected from surprise, logrolling, and misleading titles in favor of the public's right. When the effects of a measure are so unclear that the Board cannot determine whether the measure includes more than one subject, or cannot clearly express a single subject in the ballot title, no title may be set.[41] Consequently, the Board also may engage in a limited degree of interpretation, if necessary to resolve single-subject questions.

This spotlights the importance of drafting a measure clearly so the Board, or later the Court, is not faced with a measure whose interpretation is so difficult that its compliance with the single-subject requirement cannot be determined. Legal counsel who have drafting experience can be of assistance. In addition, proponents should seriously consider amending their measure in response to the questions legislative staff ask during the review and comment process. If a measure's purpose and effect cannot be divined from the measure itself, the Board or the Court may later find that voters are likely to be surprised or misled by the measure.

Tips for Initiative Proponents

Proponents who want to avoid successful challenges on single-subject grounds[42] should ask themselves, "What is the single subject of my measure? The Board almost always follows the format for legislative titles, so can I articulate the single subject in the format, 'Concerning X, and, in connection therewith, providing . . . ,' where X is the single subject and the language after 'in connection therewith' describes specific features of the measure?" This format should satisfy the single-subject requirement, inform voters, and avoid surprise.

Proponents also should consider whether and how each element of the measure is necessarily and properly related to a single purpose. If the relationship to a single purpose is clear, the measure should satisfy the requirement that the elements be connected with each other. These relationships should be clear from the text of the measure, and "not rest upon a merely possible or doubtful inference, . . . [and] be within the comprehension of the ordinary intellect, as well as the trained legal mind."[43] Finally, proponents should ask themselves whether their articulated subject and purpose are too broad—that is, whether they cover a number of elements that voters might want to vote on separately.

Conclusion

Five years of Colorado Supreme Court interpretations of the single-subject requirement for initiatives are now available to proponents.[44] The Court has emphasized its

duty to protect voters against surprise and fraud. It has developed a two-part test, which involves the traditional analysis of whether the measure relates to more than one subject, as well as whether its provisions are dependent on and connected to each other and to one general purpose. In addition, the Court has stated that a measure simply may be too broad, even if a common thread exists among its provisions. Finally, it has placed the burden squarely on proponents to bring forth a measure whose provisions are clear enough that the Board and the Court can determine and express the single subject.

Because of the Court's concerns about voter surprise and logrolling, initiative proponents may not have the same degree of choice about the scope of their measures as the sponsors of legislative bills. However, if proponents carefully analyze and draft their measures, the single-subject requirement will not present an obstacle.[45]

Notes

1. The Ballot Title Setting Board consists of the Secretary of State, Attorney General, and Director of the Office of Legislative Legal Services. CRS § 1-40-106.

2. Colo. Constitution, Article V, § 1(5.5).

3. Colo. Constitution, Article V, § 21.

4. Colo. Constitution, Article XIX, § 2(3).

5. Colo. Constitution, Article X, § 20.

6. Another measure that arguably was broader than TABOR--the Election Reform Amendment--was on the ballot in 1994, but was defeated. The presence of that measure also may have demonstrated the need for a single-subject requirement.

7. *In Re Amend Tabor* 25, 900 P.2d 126 (Colo. 1995). *See also In Re Proposed Initiative 1996-4*, 916 P.2d 533 (Colo. 1996), which dealt with an initiative to repeal most of TABOR and leave only the vote on taxes.

8. *See Meyer v. Grant*, 486 U.S. 414 (1988), and cases cited therein.

9. CRS § 1-40-106.5.

10. *See* Memorandum, "Bill Titles—Single Subject and Original Purpose Requirements," dated November 27, 1997, Office of Legislative Legal Services home page, State of Colorado website: http://www.state.co.us/gov_dir/leg_dir/olls/Titles.pdf.

11. Colo. Constitution, Article V, § 21.

12. *Edwards v. Denver & R.G.R. Co.*, 13 Colo. 59, 21 P. 1011 (1889); *Roark v. People*, 79 Colo. 181, 244 P.2d 909 (1926); *Tinsley v. Crespin*, 137 Colo. 302, 324 P.2d 1033 (1958).

13. *In Re Breene*, 14 Colo. 401, 24 P. 3 (1890); *Catron v. Co. Commissioners*, 18 Colo. 553, 33 P. 513 (1893); *Roark, supra*, note 12.

14. Colo. Constitution, Article V, § 1(5); *see also* CRS § 1-40-105.

15. *In Re Public Rights in Waters II*, 898 P.2d 1078-79 (1995). This standard has been reiterated in virtually every single-subject case.

16. 31 Colo. 369, 74 P. 167 (1903). The Colorado Supreme Court pointed out that the single-subject requirement, as it existed at that time, applied only to bills and not to constitutional amendments.

17. *Id.* at 177-78.

18. This is to be contrasted with the issue of whether a title accurately reflects the proponents' intent. *See In Re Proposed Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992).

19. *Supra*, note 15.

20. *Amend TABOR No. 32*, 908 P.2d 125 (Colo. 1995).

21. *In Re Ballot Title 1997-98 #30*, 959 P.2d 822 (Colo. 1998). For similar holdings concerning subsequent measures, *see also In Re Ballot Title 1999-2000 #37*, 977 P.2d 845 (Colo. 1999); *Matter of Title for 1999-2000 No. 38*, 977 P.2d 849 (Colo. 1999); *In Re Title for 1999-2000 No. 40*, 977 P.2d 853 (Colo. 1999); *In Re Title for 1999-2000 No. 44*, 977 P.2d 856 (Colo. 1999).

22. The text of this measure is set forth in *In Re Ballot Title 1997-98 #30, supra*, note 21 at 823.

23. *E.g., Matter of Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586 (Colo. 1995) (measure making many miscellaneous changes in initiative and referendum process held to have single purpose of "reforming the initiative and referendum process"). *In Re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996) (granting parents right to control children's upbringing, education, values, and discipline was single purpose). *But see In Re Ballot Title 1997-98 #64*, 960 P.2d 1192 (Colo. 1998) (measure to make miscellaneous changes affecting judges held to have more than one purpose). *See* also discussion of judicial measures in text accompanying note 32, *infra.*

24. *Supra*, note 16.

25. *Supra*, note 13. The early single-subject cases state that a bill may cover many minor but associated matters, and the test for whether matters are associated appears to be if they are germane to the subject expressed in the title.

26. *In Re Breene*, *supra,* note 13 at 404.

27. *See* cases related to omnibus measures, *supra*, note 23.

28. *Matter of Title for 1999-2000 #200A, Steadman v. Hindman*, 29 Colo.Law. 172 (March 2000) (S.Ct. No. 99SA368, *annc'd* 1/24/00).

29. *In Re House Bill 1353*, 738 P.2d 371 (Colo. 1987).

30. *Supra*, note 15.

31. *In Re Proposed Initiative 1996-4*, *supra*, note 7.

32. *In Re Ballot Title 1997-98 #64*, 960 P.2d 1192 (Colo. 1998); *In Re Ballot Title 1997-98 #95*, 960 P.2d 1204 (Colo. 1998); *In Re Ballot Title 1999-2000 #29*, 972 P.2d 257 (Colo. 1999); *In Re Ballot Title 1999-2000 #33*, 975 P.2d 175 (Colo. 1999); *In Re Ballot Title 1999-2000 #41*, 975 P.2d 180 (Colo. 1999); *In Re Ballot Title 1999-2000 #104*, 987 P.2d 249 (Colo. 1999).

33. *In Re Ballot Title 1997-98 #64, supra*, note 32 at 1200.

34. *Matter of Adding Section 2 to Article VII (Petitions), supra*, note 23, held that the implied amendments to the recall process, currently treated in Article XXI of the Colo. Constitution, were a separate subject from changes in the initiative and referendum process, treated in Article V. Justice Scott, in a concurring opinion, has suggested that amendment of more than one constitutional section should trigger a presumption of more than one subject. *In Re Ballot Title 1999-2000 #29, supra*, note 32.

35. *Supra*, note 16 at 178.

36.In *Re Ballot Title 1999-2000 #104, supra*, note 32. The proponent of the judicial personnel measure, who was probably trying to eliminate what had been held to be a separate subject (alteration of Denver's authority over county courts and judges), removed the repeal of Denver's authority and was charged with amendment by implication and consequently with a violation of the single-subject requirement.

37. *See, e.g., Spelts v. Klausing*, 649 P.2d 303 (Colo. 1982); *Matter of Title, Ballot Title, . . .* , 875 P.2d 207 (Colo. 1994); *Matter of Proposed Initiative 1997-98 #10*, 943 P.2d 897 (Colo. 1997).

38. *In Re Ballot Title for 1997-98 #84*, 961 P.2d 456 (Colo. 1998).

39. The dissenting justices believed that clarifying the applicability of existing limits did not constitute a separate subject.

40. *In Re Title for 1999-2000 #25*, 974 P.2d 458 (Colo. 1999).

41. *Id; see also In Re Ballot Title 1997-98 #30, supra*, note 21 at n. 2 (Justice Hobbs' description of the appropriate degree of substantive inquiry).

