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Colorado General Assembly

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MEMORANDUM

TO: Kim Monson and Marty Neilson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 12, 2023
SUBJECT: Proposed initiative measure 2023-2024 #43, 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 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 initiative and referenda to all districts;
3. To expand the Supreme Court's role in reviewing petitions;
4. To restrict the Colorado General Assembly's authority to make bills petition-exempt.
5. To repeal all laws that conflict with the proposal;
6. To impose a penalty of \$3,000 on people who stop, cite, or arrest carriers or signers who peaceably petition in public access areas;
7. To allow petitioners to use telephone and email; and
8. To require that changing any voter-approved petition language also requires voter approval.

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?

The following questions relate to the portion of section 1 (1) of the proposed initiative that appears to be related to petition reviews:

3. The first sentence states, "Petition rights shall exist in all districts." What are the enumerated petition rights this sentence is referring to and conferring?
4. What offices does "state or county election offices" include?
5. In what capacity are state and county election offices required to provide aid to petitions? What kind of aid are the election offices required provide?
6. In the third sentence, what does "[s]tate texts" refer to?
7. If state texts are required to be reviewed in four days, at what point in the draft review process does the four-day period commence?
8. Who is responsible for reviewing state texts within four days?
9. Are the "four days" calendar days or do they exclude holidays and weekends?

The following questions relate to the portion of section 1 (1) of the proposed initiative that appears to relate to ballot title setting:

10. After a petition is reviewed, what is the process, under this proposed initiative, in between the review and the ballot title setting?

11. When does the six-day period during which a ballot title must be set commence?
12. Under the proposed initiative, who sets a ballot title? Are both local and state ballot titles set by the same entity or person(s)?
13. Is notice required to be given before a ballot title is set? If so, whose duty is it to provide notice and to whom?
14. 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?
15. The proposed initiative requires that ballot titles up to 60 words be set within six days. Under the proposed initiative, what, if any, ballot title setting requirements are there for ballot titles over 60 words? Are such ballot titles permissible?

The following questions relate to the portion of section 1 (1) of the proposed initiative that appear to relate to ballot title protests:

16. The proposed initiative states that "[a]ll title protests shall be filed in the supreme court two days after setting and decided six days later."
 - a. What types of protest may be made about a ballot title?
 - b. Who can file a protest for a ballot title?
 - c. Do references to the "supreme court" throughout the measure mean the Supreme Court?
 - d. If the Supreme Court fails to make a timely decision on a ballot title or single-subject protest, is the ballot title valid as originally set?
 - e. Is six days enough time for the Supreme Court to decide ballot title protests? Does the supreme court have to issue a decision regarding a ballot title protest exactly six days after the protest was filed, or within six days of the protest being filed?
 - f. Given the quick deadlines, will the Supreme Court be able to handle the additional workload that may be required by the proposed initiative, in particular if the supreme court is required to review protests of local ballot titles in addition to protests of state ballot titles within six days?
 - g. In enforcing the state single-subject requirement, can the Supreme Court reject a measure that has more than one subject under this proposed initiative?
 - h. If a title protest for a measure is not filed within the two-day deadline and the measure is then approved by voters, can there be single-subject challenge after the election?
 - i. In the penultimate sentence of section 1, what do "1992 forms" refer to?
 - j. What are sample petitions and who is responsible for producing them?

- k. The last sentence of section 1 states that "[a]ny adult may carry or file any petition." Is it your intent to allow nonresidents of Colorado and noncitizens of the United States to file and circulate petitions? May a resident of one county file and circulate a petition in another county? Are there any requirements that petition circulators must satisfy?

The following questions relate to section 1 (2) of the proposed initiative:

17. The proposed initiative states that "[i]nitiative entries shall top 5% of district active registered electors, up to 120,000 entries at first. State entries may increase up to 6,000 every four years." These two sentences provide little context to the initiative process and petition requirements. Are you referring to the number of signatures that must be obtained for an initiated measure before it can appear on the ballot? If not, what is the context of the first two sentences in section 1 (2)? Regardless, please consider clarifying these sentences.
18. Proposed section 1 (2), states in relevant part that "[i]nitiative entries shall top 5% of active district registered electors, up to 120,000 entries at first." This likely contradicts the requirements of article V, sections 1 (2), (2.5), and (3) of the Colorado constitution which require, in addition to other requirements, that the number of entries equal "at least five percent of the total number of votes cast for all candidates for the office of secretary of state in the previous general election...". If there is a contradiction, would the requirement in the Colorado constitution control and render the language in the proposed initiative ineffective?
19. What is an entry line?
20. Is it the proponents' intent to require that entry lines include a printed name, signature, date, registered elector home address, and town, city, or county? Is this all required to be included or it is permissible? To clarify, please consider stating that "[e]ntry lines *may* list printed names..." or that "[e]ntry lines *must* list printed names..."
21. Article V, section 1 (6) of the Colorado constitution states that "[t]he petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state". Does this contradict the requirement of proposed section 1 (2), which limits what must be on the "entry lines"?
22. What is the prohibition on random or statistical entry sampling in reference to?
23. Are districts required to verify entries? If so, what office or official is charged with this duty?
24. What is an "affidavit defect"?

