

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Donald Creager III and John Ebel
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 27, 2020
SUBJECT: Proposed initiative measure 2021-2022 #6, concerning Petitions

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution and the Colorado Revised Statutes appear to be:

1. To modify the following aspects of the petition process: filing procedures, deadlines, government administration, signature form and review, number of signatures required, protest and appeals, voter information, enforcement, and election timing;

2. To extend initiatives and referenda to counties and other local governments;
3. To repeal the single-subject requirement, yet still have it remain in effect for petitions;
4. To expand the Colorado Supreme Court's role in reviewing petitions;
5. To restrict the Colorado General Assembly's authority to make bills petition exempt; and
6. To eliminate the Legislative Council Staff's Blue Book.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.
4. Given that the initiative includes proposed statutory changes, these changes may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?

The following questions relate to section 1 (1) of the proposed initiative and the definition of "subjects."

5. What is the effect of the first sentence? Does it mean that the people have the right to bring initiatives and referenda?
6. Given that there is only one secretary of state, should the first "any" in the second sentence only modify "county election office"?
7. What does "handle any state or local petition" mean?
8. Does this provision change when local elections may occur? For local issues, if only county election offices are authorized to handle a local petition, does that mean that all local petitions must be decided at coordinated elections administered by a county? So, for example, if there is a petition related to a metro district, the county would need to conduct the election and the metro district would be prohibited from conducting it?
9. By requiring any county election office to handle any state or local petition, it would appear that citizens could file a petition for an initiative to amend Denver's ordinances in Durango, or vice versa, and the City of Golden would be required to handle a state petition. Is that your intent?
10. Some special districts and other local governments have boundaries in more than one county. What is the county election office for those districts?
11. Can the secretary of state handle a local petition?
12. The following questions and comments relate to the draft reviews:
 - a. What is a draft review?
 - b. Who conducts the review and who participates in it?
 - c. When does a state initiative begin? Does a state initiative begin when it is filed with the secretary of state or a county election office?
 - d. What is meant by "four days after state initiatives begin"? Is it four calendar days? If so, are other deadline days in the proposed initiative also calendar days?
 - e. Does the draft review process apply to all kinds of initiatives including local initiatives?
 - f. Can the petition filer make any changes based on the draft review? Can the petition filer make any changes at any other point in this new petition process?
13. The following questions and comments relate to the setting of a ballot title:

- a. Currently, the Supreme Court requires that a ballot title for an initiative include the single subject and identify the central features of the measure. Do you intend to change that standard?
 - b. Is there any requirement for what must be included in a ballot? Are the requirements different for local and state ballot titles?
 - c. Who sets a ballot title? Does the same person or organization set both local and state ballot titles?
 - d. Must notice be given before a ballot title is set? If so, who shall give that notice and who shall it be given to?
14. Section 4 of the proposed measure repeals Article V, Section 1 (5.5) of the Colorado Constitution, which prohibits a petition from having more than one subject and requires the single-subject to be expressed in its title, but section 1 (1) of the proposed measure states "the state single subject rule" remains in effect.
- a. What is the "state single-subject rule"?
 - b. Why repeal the single-subject rule in section 4 of the proposed initiative, if it is supposed to remain in effect?
 - c. How can the single-subject rule remain in effect if it is being repealed by the measure?
 - d. What part of the "state single subject rule" remains in effect: The prohibition on a measure having more than one subject, the requirement that it clearly be stated in the ballot title, the prohibition on setting a title with more than a single-subject, the penalty that any part of the measure that does not fit under the single subject is void, permission for proponents to revise a measure by eliminating provisions, or some combination of these provisions?
15. What types of protests may be made about a ballot title?
16. Who can file a protest for a ballot title?
17. Do references to the "supreme court" mean the Colorado Supreme Court?
18. If the Colorado Supreme Court fails to make a timely decision on a ballot title or single-subject protest, is the ballot title valid as originally set?
19. Is 6 days enough time for the Colorado Supreme Court to decide ballot title protests?

20. In enforcing the state single-subject requirement, can the Colorado Supreme Court reject a measure that has more than one subject or is it required to remove the extra subjects until there is just one?
21. Is it your intent that after a ballot title is set, the Colorado Supreme Court must make changes to the ballot title rather than remanding the matter back to a county election office or the secretary of state for it to modify the title in accordance with its order?
22. If a measure is not challenged within the 2-day deadline and is then approved by voters, can there be single-subject challenge after the election?
23. Given the quick deadlines, that protests apply to local ballot titles, and the thousands of local governments in the state, will the Colorado Supreme Court be able to handle the additional workload that may be required by the proposed initiative?
24. In the second to last sentence, "four days later" is after what day? Does it mean four days after the ballot is reset or upheld by the Colorado Supreme Court?
25. Who delivers a sample petition section and to whom?
26. What is meant by "adapting 1992 forms"? "Adapt" means "to make fit (as for a new use) by modification," and so this appears to allow a county election office or the secretary of state to modify the 1992 forms, but it is unclear how much modification is permitted.
27. "Any adult" is authorized to "circulate or file any petitions." What is meant by "any adult"? Was it your intent to allow residents and nonresidents of Colorado and citizens and noncitizens of the United States to and file and circulate petitions? May a resident of one county file and circulate a petition in another county?