42. Expecting to avoid challenges altogether probably is unrealistic. Opponents will take the opportunity to try to delay the circulation of petitions for any controversial measure.

43. *In Re Breene, supra*, note 13 at 406.

44. *See* cases annotated in Colorado Revised Statutes, Colo. Constitution, Article V, § 1.

45. The constitutionality of the single-subject requirement recently was upheld against First Amendment and Equal Protection challenges in *Campbell v. Buckley*, 98-1329 (10th Cir., 2/10/00), *aff'g*, 11 F.Supp.2d 1260 (D.Colo. 1998).

Judicial Interpretations of the Law Governing Submission of Ballot Initiatives in Colorado

(Last updated November 14, 2002.)

Quotations and annotations from Colorado Supreme Court and federal court cases applying Colorado constitutional and statutory provisions on preparation and filing of initiatives, proceedings of the title-setting board, and related matters.

Outline

* ** * ** *

I. TITLE, SUBMISSION CLAUSE, AND SUMMARY

A. Substance

1. General -- Standards To Be Met In Fixing Title, Etc.

Title board's duties: The title-setting board must: (1) Designate and fix proper fair title for each proposed law or constitutional amendment, together with submission clause; (2) Prepare a clear, concise summary of the proposed law or constitutional amendment, which is true, impartial and not an argument, nor likely to create prejudice, either for or against measure; (3) Consider public confusion possibly caused by misleading titles and, if practicable, avoid titles for which the effect of a "yes" or "no" vote will be unclear; (4) Not permit treatment of incongruous subjects in same measure; and (5) Prevent surreptitious measures and advise people of each measure's subject by title. In re Title, etc., for 1999-2000 ##25-27, 974 P.2d 458, 465 (Colo. 1999).

Internal draft documents not considered. Where the Board's staff working draft of a suggested title and summary was captioned with the serial number of the initiative and a short, descriptive footnote inserted for tracking purposes, any allegedly misleading terms in the footnote were irrelevant. Only the official titles and summary would be seen by the voters, therefore, review would be limited to the official titles and summary. In re Title, etc., for 1999-2000 #215, 3 P.2d 447 (Colo. 2000).

"Well-established principles" of review: "(1) [W]e must not in any way concern ourselves with the merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid." Bauch v. Anderson, 178 Colo. 308, 310, 497 P.2d 698, 699 (1972).

Purpose of title, submission clause, and summary is to "fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed." Dye v. Baker, 143 Colo. 458, 460, 354 P.2d 498, 500 (1960). In addition, language should "enable the electorate, whether familiar or unfamiliar with the subject matter . . . to determine intelligently whether to support or oppose [the] proposal." In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121, 1123 (Colo. 1984).

When writing titles, the connection between title and initiative must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to understand it. The connection should be within the comprehension of voters of average intelligence. In re Title, etc., for 1999-2000 ##25-27, 974 P.2d 458, 469 (Colo. 1999).

Submission clause must be brief. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

But see In re Proposed Election Reform Amendment, 852 P.2d 28, 32 (Colo. 1993) ("[I]f a choice must be made between brevity and a fair description of essential features of the proposal, the decision must be made in favor of full disclosure . . . . In the case of a complex measure embracing many different topics . . . , the titles and summary cannot be abbreviated by omitting references to the measure's salient features.").

"Catch phrases or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an [initiative] should be carefully avoided . . . ." Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958) (Board acted properly in refusing to include phrase "freedom to work" in title of initiative prohibiting employers from using a person's membership or lack of membership in a labor union as the basis for hiring or firing). But see In re Workers Comp Initiative, 850 P.2d 144, 147 (Colo. 1993) (distinguishing Say, upholding inclusion of words "Workers Choice of Care Amendment" in summary where phrase appeared in measure itself and was not shown to be "a well-known, arguably inflammatory phrase comparable to 'Freedom to Work', ...")

The existence of a slogan or "catch phrase" is determined in the context of contemporary political debate. In re Proposed Initiative 1996-6, 917 P.2d 1277, 1281 (Colo. 1996), citing In re Workers comp Initiative, 850 P.2d 144, 147 (Colo. 1993) .

"[T]he Board is given considerable discretion in resolving the interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause." In re Proposed Tobacco Tax, 830 P.2d 984, 989 (Colo. 1992) (citing In re Initiative Concerning "State Personnel System", 691 P.2d 1121, 1125 (Colo. 1984)).

"[S]o long as the title, the ballot title and submission clause, and the summary accurately reflect the central features of the initiated measure in a clear and concise manner, we will not interfere with the Board's choice of language." In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports, 826 P.2d 1241, 1245 (Colo. 1992).

"The proponents are essentially claiming that the title should have been drafted more narrowly. We will not, however, reverse the Board's action merely because a better title could have been drafted." In re Proposed Initiated Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly And Recklessly Maintain An Unsafe Work Environment, 898 P.2d 1071, 1074 (Colo. 1995).

Interplay of clarity and single-subject requirements. Before a clear title can be written, the Board must reach a definitive conclusion as to whether initiatives encompass multiple subjects. Absent such resolution, it is axiomatic that the title cannot clearly express a single subject. In re Title, etc., for 1999-2000 ##25-27, 974 P.2d 458, 468-469 (Colo. 1999).

What are "central features": Inclusion of certain features in title held to be

mandatory where each such feature was found to be "a matter of significance to all concerned with the issues dealt with in the proposed amendment." In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Documents prepared by the board need not identify the prospective article number and section number of a proposed amendment; a statement of the "principle" of the amendment is all that is required. In re Proposed Initiative on Surface Mining, 797 P.2d 1275, 1281 (Colo. 1990).

2. "True Intent And Meaning"

Title may include language not derived from the four corners of the initiative if it requires no interpretation of the proposal and does no more than express the proponents' clear and unequivocal intent. In re Proposed Constitutional Amendment Under the Designation "Pregnancy", 757 P.2d 132, 135, 136 (1988) (upholding title containing reference to repeal of an existing, inconsistent constitutional provision, where proponents expressed their intent to "repeal" and "replace" the existing provision in a preface to the initiative itself).

"Neither this court nor the Board may go beyond ascertaining the intent of the initiative so as to interpret the meaning of the proposed language or suggest how it will be applied if adopted." In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 241 (Colo. 1990) (citing In re Casino Gaming, 649 P.2d 303, 310 (Colo. 1982)). Accord, In re Proposed Constitutional Amendment Under the Designation "Pregnancy", 757 P.2d 132 (1988).

Vagueness or ambiguity of initiated measure: The Board is under no duty to define vague terms, even if the proponents intend the language to remain vague so that the courts could interpret its application. In re Proposed Initiative #1996-6, 917 P.2d 1277, 1282 (Colo. 1996).

If terms of proposal are vague and undefined, title which tracks language of proposal accurately reflects the "intent and central features" of the proposal although it may be similarly vague and undefined. See In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992). Accord, In re Casino Gaming Initiative, 649 P.2d 303, 307 (Colo. 1982) (reference in title to "Southern Colorado Economic Development District" was not misleading where, although the number of counties included in the district had recently been reduced, text of initiative listed the counties encompassed by that term as used in the initiative); In re Proposed Initiative on Transfer of Real Estate, 611 P.2d 981 (Colo. 1980) (lack of distinction between sales "subject to" existing financing and "assumptions" of existing financing was not a basis for invalidating board's documents where language was taken directly from proposal); Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733, 741 (Colo. 1994) (use of undefined term "adjusted net proceeds" reflected true intent and meaning of measure).

But a title which merely tracks language used in a proposal may still be misleading, where the general understanding of the effect of a "yes" or "no" vote will nevertheless be unclear and the parties have agreed, at the title-setting hearing, to the addition of language stating the undisputed intent and purpose of the measure in terms more likely to be understood by voters. Matter of Proposed Initiative on "Obscenity", 877 P.2d 848 (Colo. 1994); see also In re Proposed Initiative on "Governmental Business", 875 P.2d 871, 875-77 (Colo. 1994); In re Title, etc., for 1999-2000 #104, 987 P.2d 249 (Colo. 1999).

Where the Board was unable to ascertain initiatives' meaning well enough to address whether they might result in reducing state spending, the Board's was rendered incapable of setting clear titles that would not mislead the electorate. "Where the Board has acknowledged that it cannot comprehend the initiatives well enough to state their single subject in the titles, ... the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent." In re Title, etc., for 1999-2000 ##25-27, 974 P.2d 458, 467, 469 (Colo. 1999).

If the initiative cannot be comprehended well enough to state its single subject in the title, it cannot be forwarded to the voters and must be returned to the proponent. In re Title, etc., for 1999-2000 #44, 977 P.2d 856 (Colo. 1999).

Where text of proposal contains, but does not define, a term asserted to represent a "new and potentially controversial legal standard", it is sufficient that the title merely uses the term without attempting to interpret or define it. Matter of Proposed Initiative on Water Rights, 877 P.2d 321, 326-27 (Colo. 1994) (upholding title containing phrase "public trust doctrine" where proposal required the state to adopt a "strong public trust doctrine", but the only available explanation of the term came from proponents' own testimony).