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

25. Who files the required entries and with whom are they filed? Must they be filed with a neutral election office? Does the first sentence of this subsection require that "local entries" have 120 days to collect signatures and "state entries" have 365 days to collect signatures?
26. Does "[i]n five days" mean within five days of filing a petition?
27. What is a neutral election office and who determines what qualifies as such an office?
28. What is "minimal visual compliance"?
29. To what does the "[t]wo 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 five-day period in the second sentence?
30. What types of protest are permitted under this proposed subsection?
31. Will a protest involve any questions of fact? If so, is the Supreme Court, which is an appellate court, the best court to take evidence and initially consider a protest?
32. Have the proponents considered whether the Supreme Court will be able to add the additional work required by this subsection (3) and subsection (1) of section 1 of the proposed initiative to its current workload?
33. To what does the "10 days later" in the fifth sentence refer? Is it ten days from when a protest is made in the Supreme Court or ten days from when the two-day period referenced in the third sentence runs?
34. What is a "truly addressed district elector"? If signers are "presumed truly addressed district registered electors", does that mean that signatures must be presumed valid while being counted and reported? Or is that just a standard for the Supreme Court to apply?
35. How can the standard of a "presumed truly addressed district registered elector" be overcome?
36. What does "[i]nvalidity" mean for purposes of the last sentence? When is "[i]nvalidity" achieved in order to begin the 15-day cure filing period referenced in the last sentence?
37. What process would be used to cure a petition? What office or official would be in charge of this process?

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

38. Proposed section 1-40-137 sec. 1 (4), states that "[f]ilings by August 1 shall enable ballot issues each November *on any topics*." Does this contradict article V,

- section 1 (4)(a) of the Colorado constitution that states, "All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election..."? Does this provision conflict with the requirements of section 1-41-102, C.R.S., which specifies that only issues arising under section 20 of article X of the state constitution will appear on the ballot in an odd-numbered year?
39. What are "[e]lection notice comments" and what does it mean for them to apply?
 40. Is there any information required in the election notice comments?
 41. Is there any review of the election notice comments? If not, what happens if the comment is incorrect?
 42. What does it mean for a ballot to print a filer and foe website? Does this mean the websites must be printed on the ballot?
 43. What is a "filer" website and what is a "foe website"?
 44. Who determines which websites are used as filer and foe websites?
 45. Given the requirement for the ballot, must a person who wants to bring an initiative also create a website?
 46. What happens if there are no foe websites?
 47. Is there any requirement about what information a filer or a foe website must contain? Is there any check on the accuracy of the statements on those websites?
 48. What does it mean for the websites to be "listed by August 1"? Is the website deadline the August 1 prior to the November election on which the initiative will be on the ballot?
 49. If local petition elections are not limited to November elections, then how does the August 1 deadline work? If they are limited to November elections, is the deadline the same for local and state petition elections?

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

50. Can the nine non-budgetary bills that are exempt from a petition be on any topic? Can they be "state petition-exempt" for any reason? What does it mean to be exempt?
51. Is the "one budget" the general appropriation bill that is described in article V, section 32 of the Colorado constitution?
52. What does the second sentence which states, "Filing 60,000 entries 90 days after the session shall delay effective dates until elections" mean?
53. Does the statement, "Filing 60, 000 entries 90 days after the session shall delay effective dates until elections" contradict the statement in article V, section 1 (3) of the Colorado constitution that "[t]he filing of a referendum petition against

any item, section, or part of any act shall not delay the remainder of the act from becoming operative"?

54. Using this example – "Shall section 3 of HB23-0000 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?
55. What are "rejected topics"?
56. If the voters reject a bill that made a certain act a felony in 2023, would all future bills creating felonies be required to have voter approval?
57. How does this last sentence interact with the last sentence of section 4 of the proposed initiative?

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

58. What is the scope of these definitions?
59. For purposes of the definition of "[d]istricts":
- a. What is an example of an authority that you intend to include in the definition? What types of local governments do 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 type of authority?
 - c. Are home rule governments a type of local government or different from a local government?
 - d. Why are "home rule governments" separately identified?
 - e. Article XX, section 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?
 - f. The proposed initiative defines districts to include "all local and home rule governments...". Article V, section 1 (9) of the Colorado constitution reserves the power of determining how the initiative and referendum power are exercised for cities, towns, and municipalities. Does this mean that a municipality could overrule the requirements of proposed section 1-40-137, C.R.S.?

60. For purposes of the definition of "[p]etitions":
 - a. What does the phrase "on legislative policy" mean?
 - b. Does any adult include residents and nonresidents of Colorado and citizens and noncitizens of the United States?
 - c. How does the phrase "any time" expand or change the definition?
 - d. Why are zoning measures exempted from the proposed initiative?

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

61. What are the conflicting laws referred to when it is stated that the proposed initiative "repeals all conflicting laws"? Does this include conflicting constitutional provisions? If so, how would this initiated measure, that amends the Colorado Revised Statutes, repeal one or more constitutional provisions without the electors voting on whether to repeal those statutory provisions?
62. Who will determine if a law conflicts with the proposed initiative and should be repealed and how will they make that determination?
63. What is a "public access area"?
64. Which courts have jurisdiction over cases regarding carriers or signers who are stopped, cited, or arrested? Does the \$3,000 fine apply after a criminal conviction?
65. Does "carrier" have the same meaning as "petitioner" or does it mean something else?
66. Is it your intent that the state enforce petition rights for all of the local districts in the state?
67. What is the context of the second to last sentence that permits petitioners to use telephones and emails? Would this provision allow petitioners to gather signatures over the phone or via email? If so, how would the signatures be obtained?

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 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 may consider relabeling subsections (1), (2), (3), and (4) of section 1 of the proposed initiative as subsections (a), (b), (c), and (d).

4. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes.
5. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."

6. It is standard drafting practice to write digits as words. For example, "5%" should be written as "five percent" and "120 days" should be "one hundred and twenty days".
7. It is standard drafting practice to have the definitions section at the beginning of a provision. Would you consider moving the definitions in section 3 to section 1 and renumbering subsequent sections so that the reader knows what the definitions are at the beginning of the proposed initiative?
8. The following is an example of the standard drafting language used for creating a definition: "As used in this article, unless the context otherwise requires, 'elective' means an office subject to regular, special, or retention election, even if term-limited".