The following questions and comments relate to section 1 (2) of the proposed initiative.

28. What is an entry?
29. Who is responsible for annually determining the number of required entries? More specifically, who is required to make this determination for local governments?
30. Is the "120,000 entries at first" a limit on the total number of entries required for a state constitutional amendment that applies until potentially modified every four years? Does the limit apply to any other kind of initiative?

31. Constitutional amendment entries shall be "5% of district active registered electors, up to 120,000 entries at first," "may increase 9,000 every four years," and "shall remain 50% more than statutory entries." How do all of these requirements work together?
32. May constitutional amendment entries change by a number other than 9,000 every four years?
33. Does the phrase "shall remain 50% more than statutory entries" mean that the required number of entries for a statutory change shall increase in proportion to the number of entries required for a constitutional amendment? If so, must this proportion ensure exactly a 50% difference between the two?
34. Are all of the fields on an entry line referenced in the third sentence required?
35. An address typically includes the town, city, or county. Since you have separately listed the address in the district and the town, city, or county as permissible in an entry line, do you mean the street address?
36. If random or statistical entry sampling is inadmissible, is a line-by-line analysis the only permissible way to verify entries?
37. Is a district required to verify the entries?
38. What is an "affidavit defect"?

The following questions and comments relate to section 1 (3) of the proposed initiative.

39. Who files the required entries and with whom are they filed? Must they be filed with a neutral election office?
40. What is a neutral election office and who determines it? For example:
 - a. What is a neutral election office for an initiative to change a City and County of Denver ordinance?
 - b. What is a neutral election office for South Denver Metro Fire District?
 - c. What is a neutral election office for a state initiative?
41. Who is responsible for the cost of verifying the signatures?
42. Does counting the entries include verifying their validity?
43. To what does the "two days later" in the third sentence refer? Does it mean two days from when the neutral election office reports on the entries or two days from the end of the ten day period in the second sentence?

44. Who is a "foe"? How does one become a "foe"? Can more than one person be a "foe"?
45. What types of protest are permitted under this proposed subsection?
46. Will a protest involve any questions of fact? If so, is the Colorado Supreme Court, which is an appellate court, the best court to take evidence and initially consider a protest?
47. Have you considered whether the Colorado Supreme Court will be able to add the additional work required by this subsection and subsection (1) of this section to its current workload?
48. Are the "reports" referenced in fourth sentence the Colorado Supreme Court's determination about a protest? If not, what are they?
49. To what does the "ten days later" in the fourth sentence refer? Is it ten days from when a protest is made in the Colorado Supreme Court or ten days from when the two day period referenced in the third sentence runs?
50. If signers are "presumed truly addressed district registered electors," does that mean that entries must be presumed valid while being counted and reported? Or is that just a standard for the Colorado Supreme Court to apply?
51. How can the standard of a "presumed truly addressed district registered elector" be overcome?
52. What does "invalidity" mean for purposes of the last sentence? When is "invalidity" achieved in order to begin the 15 day cure period referenced in the last sentence?
53. Does the phrase "with two days each for reporting and supreme court filing" mean that a neutral election office must count and report cured entries within two days and that filers and foes have two days to protest these results from the date they are reported?
54. Do the reporting and filing periods referred to in the last sentence count as part of the 15 day cure period?

The following questions and comments relate to section 1 (4) of the proposed initiative.

55. What does the first sentence of this subsection mean?
56. What does "first filed" mean? Does it include any protest, court proceeding, or cure period?
57. How does this deadline work for local governments that conduct elections on a date other than the statewide November election date?
58. What is a "topic"?
59. What are "election notice comments" and what does it mean for them to apply?

60. Is there any information required in the election notice comments?
61. Is there any review of the election notice comments? If not, what happens if the comment is incorrect?
62. Who determines which websites to use as filer and foe websites?
63. Given the requirement for the ballot, must a person who wants to bring an initiative also create a website?
64. What happens if there are no foe websites?
65. Is there any requirement about what information a filer or foe website must contain? Is there any check on the veracity of the statements on those websites?
66. Is the website deadline the "August 2" prior to the November election on which the initiative will be on the ballot?
67. If local petition elections are not limited to November elections, then how does the August 2 deadline work? If they are limited to November elections, does the deadline work the same as for the state?
68. What is the purpose and effect of the last sentence in proposed subsection (4)?

The following questions and comments relate to section 2 of the proposed initiative.