Even if a term in summary is unclear and undefined and must await future legislative and judicial construction and interpretation, use of the term in the summary will not amount to an abuse of discretion by the Board. In re Title, etc., for 1997-1998 #75, 960 P.2d 672, 673 (Colo. 1998).

Use of a technical and not generally understood term such as "open mining" in a ballot title is not misleading where the term is defined by statute and where any ambiguity in meaning is clarified by its use in the summary. In re Title, etc., for 1999-2000 #215, 3 P.2d 447 (Colo. 2000).

The Board was within its discretion when it set out the labeling requirements for genetically engineered food and drink in the summary but not the titles. The failure to define the foods that must be labeled in the titles does not render the titles misleading to voters. In re 1999-2000 #265, 3 P.3d 1210 (Colo. 2000).

"Unless the summary adopted by the board is clearly misleading or does not fairly reflect the purport of the proposed amendment, we will not interfere with the Board's choice

of language." In re Title Pertaining to the Proposed Initiative Under the Designation "Tax Reform", 797 P.2d 1283, 1288 (Colo. 1990).

Mere ambiguity of summary, if not clearly misleading, is not a ground for disapproval. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121 (Colo. 1984).

Omission of the sentence describing the Initiative's legislative declaration does not render the summary clearly misleading to the electorate. In re 1999-2000 #265, 3 P.3d 1210 (Colo. 2000).

Terms used in title, etc., connote "an actual condition rather than some possible future state of affairs". In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992) (use of term "statewide" was misleading where measure altered regulation of casino gambling as it foreseeably could be, but as yet had not been, conducted outside of limited area of four communities in state). But see In re Title, etc., for 1999-2000 #215, 3 P.2d 447 (Colo. 2000) (where initiative would apply to one known, existing mining operation in the state but there might be others in the future to which it would also apply, the title was not misleading for failure to state that the initiative would apply to only one mining operation in the state).

"We can only consider whether the Title, etc., reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the proposed language." Similarly, the asserted unconstitutionality of the initiative cannot be considered in title proceedings. In re Title Pertaining to Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992) (upholding title, submission clause, and summary which did not indicate, contrary to language of proposed amendment, that amendment to adoption-records statute would not be applied retroactively).

See also In re Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990) (federal preemption of ban on surface mining, as it pertained to mining activities on federal land, was beyond scope of matters to be considered by board); In re Branch Banking Initiative, 612 P.2d 96 (Colo. 1980) (potential for conflicting interpretations, at state and federal levels, of "public need and convenience" standard relating to banks was a matter properly left open to public debate rather than addressed in summary); In re Proposed Initiative on Transfer of Real Estate, 611 P.2d 981 (Colo. 1980) (potential for retroactive application of measure was not relevant to determination of accuracy of board's language).

Alleged effect of proposal on existing constitutional rights is beyond the scope of matters to be considered by the board. In the Matter of Proposed Initiated Constitutional Amendment Concerning "Fair Treatment II", 877 P.2d 329, 331-32 (Colo. 1994). Accord, Matter of Proposed Initiative on Water Rights, 877 P.2d 321, 328 (Colo. 1994) (upholding title which did not venture to determine proposal's effect on private property rights). But see In re Proposed Initiative on "Fair Fishing", 877 P.2d 1355, 1361-62 (Colo. 1994) (upholding summary that alerted voters to potential fiscal impact in the event that courts found

compensation due to landowners affected by the measure).

Summary does not have to inform voters that the initiative may be in conflict with existing state laws: "Although the language of the summary could have been more precise, the chosen language fairly summarizes the intent and meaning of the proposed amendment." In re Proposed Ballot Initiative On Parental Rights, 913 P.2d 1127, 1131 (Colo. 1996)

"Neither the board nor this court is authorized to interpret the meaning of a proposed amendment prior to its adoption." In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121, 1125 (Colo. 1984). Accord, In re Proposed Initiative Concerning "Automobile Insurance Coverage", 877 P.2d 853, 856 (Colo. 1994) (characterization of money raised under future implementing legislation as a "tax", "fee", or "premium" was a matter to be determined later by the courts, not by the board in title-setting hearings); In re Mineral Production Tax Initiative, 644 P.2d 20, 23 (Colo. 1982) (board acted properly in refusing to include, in summary, a detailed interpretation of the applicability of a mineral tax to a particular mineral where the measure itself was unclear on the subject).

"Effects of a measure which might be implied but would not occur cannot be required to be included in the descriptions which are statutorily required to be brief. . . . Petitioner's assertions that the titles must more fully distinguish the effects of certain provisions of the amendment is unrealistic where . . . the initiative is a complicated measure with numerous inclusions and exclusions. The summary, as statutorily required, more clearly reflects these differences." Excessive elaboration would conflict with the requirement that the effect of a "yes" or "no" vote be clearly expressed. In re Initiative Concerning "Taxation III", 832 P.2d 937 (Colo. 1992).

Title and summary need not cover all possible problems that may in the future arise when applying the amendment. In re Sale of Table Wine in Grocery Stores Initiative, 646 P.2d 916 (Colo. 1982).

Board's task, and Supreme Court's task on review, is to ensure that neither signers of the initiative nor electors voting on it will be misled by reading the summary. In re Proposed Constitutional Amendment Under the Designation of "Pregnancy", 757 P.2d 132, 134 (Colo. 1988).

It is not the Supreme Court's function to replace a summary or title to achieve the best possible statement of the amendment. In re Mineral Production Tax Initiative, 644 P.2d 20 (Colo. 1982). Documents produced by the board "need not be so flawless as to constitute 'models for future draftsmanship.'" In re Proposed Initiative on Surface Mining, 797 P.2d 1275, 1279 (Colo. 1990).

Where meaning attributed to initiative in titles is "reasonable, although not free from all doubt, and relates to a feature of the proposed law that is both peripheral to its central purpose and of limited temporal relevance," Board's language will not be invalidated. In re

Proposed Initiative Concerning Drinking Age, 691 P.2d 1127, 1131 (Colo. 1984) (upholding title implying that "selling, serving, or giving" of certain beverages to persons between 18 and 21 years of age would be permissible for a specified period of time although text of amendment said only that such persons might "consume" such beverages during that time).

It is well established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. In re Title, etc., Regarding Proposed Initiative 1997-98 #74, 962 P.2d 927, (Colo. 1998). Nor is the Board required to discuss every possible effect or provide specific explanations of the measure. In re Title, etc., for 1999-2000 ##245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

The Board is not required to describe every feature of a proposed initiative in a title or ballot title and submission clause, but it may not sacrifice a full and fair description of essential features of a measure for the sake of brevity. In re Proposed Initiative on School Pilot Program, 874 P.2d 1066, 1071 (Colo. 1994).

Summary is not intended to fully educate people on all aspects of the proposed law, and need not set out in detail every aspect of the initiative, but should "correctly and thoroughly summarize" its contents. In re Proposed Constitutional Amendment Under the Designation of "Pregnancy", 757 P.2d 132, 137 (Colo. 1988). Accord, In re Title Pertaining to Increase of Taxes on Tobacco Products, 756 P.2d 995, 998 (Colo. 1988).

Summary is not required to mention the effect of a proposed amendment on an existing statute addressing the same or a similar subject. In re Mineral Production Tax Initiative, 644 P.2d 20, 24 (Colo. 1982) (declining to require board to include, in summary, a statement as to the initiative's implied repeal of an allegedly inconsistent tax statute); In re Branch Banking Initiative, 612 P.2d 96, 100 (Colo. 1980) (declining to require board to include language regarding implied repeal of existing statutory authorization for "detached [banking] facilities").

Board's documents are not required to describe or explain in detail existing constitutional provisions that would be repealed by an initiative. In re Proposed Constitutional Amendment Under the Designation "Pregnancy", 757 P.2d 132, 137 (Colo. 1988).

Standard met where board summarized two provisions of proposal which allegedly conflicted, but did not render an opinion as to whether the presence of both provisions rendered proposal ambiguous. Indeed, to do so would have been an interpretation and therefore impermissible. In re Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990).

Standard met where title contained the word "scar", which, although arguably laden with prejudicial meaning, was one of the operative words in the initiative itself. Inclusion of this word in the title "fairly and accurately reported the intent of the proposed

amendment." In re Proposed Initiative on Surface Mining, 797 P.2d 1275, 1280 (Colo. 1990). Accord, In re Proposed Initiative on Transfer of Real Estate, 611 P.2d 981 (Colo. 1980); In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993).

Standard met where ballot title and submission clause posed a compound question which could be answered "yes" or "no", indicating the voters' approval or rejection of both of the major components of the proposed amendment. In re Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990).

Standard met where title omitted change in hours during which alcoholic beverages could be sold, and change was held to be merely incidental to main purpose of initiative. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127, 1132 (Colo. 1984).

Standard met where title did not distinguish between state and local elections, to which campaign financing limits applied, and federal elections, to which limits did not apply, but title did refer to proposal as affecting state constitution, and summary listed only state offices affected by the measure. Matter of Petition on Campaign and Political Finance, 877 P.2d 311, 314 (Colo. 1994).

