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Colorado General Assembly

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MEMORANDUM

TO: Margot Herzl and Anna Omsberg
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 20, 2021
SUBJECT: Proposed initiative measure 2021-2022 #37, concerning conduct of elections

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

1. To revise Colorado laws and procedures concerning voter registration and voting.
2. To establish new election security measures.

3. To establish new methods of receiving and counting ballots.
4. To establish new elections offenses and punishments for those offenses.

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 paragraph numbered (106) states that article 1-16 is effective in 2023. Does this mean the measure is intended to take effect on January 1, 2023?
3. The provisions in the initiative significantly overlap with or conflict with the "Uniform Election Code of 1992," articles 1 to 13 of title 1 of the Colorado Revised Statutes (code). Is it the proponents' intent that this initiative repeals and entirely replaces Colorado's existing election laws? Or do the proponents intend that existing law would be amended to conform and harmonize with the initiative provisions?
4. Paragraph (101) states that "voter rolls shall close 25 days before elections." What does it mean for voter rolls to "close"? Is the intent to prohibit all new registrations for the 25-day period before an election? Or can people register during that time but are not eligible to vote in the upcoming election?
5. What does it mean for new registrants to "sign in person or by video"? Does this mean people can only register to vote in person or by video? Are there security or other technical requirements for video registration?
6. What are elector cards? Who is responsible for creating and mailing them? What is the process for applying for and receiving them? Is a new elector card mailed to every elector before every election, or are they issued only once after a person registers?
7. What are the requirements for elector affidavits of absence or illness as described in paragraph (102)? What is the deadline for filing them? Who does the elector file them with?
8. Paragraph (102) says that an elector receives only one paper ballot. What happens if the elector makes a mistake and needs a new ballot?

9. Paragraph (102) states that polling places must be open for 12 hours on election day, and that the hours shall not be advanced "but electors in line may vote." Does this mean that everyone who is in line by the end of the 12 hours is able to vote, no matter how long it takes?
10. Paragraph (102) requires that each ballot shall be reported instantly to a central computer, but paragraph (103) requires that no "computers, or other devices shall allow...access to any internet connection." How are these two requirements reconciled? How can the ballots be reported to a central computer if there is not internet access on computers at the polling place?
11. Paragraph (102) requires that ballots list a website for each candidate and not a political party. Is it the proponents' intent to eliminate partisan elections? What is the purpose of listing a website on the ballot? Are electors allowed or encouraged to use their devices to access the internet while voting?
12. Paragraph (102) says that only paper ballots may be cast, counted, or audited, but also states that "[c]omputer and paper ballot records shall be kept six years." What are the computer ballot records referenced here and how would they be used?
13. Under current law, ballots cast by uniformed and overseas citizens are counted if they are returned by the eighth day following the election. Does paragraph (103) prohibit counting the ballots of these individuals if they arrive after election day?
14. Paragraph (103) requires that the total ballots cast must be stated four hours after polls close. What happens if the poll workers cannot complete counting within that time?
15. Does the statement "counting continues until finished" prohibit poll workers from taking breaks during counting of ballots? Would this require having more workers at the polls and increase the costs of the election?
16. Does the last sentence of paragraph (103) prohibit the use of machine counting devices? Is it the proponents' intent to require all ballots and all races to be counted manually?
17. Paragraph (104) states that "voter signatures shall be received, verified and initialed by two bi-partisan" workers. What does this mean? Where does the elector sign and how is the signature received?

18. Paragraph (104) requires that "[f]irst results shall be completed by five hours after polls close." What are first results? What happens if counting on those results cannot be completed within five hours?
19. Paragraph (104) states that "[s]tate and federal ballot lines reviewed shall be enlarged 10X, held two seconds, and recorded on video." When would this procedure be followed? What is the purpose of this process? How would the video be used, and how long must it be stored?
20. What are the manual recount, full canvas, and audit processes referenced in paragraph (104)? Is the intent to use the procedures in existing law?
21. Paragraph (104) prohibits a ballot being printed, sent, or counted outside the state. Does this prohibit uniformed and overseas citizens from receiving ballots and voting? If so, does it violate federal law requiring those voters to receive ballots and have the opportunity to vote?
22. Paragraph (104) states that if there are more ballots cast than registered electors in the district, the election is void. What is a "district" for purposes of this statement? How are the races and ballot issues in that district decided if the election is void? Is this remedy unconstitutional because it deprives people of their constitutional right to vote?
23. Paragraph (104) states that "Current voter roll discs are free." What are current voter roll discs?
24. Paragraph (105) allows candidates for vacancies in the United States Senate or congress to "file 2,000 or 16,000 registered district elector entries." What are registered district elector entries? What does it mean for them to be treated "like initiative entries"?
25. Paragraph (106) states that duplicates shall be deleted from the voter rolls weekly, except for "real property tax electors." What are "real property tax electors" and why are they exempt from having duplicate registrations removed?
26. Paragraph (106) calls for inactive records to be deleted every three years. How are inactive records defined?
27. What does it mean to "recheck" voter roll records monthly?
28. What is the purpose of prohibiting amendments to the election laws and procedures in general election years?

29. Paragraph (106) states that executive or judicial action may not alter election law by agreement, consent decree, or otherwise. If judges cannot hear cases on election law disputes, how will those disputes be resolved? Does this prohibit election workers from developing procedures to implement the law and resolve ambiguities?
30. Paragraph (106) purports to establish multiple felonies, some of which are punished with 10 days in jail. Is this consistent with how felonies are defined in Colorado law? What are the elements and mental states required for these felonies? What are the "other similar voting acts" that are considered felonies?
31. Paragraph (106) provides that any person can sue to enforce these statutes. Does that mean that people from out of state or even outside the country have standing to sue in Colorado courts over alleged violations?
32. What does "Voter-approved election laws need no petition" mean?
33. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?

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. 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** X-X-XXX as follows:
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new article to title 1 of the

Colorado Revised Statutes, you would include the following amending clause
"In Colorado Revised Statutes, **add** article ___ to title 1 as follows:".

3. Each new article added to the Colorado Revised Statutes has an article heading that includes the article number and the topic of the article, for example:

ARTICLE 18
Election Integrity

4. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the new section or article of the proposed initiative and be in bold-face type.
5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

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

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

6. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado constitution or the Colorado Revised Statutes.
7. 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."

8. It appears that you would like to add a new article to title 1 of the Colorado Revised Statutes; however, article 16 of title 1 already exists and therefore cannot be added. You may want to consider adding a new article 18 to title 1 of the Colorado Revised Statutes and adding the proposed sections (101 to 106) as full sections with headnotes, for example "**1-18-101. [Insert headnote].** Voter rolls shall close 25 days...".
9. In paragraph (101) of the proposed initiative, the phrase "60 day" should be "60 days".
10. In paragraph (106) of the proposed initiative, there is a reference to "Article VII." For clarity, please specify if this is in the state or federal constitution.
11. Also in paragraph (106) of the proposed initiative, there is a reference to "Article 1-16," which seems to refer to the language being added by the proposed initiative; however, this does not follow the numbering conventions of the Colorado Revised Statutes, which includes a title, article, and section when referencing, for example "section 1-1-101" or "article__ of title __" and therefore should be updated.