69. The General Assembly currently enacts bills with petition clauses. Do you intend those clauses to be used on all but the 10 or fewer identified bills?
70. Can the 9 non-budgetary bills be on any topic? Can they be "state petition-exempt" for any reason?
71. Is the "one budget" the general appropriation bill that is described in article V, section 32 of the Colorado Constitution?
72. Using this example—"Shall section 3 of HB21-0000 be rejected?"—are the following statements correct:
 - a. If a majority of voters vote "yes," then section 3 is rejected and does not become law and later bills on that topic require voter approval; and
 - b. If a majority of voters vote "no," then section 3 becomes law and there are no limits on the topic of section 3?
73. In relation to the last sentence of this section:
 - a. What are "rejected topics"?
 - b. Is a topic broader than the single-subject that is expressed in the ballot title for an initiative?
 - c. If the voters reject a bill that made a certain act a felony in 2021, would all future bills creating felonies be required to have voter approval?

- d. How does this sentence interact with the sixth sentence of section 4 of the proposed initiative?

The following questions and comments relate to section 3 of the proposed initiative.

74. What is the scope of these definitions?

75. For purposes of the definition of "districts":

- a. What is an example of an authority that you intend to include in the definition?
- b. The Colorado channel authority, which is created in section 24-49.9-101, C.R.S., is a body corporate and a political subdivision of the state governed by a board. How would petition rights work with this authority?
- c. Are home-rule governments a type of local government or different from a local government?
- d. Why separately identify "home rule governments"?
- e. Article XX sec. 5 of the Colorado Constitution requires that a home rule municipality's charter provide for "the initiative by the qualified electors of such ordinances as they may by petition request." Does the proposed initiative conflict with the power of a home rule municipality to set its own referendum and initiative procedures in its charter?

76. For purposes of the definition of "petitions":

- a. What does the phrase "on legislative policy" mean? How does this change the definition?
- b. Is an initiative or referenda "begun" when it is first submitted to a district? If not, what does "begun" mean? Is this the same manner that "state initiatives begin" in the third sentence of subsection (1) of section (1) the proposed measure?
- c. Does any adult include residents and nonresidents of Colorado and citizens and noncitizens of the United States?
- d. How does the phrase "any time" expand or change the definition?
- e. Why have you exempted zoning measures from the proposed initiative?

The following questions and comments relate to section 4 of the proposed initiative.

77. Do you intend for this measure to repeal all of the constitutional provisions identified? If so, it would be helpful for voters to show the provisions that are being repealed using the format described in the technical comments.

78. Does the language "except the first sentence of (4)(a), (7.3), and (8)" exclude the first sentence of (7.3) and the first sentence of (8) or the entirety of (7) and the entirety of (8)?
79. If there is no constitutional requirement for the Blue Book, is the General Assembly free to establish the requirements for any statewide ballot information booklet?
80. Given that article V, section (1) (7.5) of the Colorado Constitution is repealed by the first sentence of this section, what is the effect of the second sentence of this section?
81. Is it your intention that the state enforce petition rights for all of the local districts in the state?
82. What is a "public access area"?
83. Does the \$3,000 fine apply after a criminal conviction?
84. Is the italicized language of "Government hostility to petitions must cease." an instruction with a legal effect to someone? If so, to whom is the instruction being made and what is the instruction?
85. The following questions and comments relate to the fifth sentence in section 4:
 - a. Does this language only apply to hearings and filings identified in this article?
 - b. Does "hearings" include any hearings that the Colorado Supreme Court conducts in accordance with the proposed initiative, so that if the Colorado Supreme Court has to conduct a hearing, they would need to permit people to participate by telephone?
 - c. Do you mean that any participant in a hearing or a person who files a document may use a telephone or email, as applicable?
86. Is the following correct: If the voters approve a provision in a petition, then that provision can only be amended by a bill that is referred to and approved by the voters or through an initiative approved by the voters?
87. What are the conflicting laws referred to when it is stated that the proposed initiative shall "repeal all conflicting laws"?
88. Who will determine if a law conflicts with the proposed initiative and should be repealed and how will they make that determination?
89. What is the effect of the second to last sentence?
 - a. Does this mean "any issue" related to the right to petition or any issue whatsoever?
 - b. In what jurisdiction will this standing apply?

- c. Does this apply to residents and nonresidents of Colorado and citizens and noncitizens of the United States

90. What do the "its" and "this" in the final sentence refer to?

91. What does "literal meaning," as referred to in the last sentence, mean?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.).

For example:

SECTION 1. In Colorado Revised Statutes, **add** 1-40-137 as follows:

2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be in bold-face type.
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

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

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

The proponents have placed sections within the newly created section 1-40-137. Please consider replacing “**Section 1. Procedures.** (1) PETITION RIGHTS SHALL EXIST...” with “(1) **Procedures.** (a) PETITION RIGHTS SHALL EXIST...” and so on throughout the section.

4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes. *Italics* is not used per standard drafting practice.
5. It is standard drafting practice to write digits as words. For example, “5%” should be written as “five percent”.
6. It is important for clarity to make reference to the Colorado Constitution and C.R.S. in a standard format. For example, “Article V section (2)-(10)” should read “sections (2) to (10) of article V of the state constitution”.