Standard met where exemptions from key requirements of the measure were placed in the titles along with related information, rather than close to the beginning of the title, and where the titles included reference language instead of a full explication of every type of judicial officer to which the measure applied. In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 ##245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Standard met where title and summary mentioned context of existing law into which initiated measure would fit, even though language was not derived from initiative itself. In re Sale of Table Wine in Grocery Stores Initiative, 646 P.2d 916, 921 (Colo. 1982).

Standard not met where title, although sufficiently brief, failed to mention central features of licensing scheme contained in proposal. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

Standard not met where one of central features of proposal was a new and foreseeably controversial definition of "abortion" which established that, for certain purposes, life legally begins at conception, and this feature of proposal was not noted in title or submission clause. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 242 (Colo. 1990).

Standard not met where summary stated broadly that services would not be included in tax base without approval of two-thirds of both houses of general assembly, although services included as of a given future date would be so included, and legislature, while under no obligation to continue taxing such services, already was doing so. In re Title Pertaining to "Tax Reform", 797 P.2d 1283, 1290 (Colo. 1990).

Standard not met where summary stated broadly that food would not be included in tax base without voter approval, although in some cases it would be, then stated that the measure "specifies exceptions to the uniform . . . tax base". In re Title Pertaining to "Tax Reform", 797 P.2d 1283, 1290 (Colo. 1990).

Standard not met where title did not specifically mention that initiative would impose mandatory, nonsuspendable fines for certain campaign violations; would prohibit, not merely "limit", certain political contributions; would revise substantive as well as procedural provisions relating to elections; and would change number of seats in general assembly, requiring reapportionment upon passage. In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Standard not met where title listed all important features of proposal, but "buried" features relating to one of the two main purposes between first and last clauses relating only to the other. Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733, 742 (Colo. 1994).

Standard not met where title did not contain any indication that the geographic area to be affected was quite limited, thus posing a significant risk that voters statewide would misperceive the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 803 (Colo. 1996).

Standard not met where title created confusion and was misleading because it did not sufficiently inform the voter of the parental-waiver process and its virtual elimination of bilingual education as a viable parental and school district option. In re Ballot Titles 2001-2002 #21 & #22, 44 P.3d 213 (Colo. 2002).

Use of word "legalize" in title adequately expressed intent of measure to require that local jurisdictions enact ordinances allowing limited gaming and that no local option was contemplated. Use of "legalize" rather than "mandate" or "require" did not unfairly imply that localities could exercise such discretion. In re Proposed Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports, 826 P.2d 1241 (Colo. 1992).

Title and summary were sufficient despite lack of specificity about scope of rulemaking power delegated to a commission created under the measure: "Addition of language detailing the commission's rulemaking power would increase the length of the title . . . while providing little information that would advance voters' understanding of the initiative. Because the delegation of rulemaking power is limited, we are satisfied that [this] omission . . . will not mislead voters." In re Proposed Tobacco Tax, 830 P.2d 984, 990 (Colo. 1992).

Title and summary were sufficient although they did not exactly track the language of statutory sections affected. In re Proposed Initiative on "Fair Fishing", 877 P.2d 1355,

1360-63 (Colo. 1994).

Title and summary were sufficient despite lack of specificity about types of tax increases mandated by the measure: "[The proponent's suggested] language would provide a more detailed explanation . . . . However, [it] would not likely lead to improved voter understanding . . . because many voters may not realize or attach importance to the distinction between an excise tax and a sales tax. It is sufficient that voters are apprised, in general, that taxes on cigarette and other tobacco products would increase under the proposed measure." In re Proposed Tobacco Tax, 830 P.2d 984, 990 (Colo. 1992).

Title and summary were sufficient where title referred generally to "arbitration" and summary detailed the types of arbitration to which the initative was intended to apply. In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees, 613 P.2d 867, 871 (Colo. 1980).

Title was sufficient despite lack of specificity about extent of local control over mining operations, where word "regulation" was used to denote increase in requirements imposed on the mining industry. In re Proposed Initiative on Surface Mining, 797 P.2d 1275, 1280 (Colo. 1990).

Title and summary were sufficient where title described proposal as "prohibiting surface mining . . . that may scar the land surface" and these terms were derived from proposal itself, notwithstanding that all surface mining may be said to "scar the land surface" and therefore proposal allegedly would have practical effect of prohibiting all surface mining. Summary also stated purpose of proposal as a flat prohibition of surface mining in the geographic areas encompassed by the proposal. In re Proposed Initiative on Surface Mining, 797 P.2d 1275, 1280, 1281 (Colo. 1990).

Title was sufficient where "main theme" of initiative was that fermented malt beverages not be made available to persons under twenty-one years of age, and title referred to the "selling, serving, or giving" of such beverages to such persons. Failure to mention "incidental" prohibitions on possession or consumption at certain places and times was not fatal. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127, 1131 (Colo. 1984).

Title and summary were sufficient where title referred to "exempt positions" in context of state personnel system and neither title nor summary explained exemption concept in detail. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121, 1123-24 (Colo. 1984).

Title and summary were not sufficient for proposed amendment dealing with "petition procedures" because they failed to convey the fact that the initiative created numerous retroactive fundamental rights unrelated to any procedural changes and provided no summary of certain provisions of the initiative. Amendment to Const. Section 2 to Article VII, 900 P.2d 104, 109 (Colo. 1995).

Title and summary were not sufficient for proposed amendment dealing with English language education in schools where title and summary omitted a key, material feature of the initiative allowing individual schools to determine whether to offer a bilingual program in addition to mandatory immersion programs. This feature would materially alter the stated feature of allowing parents to choose which educational program to enroll their children in, thus its omission had the potential to mislead voters. In re Title, etc., for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

3. Catch Phrases

The existence of a slogan or "catch phrase" is determined in the context of contemporary political debate. In re Proposed Initiative 1996-6, 917 P.2d 1277, 1281 (Colo. 1996), citing In re Workers comp Initiative, 850 P.2d 144, 147 (Colo. 1993) .

"'Catch phrases' are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." In re Title, etc., for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

A "catch phrase" consists of words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated measure. In re Title, etc., for 1999-2000 ##227 and 228, 3 P.3d 1 (Colo. 2000).

"Catch phrase" was used where title of initiative to permit the granting of sales and use tax authority to local governments contained the gratuitous phrase ". . . and permitting replacement of general real estate or other taxes." Since local taxing authorities would be able to reduce such taxes regardless of the passage of the initiative, title was prejudicial and the quoted phrase was required to be deleted. Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960).

"Catch phrases" were used where concepts of "consumer protection" and "open government" appeared prominently in titles and summary, but the former was too narrow and the latter was redundant in light of the measure's actual scope. These defects also rendered the board's documents misleading. In the Matter of Proposed Initiative Designated "Governmental Business", 875 P.2d 871, 875-76 (Colo. 1994).

"Catch phrase" was used where language in title and submission clause, "as rapidly and effectively as possible," masked the underlying policy question regarding whether the most rapid and effective way to teach English to non-English-speaking children is through an English immersion program. In re Title, etc., for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

No "catch phrase" was used where "refund to taxpayers" appeared in title and

summary. The court found no convincing evidence that those words constituted a catch phrase beyond comparison to issue before general assembly in previous session concerning adherence to Amendment 1 involving refund of excess revenues. "The deterioration of a group of terms into an impermissible catch phrase is an imprecise process. We must be careful to recognize, but not create, catch phrases, and we do not now view 'refund to taxpayers' as such a phrase." In re Title, etc., for 1997-98 ##105, 102 & 103, 961 P.2d 1092, 1100 (Colo. 1998).

No "catch phrase" was used where the name of the "Southern Colorado Economic Development District" appeared in the board's title, submission clause, and summary. In re Casino Gaming Initiative, 649 P.2d 303, 308 (Colo. 1982).

No "catch phrase" was used where phrase "public's interest in state waters" was used in title and submission clause, and where petitioners failed to provide any evidence that the phrase constituted a catch phrase other than their bare assertion that it did. In re Proposed Initiative 1996-6, 917 P.2d 1277, 1281 (Colo. 1996).

No "catch phrase" was used in initiatives including the phrase "to preserve...the social institution of marriage" because the articulated purpose of the initiatives was to preserve the traditional societal notion of marriage as existing between a man and a woman. In the Matter of the Title, etc., for 1999-2000 #227 and #228, 3 P.3d 1 (Colo. 2000).

No "catch phrase" was used where the word "convenience", as used in the proposed legal standard "public need and convenience" embodied in the initiative itself, appeared in the board's title, submission clause, and summary. In re Branch Banking Initiative, 612 P.2d 96, 99, 100 (Colo. 1980). Accord, In re Proposed Initiative on Transfer of Real Estate, 611 P.2d 981, 983 (Colo. 1980) (allegedly prejudicial language was taken verbatim from the initiative, hence was properly included).

B. Procedure

1. General

Two members of the three-member board are sufficient to exercise the authority granted to the board. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992); In re Initiative Concerning "Taxation III", 832 P.2d 937 (Colo. 1992).

