

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Nathan Clay and Mark Tejada

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 19, 2019

SUBJECT: Proposed initiative measure 2019-2020 #80, concerning approval voting

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.

An earlier version of this proposed initiative, proposed initiative 2019-2020 #58, was the subject of a memorandum dated March 19, 2019. Proposed initiative 2019-2020 #58 was discussed at a public meeting on April 2, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purpose of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To require the use of approval ballots in elections on which an elector can select any number of candidates on a ballot and the winner is the most-approved candidate or, in the case of a multiple-seat election, the winners are the most-approved candidates.

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? Proposed section 1-7-1101 (2) states that part 11 is effective January 1, 2022, but the initiative does not provide an effective date for the rest of the measure. If the other sections of the initiative take effect upon the proclamation of the governor, but the new part 11 takes effect January 1, 2022, will this create a conflict in the laws governing elections conducted between the two effective dates?
3. Under section 1-40-105.5, C.R.S., 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. The proposed definition of "political contest" refers to a "political seat." What do the proponents mean by "political seat"? Does the term include all elected offices? Or does it refer only to a subset of elected offices, such as those decided in partisan elections?
5. Proposed section 1-7-1103 (1) states that "[a]ll elections within the state of Colorado...will...use approval ballots." Articles 1 through 13 of title 1, C.R.S., are known as the "Uniform Election Code" or "the code." Under section 1-1-102, C.R.S.:
 - (1) This code applies to all general, primary, congressional vacancy, school district, special district, ballot issue, and other authorized elections unless otherwise provided by this code. This code applies to any municipal election conducted as part of a coordinated election except to the extent that this code conflicts with a specific charter provision. Any municipality may provide by ordinance or resolution that it will utilize the requirements and procedures of this code in lieu of the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S., with respect to any election.
 - (2) For elections that must be coordinated pursuant to section 20 (3)(b) of article X of the Colorado constitution where the enabling legislation does not require that the electors be registered electors, the political subdivision may conduct its elections pursuant to the enabling legislation but it must assure that the notice required by part 9 of article 7 of this title is provided to the election official responsible for publishing the ballot issue notice.

Do the proponents intend "[a]ll elections within the state of Colorado" to mean elections conducted under the code? Or do the proponents intend for the new provisions to also apply to elections conducted under the "Colorado Local Government Election Code," article 13.5 of title 1, C.R.S., and elections conducted under the "Colorado Municipal Election Code of 1965," article 10 of title 31, C.R.S.?

6. Proposed section 1-7-1103 (1), C.R.S., states that "[a]pproval ballots will have two write-in slots." This requirements appears to create potential conflicts with section 1-5-407 (3), C.R.S., and, to the extent the measure applies to the "Colorado Local Government Election Code," section 1-13.5-902 (4), C.R.S. How should these conflicts be reconciled?

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. 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."
2. For clarity, it may assist the proponents to follow the same standard format for all definitions throughout the proposed initiative. For example, proposed section 1-7-1102 should read:

1-7-1102. Definitions. AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPROVAL BALLOT" MEANS A BALLOT USING AN ELECTORAL SYSTEM WHERE EACH ELECTOR MAY SELECT (APPROVE) ANY NUMBER OF CANDIDATES. THE WINNER IS THE MOST-APPROVED CANDIDATE.

3. Please correctly number the sections within the newly created part 11 of article 7 of title 1.
4. In section 1, would the proponents consider striking the word "a" before the new word "THAN" for clarity?
5. Sections 1 and 2 of the initiative amend the same statutory section. The two sections can be combined with one amending clause, reading "In Colorado Revised Statutes, 1-1-104, **amend** (23.4); and **add** (23.7) as follows:"