Since the title board is a creature of statute, the attorney general and the secretary of state may designate deputies to service in their place. Matter of Title, etc.,, 900 P.2d 121 (Colo. 1995).

Proponent's testimony as to "true intent and meaning" of a proposal should be

considered by the board. The proponent best understands the reasons for the proposal, and not to consider such testimony would render the public meeting requirement meaningless. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992). But see Matter of Proposed Initiative on Water Rights, 877 P.2d 321, 327 (Colo. 1994) (board was not required to add language suggested by proponents as clarifying their intent, where measure itself did not support the distinction they sought to make).

Requirement in § 1-40-101 (2), C.R.S., that proponents "designate two persons to whom all notices or information . . . shall be mailed" is an aid to efficient notification and not a jurisdictional requirement. The designation of more than two such persons does not affect the board's jurisdiction to fix titles, In re Initiative Concerning "Taxation III", 832 P.2d 937, 942 (Colo. 1992), nor does the listing of only one such person without furnishing the person's address, Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733, 739 (Colo. 1994).

Board is not bound by Administrative Procedure Act. Although correctly termed an "agency", the board is a special statutory body with its own unique function and specifically delineated procedures; its hearings are neither adjudicatory nor rulemaking hearings covered by general procedural requirements of the APA. In re Title Pertaining to "W.A.T.E.R.", 831 P.2d 1301 (Colo. 1992).

Timing of election not considered. Questions about whether an initiative would be permitted to appear on an odd-year ballot were held irrelevant to board's task of setting title, etc. In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993); In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Standing to challenge titles. Where a registered elector appeared jointly with industry association and raised identical arguments, the industry association's asserted lack of standing would not be addressed. In re Title, etc., for 1999-2000 #215, 3 P.2d 447 (Colo. 2000).

Technical corrections of previously unrecognized errors may be made by the board in title-setting proceedings where changes embody the proponents' intent and where strict adherence to statute, with the consequent requirement of resubmission of an initiative, would frustrate proponents' exercise of their constitutionally granted right of initiative. In re Casino Gaming Initiative, 649 P.2d 303, 306, 311 (Colo. 1982).

Substantial compliance with statutory deadlines was held sufficient where one-day delay in completing title-setting hearing, which had already begun within statutory time period, was due to inadvertence and no one objected to continuance. In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees, 613 P.2d 867, 870, 871 (Colo. 1980).

Statutory challenge procedure is not exclusive. Ballot title may be challenged in court prior to election, even if statutory time limits have expired. Glendale v. Buchanan, 578 P.2d 221, 226 (Colo. 1978). But see Polhill v. Buckley, 923 P.2d 119, 121 (Colo. 1996) (courts lack subject matter jurisdiction to review legislative referendum for compliance with single-subject requirement unless and until referendum has been approved by the voters).

Relevant statutory standards, phrases, and citations are collected in narrative form in In re Proposed Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports, 826 P.2d 1241 (Colo. 1992), in part II of the opinion in In re Proposed Tobacco Tax, 830 P.2d 984, 988-89 (Colo. 1992), in In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993), and in Matter of Proposed Tobacco Tax Amendment 1994, 872 P.2d 689 (Colo. 1994).

2. Time Limits

"There is . . . no limit as to how early a petition for an initiative can be circulated or filed prior to an election, as long as the process is started after the previous general election." In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993).

Board had jurisdiction to meet and take action between June and the November election to act on proposed initiatives which would not be considered for the ballot in that same year. Title, etc., for 1997-98 #30, 959 P.2d 822, 824 (Colo. 1998).

Tax, debt, and spending measures are eligible for placement on odd- or even-year ballots. Title, etc., for 1997-98 #30, 959 P.2d 822, 824 (Colo. 1998).

Board has no power to set an election date or place any measure on the ballot; such power is vested in the Secretary of State alone. In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993); In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Questions about whether an initiative would be permitted to appear on an odd-year ballot were held irrelevant to board's task of setting title, etc. In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993); In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Substantial compliance with statutory deadlines was held sufficient where one-day delay in completing title-setting hearing, which had already begun within statutory time period, was due to inadvertence and no one objected to continuance. In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees, 613 P.2d 867, 870, 871 (Colo. 1980).

Where proponent failed to file motion for rehearing within 48 hours after action of title-setting board, he was barred from asserting excessive length of title for the first time on appeal to the supreme court. In re Proposed Election Reform Amendment, 852 P.2d 28 (Colo.

1993).

Where opponents failed to raise the issue of the use of the term "significant" versus "measurable" in the summary before the Board, either in their motion for rehearing or at the rehearing before the Board, they were barred from raising this contention as a grounds for reversing the Board. In re 1999-2000 #265, 3 P.3d 1210 (Colo. 2000).

Issues to be considered on rehearing must be raised in the first motion for rehearing. See In re Title, etc., for 1999-2000 #219, 999 P.2d 819 (Colo. 2000).

Hearings on motions to reconsider decisions entered during the last meeting in May must be held within 48 hours of filing the motion in odd-numbered as well as even-numbered years. Byrne v. Title Bd., 907 P.2d 570 (Colo. 1995).

3. Rehearings

Rehearing before two members of board, where three members fixed title initially, does not violate constitution or statutes. A majority of the board has authority to act on behalf of the board. In re Initiative Concerning "Taxation III", 832 P.2d 937 (Colo. 1992).

Attorney fees not awarded to proponents where request for rehearing and appeal were filed by opponent of measure acting in capacity of registered elector "not satisfied with the [board's designated] titles, summary, and submission clause" pursuant to section 1-40-102 (3) (a) [now § 1-40-107] and grounds for dissatisfaction were stated. In re Proposed Tobacco Tax, 830 P.2d 984 (Colo. 1992); In re Title Pertaining to "W.A.T.E.R.", 831 P.2d 1301, 1307 n. 1 (Colo. 1992).

An objector is permitted to bring only one motion for rehearing to challenge titles set by the Board, where the issues raised in the second such motion could have been raised in the first. To hold otherwise would allow an objector to stall an initiative indefinitely in the early stages, frustrating the general purpose of the initiative process. In re Title, etc., for 1999-2000 #219, 999 P.2d 819 (Colo. 2000).

The Title Board lacks jurisdiction to grant an objector's second motion for rehearing where the motion raises arguments that could have been made in the objector's first motion for rehearing. In re Title, etc., for 1999-2000 #219, 999 P.2d 819 (Colo. 2000).

4. Appeals

Jurisdiction. Courts lack subject matter jurisdiction to review legislative referendum for compliance with single-subject requirement unless and until referendum has been approved by the voters. Polhill v. Buckley, 923 P.2d 119, 121 (Colo. 1996).

Prerequisites. Challenge to titles brought by "registered elector" is not subject to

procedural hurdles applicable to challenge by proponents, such as participation at hearings or preservation of issues for appeal. In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993).

Standards for review. "In reviewing the Board's title setting process, the law is settled that this court should not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; we should resolve all legitimate presumptions in favor of the Board; and we will not interfere with the Board's choice of language if the language is not clearly misleading. Our duty is to ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board. In re Proposed Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023, 1026 (Colo. 1992)." In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993).

While Supreme Court on review may not address the merits of proposed initiative or suggest how initiative might be applied if enacted, Court must sufficiently examine initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated. In construing an initiative for this limited purpose, the court employs the usual rules of statutory construction. Title, etc., for 1997-98 #30, 959 P.2d 822, 825 (Colo. 1998).

The General Assembly has squarely placed the responsibility for carrying out the dual mandates of the single-subject and clear title requirements on the Title Board, and the actions of the Board are presumptively valid. In re Title, etc., for 1999-2000 #104, 987 P.2d 249 (Colo. 1999).

Before clear title can be written, Board must reach definitive conclusion as to whether initiatives encompass multiple subjects. Absent such resolution, "it is axiomatic that the title cannot clearly express a single subject." In re Title, etc., for 1999-2000 ##25-27, 974 P.2d 458, 468-469 (Colo. 1999).

The presence of some redundant words does not by itself render Board's documents invalid; brevity is a relative measure, and court's task on review is not to edit the Board's language to the least common denominator. In the Matter of Proposed Initiative Designated "Governmental Business", 875 P.2d 871, 875 (Colo. 1994).

Presumption of validity. "In evaluating the petitioner's objections, we are mindful that the Board's actions must be presumed to be proper so that the orderly progress of the initiative process is not impeded for other than substantial reasons. This protects the 'strong constitutional interest in the People's right to initiate constitutional amendments.'" In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127, 1132 (Colo. 1984) (citations omitted).

Proponents gather signatures at their peril while appeal is pending. Signatures collected under a title later found misleading cannot be counted. Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733, 743 (Colo. 1994).

The proponents of an initiative may commence circulating their petition for signatures after the Title Board has taken its final action in regard to the ballot titles and summary, pursuant to section 1-40-107 (1) and (5), C.R.S., and while that action is before the Colorado Supreme Court on appeal pursuant to section 1-40-107 (2). Armstrong v. Davidson, 10 P.3d 1278 (Colo. 2000).

Supreme Court's narrow scope of review of Board's actions does not include resolving issue whether Court can hold that proponents may not circulate a petition for signature until titles and summary have been fixed. In re Title, etc., for 1997-98 ##105, 102 & 103, 961 P.2d 1092, 1099 (Colo. 1998).

Matter remanded with directions to revise ballot documents to match language set out in opinion. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 242 (Colo. 1990); Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994); Matter of Proposed Initiative on "Obscenity", 877 P.2d 848 (Colo. 1994).

Attorney fees under C.A.R. 38(d) not awarded to proponents where request for rehearing and appeal were filed by opponent of measure acting in capacity of registered elector "not satisfied with the [board's designated] titles, summary, and submission clause" pursuant to section 1-40-102 (3) (a) [now 1-40-107] and grounds for dissatisfaction were stated. In re Proposed Tobacco Tax, 830 P.2d 984 (Colo. 1992); In re Title Pertaining to "W.A.T.E.R.", 831 P.2d 1301, 1307 n. 1 (Colo. 1992).

5. Rules of Judicial Construction

Proponents' pre-election views irrelevant. "The [opponents of the initiative] express concern that if the initiative passes, the proponents, in subsequent litigation, will rely upon their briefs and testimony before the directors and the Board as evidence of the meaning of the amendment. This concern is misplaced. It is appropriate for the Board, when setting a title, to consider the testimony of the proponents concerning the intent and meaning of a proposal. . . . However, when courts construe a constitutional amendment that has been passed through a ballot initiative, any intent of the proponents not adequately expressed in the language of the measure will not govern that construction." Matter of Proposed Initiative on Water Rights, 877 P.2d 321, 327 (Colo. 1994).

Placement by proponents is relevant to intended scope. Where amendment was placed in revenue article of constitution (article X) and was replete with references to taxing, spending, and budgets, it was reasonable to conclude that election provisions applied only

to elections on fiscal matters. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

II. REVIEW AND COMMENT MEETING WITH LEGISLATIVE OFFICES

A. Substance

Purposes of review and comment meeting: (1) "[P]ermits proponents of initiatives to benefit from the experience of independent experts in the important process of drafting language that may become part of this state's constitutional or statutory jurisprudence." (2) "[P]ermits the public to understand the implication of a proposed constitutional amendment at an early stage of the initiative process." In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992) (measure remanded; had been significantly altered in scope after submission for review and comment); In re Title Pertaining to "Tax Reform", 797 P.2d 1283, 1287 (Colo. 1990) (second measure, containing part of earlier measure, remanded; had not been submitted for review and comment at all).

B. Procedure

Necessity of review and comment meeting: Failure to hold meeting is "contrary to the plain language of Article V, Section 1 (5). . . . Here there was no such public meeting prior to setting the ballot title for the May initiative. The only public meeting was held prior to setting the ballot title for the April initiative. The April public meeting cannot serve as the constitutionally required predicate for setting two different titles for two initiatives. . . . [T]here is an overriding public purpose served by the presentation of comments and review in a public meeting," which is to "inform the public, as well as proponents, of the potential impact of the original draft of any proposed initiative." In re Title Pertaining to "Tax Reform", 797 P.2d 1283, 1287 (Colo. 1990). But see In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees, 613 P.2d 867, 871 (Colo. 1980) (where proponents filed a "second version of essentially the same initiative," and directors of legislative offices indicated that a second meeting "would not be necessary because they had no comments beyond those made on the first proposal", substantial compliance with statutory requirements had been shown).

Where a proposal is not presented to legislative offices for review and comment at a public meeting, or where the intent and meaning of central features of the proposal are so substantially altered, compared to an earlier version which was so presented, that it is in effect a new proposal, title board has no authority to fix a title to it. In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992); In re Title Pertaining to "Tax Reform", 797 P.2d 1283, 1287 (Colo. 1990).

Failure of proponents adequately to point out, or of legislative service agencies to question, a particular feature of a proposal is not fatal. Where title, submission clause, and summary all gave notice of the overlooked feature, proposal would not be remanded for another hearing. Matter of Proposed Initiative for an Amendment Entitled "W.A.T.E.R.",

875 P.2d 861, 868 (Colo. 1994).

III. SUGGESTED CHANGES TO §§1-40-101, ET SEQ.

A. Notice provisions

Notice provisions should be added which provide, at a minimum, for "[n]otice by publication in newspapers of general circulation reasonably prior to the title board's hearing, and notice of the title board's decision and rights of appeal published soon after the hearing", with the possible addition of similar notice of the review and comment hearing which, under the constitution, is to be held "only after full and timely notice to the public". Such notice is required in order to allow members of the public a meaningful opportunity to exercise the liberty interest granted by the state under art. V sec. 1 and §§ 1-40-101 et seq. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

IV. SINGLE-SUBJECT REQUIREMENT

1. Purpose

The single-subject requirement limits the scope of an initiative to a single subject, which must be clearly expressed in its title. Amendment to Constitution Adding Section 2 to Article VII, 900 P.2d 104,108 (Colo. 1995); Matter of Title, Ballot Title, 917 P.2d 1277, 1279 (Colo. 1976).

The Board may not set the titles of a proposed initiative or submit it to the voters if it contains multiple subjects. In re Title, etc., for 1999-2000 ##245(b), 245(c), 245(d) and 245(e), 1 P.3d 720 (Colo. 2000).

Purpose of requirement is "to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and which might not otherwise be approved by voters on the basis of the merits of those discrete measures." In re Proposed Initiative on School Pilot Program, 874 P.2d 1066, 1069 (Colo. 1994); Title, Ballot Title, & Submission Clause, 900 P.2d 121, 125 (Colo. 1995); In re Proposed Petition, 907 P.2d 586, 589 (Colo. 1995); In re Proposed Initiative on Parental Choice in Education, 917 P.2d 292, 294 (Colo. 1996).

The single-subject requirement is intended to ensure that each proposal depends upon its own merits for passage, and to forbid the joining of incongruous subjects in the same measure. In re Proposed Initiative "Public Rights in Water II", 898 P.2d 1076, 1078 (Colo. 1995).

2. Standards To Be Met

The same standards apply to single-subject review of citizen initiatives as apply to single-subject review of legislation enacted by the General Assembly. In re Title, etc., for 1999-2000 #200A, 992 P.2d 27 (Colo. 2000).

A proposed measure violates the single-subject requirement if "its text relates to more than one subject and if ... it has at least two distinct and separate purposes which are not dependent upon or connected with each other." In re Proposed Initiative "Public Rights in Waters II", 898 P.2d 1076, 1078-79 (Colo. 1995); In re Title, etc., Regarding Petition Procedures, 900 P.2d 104, 109 (Colo. 1995); In re Proposed Petition, 907 P.2d 586, 590 (Colo. 1995); In re Proposed Initiative 1997-98 #30, 959 P.2d 822 (Colo. 1998); In re Title, etc., for 1997-98 ##84-85, 961 P.2d 456, 458 (Colo. 1998).

Use of a generic title will not insulate a proposal from compliance with the applicable constitutional and statutory requirements. In re 1999-2000 #29, 972 P.2d 257 (Colo. 1999) (title containing term "judicial personnel" did not bring into one subject the two subjects of judicial officer qualifications and judicial discipline commission member qualifications).

An initiative that has separate and unconnected purposes will not be saved by a proponent's attempt to characterize the initiative under an overarching theme. In re Proposed Initiative 2001-02 # 43, 46 P.3d 438 (Colo. 2002).

The General Assembly has squarely placed the responsibility for carrying out the dual mandates of the single-subject and clear title requirements on the Title Board, and the actions of the Board are presumptively valid. In re Title, etc., for 1999-2000 #104, 987 P.2d 249 (Colo. 1999).

Proposed initiatives to repeal state constitutional provisions are not exempt from the single-subject requirement, notwithstanding that the provisions sought to be repealed were adopted in a single measure before the single-subject requirement was adopted. In re Proposed Initiative #1996-4, 916 P.2d 528, 532 (Colo. 1996).

Although broad, a title can meet the single-subject requirement as long as it is not misleading. Title referred to petitions but subject included initiated and referred petitions. In re Proposed Petition for an Amendment to the Constitution of the State Of Colorado Adding Section 2 to Article VII (Petitions), 907 P.2d 586 (Colo. 1996).

Single-subject requirement for constitutional initiatives is to be liberally construed so as to deter practices against which it is aimed and to preserve and protect the right of initiative and referendum. In re Title, etc., 900 P.2d 121, 125 (Colo. 1995).

Combining a $40 tax credit and future initiative procedural measures violated single-subject requirement. Infirmity is not cured by the fact that the initiative proposes amendments to an existing constitutional provision. The constitutional provision, amendment 1, was not subject to the single-subject requirement and contains multiple

subjects. In re Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X (Amend TABOR 25), 900 P.2d 121 (Colo. 1995).

An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. In re Title, etc., Regarding Proposed Initiative 1997-98 #74, 962 P.2d 927, (Colo. 1998).

Implementing provisions that are directly tied to the initiative's central focus are not separate subjects. In re Title, etc., for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

Minor provisions necessary to effectuate the purpose of an initiative measure are properly within the scope of the single-subject rule. In re Proposed Petition, 907 P.2d 586, 590 (Colo. 1995).

"[T]he fact that an initiative may be intended to achieve more than one beneficial effect, i.e., the reduction of both air and water pollution, does not mean it embraces more than one subject, i.e., regulation of swine operations." In re 1997-98 #113 (Commercial Swine Feed Operations), 962 P.2d 970 (Colo. 1998).

A proposed initiative does not necessarily contain more than one subject merely because it provides for alternative ways to accomplish the same result, if the alternative ways are related to and connected with each other. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Despite the comprehensive nature of an initiative, it may still satisfy the single-subject requirement if: (1) the text of the initiative encompasses a single subject, and (2) the initiative does not attempt to further two or more unconnected purposes. In re Proposed Initiative Bingo-Raffle Licensees (I) and (II), 915 P.2.d 1320 (Colo. 1996).

Where the opponents' arguments invite the court to speculate on the motivations of proponents of the initiative or construe the legal effect of the initiative as if it were law, such issues are outside the scope of the court's single-subject review. In re Title, etc., for 1999-2000 No. 200A, 992 P.2d 27 (Colo. 2000).

3. Application Of Standards In Specific Cases

1. Measure Found To Satisfy Single-Subject Requirement

Requirement satisfied in comprehensive initiated measure that defined the right to petition and established a battery of procedures that governed the exercise of that right, as

all of its numerous provisions related to the single purpose of reforming petition rights and procedures. In re Title, etc., 900 P.2d 121, 125 (Colo. 1995).

Budgetary implications of an initiative concerning judicial personnel did not create a hidden second subject where the initiative did not mandate the creation or funding of magistrate positions, but allowed for the conversion of magistrate positions into article VI judgeships. Both the conversion and funding of those positions, should such occur, were found to be within the single subject of "judicial personnel." In re Title, etc., for 1999-2000 ##245 (b), 245(c), 245(d) and 245(e), 1 P.3d 720 (Colo. 2000).

Proposed initiative was found to encompass a single subject although comprising both (1) the assessment of fees upon water pumped from beneath trust lands, and (2) the allocation of those fees for school financing. "The theme of the purpose of state trust lands and the educational recipient provides a unifying thread." In re Title, etc., for 1997-98 ##105, 102 & 103, 961 P.2d 1092, 1096 (Colo. 1998).

Requirement satisfied where initiative dealt with the qualifications, removal, and retention of judges and contained provisions dealing with the service of senior judges, a bar on the publication of Judicial Performance Commission reports, and provisions dealing with the recall of judges. In re Title, etc., for 1999-2000 #104, 987 P.2d 249 (Colo. 1999). Accord, In re Title, etc., for 1999-2000 ##245(f) and 245(g), 1 P.3d 739 (Colo. 2000) (term "judicial personnel", when read in context with limitations that excluded bailiffs and other persons serving in a non-judicial capacity, encompassed only judicial officers).

Requirement satisfied in proposed initiative that sought to establish a $60 tax credit that would have applied to six state or local taxes and required the state to replace local revenues that would have been lost as a result. In re Title, etc., Regarding Amend TABOR 32, 908 P.2d 125, 129 (Colo. 1995).

Requirement satisfied where, in initiative dealing with the conservation of undeveloped land, there was a sufficient connection between the election provision and the subject of the initiative. In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a), 3 P.3d 1219 (Colo. 2000).

Single-subject requirement was not violated where initiative established parent's right of control of their children in four distinct areas. "Because the Initiative relates to a single subject and does not encompass multiple unrelated matters, we conclude that it does not violate the single-subject requirement." In re Proposed Ballot Initiative On Parental Rights, 913 P.2d 1127, 1131 (Colo. 1996); In re Proposed Initiative on Parental Choice in Education, 917 P.2d 292 (Colo. 1996).

Requirement satisfied in set of proposed initiatives concerning gaming activities conducted by nonprofit organizations that addressed what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re

Proposed Initiative Concerning Bingo-Raffle Licenses I, 915 P.2d 1320, 1325 (Colo. 1996).

Requirement satisfied in proposed initiative concerning "the public's interest in state waters" which addressed both the "public trust doctrine" and the assignment of water use rights to the public or a watercourse. Matter of Title, etc., 917 P.2d 1277, 1281 (Colo. 1996).

Requirement satisfied where effect of initiative on school board's power did not constitute a separate, distinct, or unconnected subject but instead was a logical incident of adopting English immersion as the chosen method of teaching non-English speaking students. In re Title, etc., for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

Requirement satisfied in proposed initiative with the primary subject of English-language acquisition by teaching in English that also required that children be provided an English-language public education at their public school of choice. The initiative did not create a new constitutional duty to provide children generally with public education because Colo. Const. art. IX, § 2 provides a general duty to educate, and the measure did not impose an unlimited new requirement for school "choice". In re Ballot Titles 2001-2002 #21 & #22, 44 P.3d 213 (Colo. 2002).

2. Measure Found Not To Satisfy Single-Subject Requirement

Requirement not satisfied in proposed initiative dealing with "petition procedures" which (1) contained provisions concerning the nature of the rights of initiative, referendum, and recall and altered the procedures for the exercise of such rights; (2) provided that charter or constitutional provisions approved after 1990 shall create fundamental rights; (3) authorized individual or class-action suits to enforce the measure; (4) authorized awards of costs to successful plaintiffs who enforce such petitions by means of civil litigation and to defendants if such civil actions are frivolous; and (5) established certain common-law standards for judicial interpretation and construction of such petitions. Amendment to Const. to Add Section 2 to Article VII, 900 P.2d 104, 109 (Colo. 1995).

Language "within all tax and spending limits" violated single-subject requirement. The initiative contained at least two subjects: (1) tax cuts, and (2) mandatory reductions in state spending on state programs. In re Title, etc., for 1997-1998 ##86 and 87, 962 P.2d 245 (Colo. 1998).

Requirement not satisfied in proposed initiative concerning "government revenue changes" that established a tax credit and set forth several procedural requirements for future ballot titles. Since the tax credit was not dependent upon nor connected to the procedures for adopting future initiatives, the measure contained more than one subject, regardless of the fact that the common characteristic of "revenue" was attributable to both subjects. In re Title, etc., 900 P.2d 121, 125 (Colo. 1995).

Initiative that would repeal constitutional requirement of at least one judge in each

judicial district, repeal the City and County of Denver's control over county court judges, confer absolute immunity upon individuals who, outside a courtroom, criticize a judicial officer concerning his or her qualifications, and reorganize the Commission on Judicial Discipline contained multiple subjects. The initiative carried a broad title, "Concerning Judicial Officers", and a following trailer. The court held that many of the initiative's provisions sought to achieve purposes that bore no necessary or proper connection to the qualifications of judicial officers, the sole purpose argued by the Title Board. Two justices dissented, saying the majority did not properly construe the proposed initiative liberally. In re 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).

Requirement not satisfied where initiative, with stated purpose of establishing state judicial qualifications, served separate and discrete purposes unrelated to judicial officer qualifications, including setting judge per district ratio; conferring absolute immunity upon judicial critics, limiting powers of Judicial Discipline Commission, and depriving home rule cities of control over municipal judges. In re Title, etc., for 1997-98 #95, 960 P.2d 1204, 1208-09 (Colo. 1998).

Requirement not satisfied in proposed initiative that sought to repeal parts of article X, sec. 20 ("TABOR") addressing spending and revenue limits, elections, local responsibility for state-mandated programs, and emergency reserves. Title "Limited Government Spending" stated too broad and general a concept to serve the purposes furthered by the single-subject requirement. In re Proposed Initiative #1996-4, 916 P.2d 528, 532 (Colo. 1996). Accord, In re 1999-2000 #29, 972 P.2d 257 (Colo. 1999) (initiative using the term "judicial personnel" did not bring into one subject the two subjects of judicial officer qualifications and judicial discipline commission member qualifications).

Requirement not satisfied in proposed initiative containing two distinct subjects, tax cuts and mandatory reductions in state spending on state programs, which had separate purposes. While requiring the state to replace affected local revenue in itself is sufficiently related to a tax cut, requiring the state separately to reduce its spending on state programs was not dependent upon and clearly related to a tax cut. Thus, both subjects did not encompass "a single definite object or purpose." In re Title, etc., for 1997-98 ##84-85, 961 P.2d 456, 460 (Colo. 1998).

In proposed initiative dealing with tax cuts and previous voter-approved revenue and spending increases, language of provisions dealing with voter-approved revenue and spending increases was buried within tax cut language. Thus, voters could be enticed to vote for measure in order to enact tax cut while not realizing that passage would simultaneously achieve a purpose not necessarily related to tax cut. Title, etc., for 1997-98 #30, 959 P.2d 822, 826-827 (Colo. 1998).

Proposed initiatives contained at least four separate and unrelated purposes in violation of the single-subject requirement. There was no necessary connection between the initiatives' central purpose of modifying the process by which initiative and referendum

petitions are placed on the ballot and the additional purposes of modifying the content of initiative and referendum petitions that are placed on the ballot, preventing the repeal of the TABOR amendment in a single initiative, and protecting private property rights from the referendum process. In re Proposed Initiative 2001-02 #43, 46 P.3d 438 (Colo. 2002).

Requirement not satisfied in proposed initiatives where there was no necessary and proper connection between (1) establishment of local tax cuts and (2) audit responsibilities that relate to the enforcement of other constitutional provisions. In re Title, etc., for 1999-2000 ##172-175, 987 P.2d 243 (Colo. 1999).

Requirement not satisfied in proposed initiative concerning public water rights where paragraphs dealing with district election had no necessary connection with paragraphs dealing with public trust water rights, notwithstanding that all provisions involved "water". In re Proposed Initiative "Public Rights in Water II", 898 P.2d 1076, 1080 (Colo. 1995).

Rules for Staff of Legislative Council and Office of Legislative Legal Services Review and Comment Filings

Adopted by the Legislative Council on September 6, 2000

1. Legal Authority. These rules are issued pursuant to section 1(5) of article V of the Colorado Constitution and section 1-40-105, Colorado Revised Statutes.

2. Purpose of Rules. The purpose of these rules is to delineate the procedures to be followed by the staff of the Legislative Council and the Office of Legislative Legal Services in preparing comments and conducting review and comment meetings with proponents as specified by the Colorado Constitution and by Colorado Statutes. These rules are intended to balance the interests of proponents, including their interests in a reliable, predictable, and fair process; the public's right to receive full and timely notice of meetings and to participate in them; and the business requirements of the staffs of the two offices. These rules are further intended to advise proponents and interested persons of the procedures to be followed so that they may make more effective use of the review and comment process.

3. Applicability of Rules. These rules apply to the filing of all original petitions, corrected petitions, and amended petitions.

4. Definitions. As used in this rule, the following definitions apply:

(a) "Original petition" means the first submission of the text of a proposed initiated constitutional amendment or initiated law filed by a proponent.

(b) "Corrected petition" means the submission of a proposed initiated constitutional amendment or initiated law that, because of an obvious and plain error, including a grammatical, punctuation, or spelling error or other error of a technical nature, is filed as a replacement for an original petition or amended petition.

(c) "Amended petition" means a revised version of an original petition that contains substantive changes and therefore does not meet the definition of a corrected petition.

(d) "State holiday" means the legal holidays enumerated in or appointed pursuant to section 24-11-101, Colorado Revised Statutes, with the exception of the third Monday in January (observed as the birthday of Dr. Martin Luther King, Jr.) and the third Monday in February (commonly called Washington-Lincoln Day).

5. Designees. The directors of the Legislative Council and the Office of Legislative Legal Services may designate persons on their respective staffs to act in their stead. In addition, the staff of Legislative Council is the designee of the Office of Legislative Legal Services for the purpose of receiving any filings made pursuant to section 1(5) of article V of the Colorado Constitution.

6. Filing Requirements. 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.

7. Time of Filing. A petition shall be filed with the staff of Legislative Council during normal business hours. Normal business hours are considered to be from 8:00 AM through 5:00 PM, excluding weekends and state holidays. Any petition received by the staff of Legislative Council after 5:00 PM, on a weekend, or on a state holiday shall be deemed to be filed on the next regular business day.

8. Methods of Filing - Numbering. (a) Petitions shall be considered filed when a legible, typewritten, complete copy is received by delivery to the staff of Legislative Council in person, by mail, by electronic mail, or by telefax. It is the responsibility of proponents to verify that filings made by mail, electronic mail, and telefax are received by the staff of Legislative Council in legible and complete form.

(b) Petitions shall be numbered by the staff of Legislative Council for purposes of keeping track of each filing.

9. Scheduling of Review and Comment Meetings. In all cases, a review and comment meeting on an original petition or amended petition shall be scheduled with the proponents and the staff of the Legislative Council and the Office of Legislative Legal Services on a date two weeks after the petition is filed with the staff of Legislative Council.

10. Review and Comment Meetings. (a) Review and comment meetings for original petitions will be conducted in the State Capitol Building or the Legislative Services Building. If a review and comment meeting is required for an amended petition, proponents may participate in said meeting via telephone conference call.

(b) The review and comment memorandum prepared by the Office of Legislative Legal Services and the staff of the Legislative Council for the review and comment meeting shall be transmitted to the proponents as soon as possible but no later than 48 hours prior to the meeting date.

11. Corrected Petitions and Amended Petitions Filed Prior to the Review and Comment Meeting. (a) A corrected petition filed with the staff of Legislative Council shall be treated for all purposes as a substitute for the petition that it corrects unless the proponents request that it be treated as an amended petition. A corrected petition shall be considered at the review and comment meeting originally scheduled for the petition it corrects.

(b) If the staff of Legislative Council determines that a document filed as a corrected petition actually constitutes an amended petition, they shall treat it as an amended petition. Staff should make the determination as soon as practicable but no later than 24 hours after the document is filed. The proponents shall be asked if they wish to proceed with both

petitions or to specify the status of the prior petition. The filing date for the amended petition and the date for the review and comment meeting shall be determined in accordance with these rules.

12. Changes Made Subsequent to the Review and Comment Meeting. After the review and comment meeting, if proponents make substantial amendments or revisions to a petition that are not in response to comments made by the staff of Legislative Council or the Office of Legislative Legal Services, the proponents shall file an amended petition with the staff of Legislative Council for the purposes of scheduling and holding a review and comment meeting. The review and comment meeting shall be scheduled in accordance with Rule 9 on a date two weeks after the amended petition is filed. If the directors of Legislative Council and the Office of Legislative Legal Services have no additional comments on the amended petition, they shall so inform the proponents in writing as soon as practicable, but in no case later than 72 hours after the filing, and the review and comment meeting shall be canceled. Notice of the filing of such an amended petition and the conclusion of the directors that they have no additional comments and that a review and comment meeting has been canceled shall be posted in the office of the staff of Legislative Council and communicated to any party who has provided an address to the staff of Legislative Council for such purpose.

13. Changes Made Subsequent to a Title Board Meeting. (a) The staff shall accept a filing as an amended petition if the Title Setting Board has made a determination that it does not have jurisdiction to set a title for the petition because the proponents have made substantial amendments or revisions to the petition following the review and comment meeting and the amendments or revisions are not in response to comments made by the staff of Legislative Council or the Office of Legislative Legal Services.

(b) If the staff of Legislative Council is informed of or is aware that a petition contains changes that have been made to achieve a single subject following a determination by the Title Setting Board that the petition contains more than one subject, the staff shall inform the proponents that they should file the petition directly with the office of the Secretary of State unless the changes involve more than the elimination of provisions to achieve a single subject.

(c) In addition, the staff shall accept a filing as an amended petition if the Title Setting Board has previously determined that the petition contains more than one subject and the proponents have changed the petition and resubmitted it to the Title Setting Board and the Board has subsequently made a determination in accordance with section 1 (5.5) of article V of the Colorado Constitution that the changes involve more than the elimination of provisions to achieve a single subject or that the changes are so substantial that a review and comment meeting is in the public interest.

(d) If proponents decline to file a petition directly with the Secretary of State because they want it treated as an original petition or if they have determined that it contains changes that involve more than the elimination of provisions to achieve a single subject, the petition

shall be accepted and treated as an amended petition.

(e) All amended petitions accepted for filing in accordance with this rule shall be scheduled for a review and comment meeting in accordance with Rule 9 on a date two weeks after the amended petition is filed. If the directors of Legislative Council and the Office of Legislative Legal Services have no comments on the amended petition, they shall so inform the proponents in writing as soon as practicable, but in no case later than 72 hours after the filing, and the review and comment meeting shall be canceled. Notice of the filing of such an amended petition and the conclusion of the directors that they have no additional comments and that a review and comment meeting has been canceled shall be posted in the office of the staff of Legislative Council and communicated to any party who has provided an address to the staff of Legislative Council for such purpose.

14. Computations of Time. For purposes of these rules, time shall be computed as provided in sections 2-4-105 and 2-4-108, Colorado Revised Statutes. "Two weeks" means 14 consecutive days. The counting of any time period included in these rules excludes the day a petition is filed with the staff of Legislative Council. When the final day in a counting period falls on a state holiday, the counting period is extended so that the final day falls on the next regular business day following a state holiday. The following examples illustrate how time periods are calculated:

(a) When a petition is filed on Monday, the 1st of the month, the review and comment meeting shall be held on Monday, the 15th of the month. If Monday the 15th is a state holiday, the review and comment meeting shall be held on Tuesday the 16th.

(b) When a petition is filed on Friday, the 1st of the month, the review and comment meeting shall be held on Friday, the 15th. When Friday the 15th is a state holiday, the review and comment meeting shall be held on Monday, the 18th.

(c) When a petition is filed with the staff of Legislative Council after 5:00 PM on Friday, the 1st of the month, and Monday, the 4th of the month, is a state holiday, the petition shall be deemed to be filed on Tuesday, the 5th of the month. The review and comment meeting shall be held on Tuesday, the 19th.

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