

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Mike Spalding and Donald "Chip" Creager
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 18, 2020
SUBJECT: Proposed initiative measure 2019-2020 #299, 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 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;
6. To repeal the requirement that constitutional amendments, other than those that are limited to repealing a provision, must be approved by 55% of the voters; and
7. To eliminate 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?

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

2. What is the effect of the first sentence?
3. There is only one secretary of state. Therefore, "any" should only modify "county election office".
4. What does "handle any state or local petition" mean?
5. Does this provision change when local elections may occur?
6. Could a petition to amend a City of Golden ordinance be filed in Pitkin County? Could a state petition be filed in La Plata County?
7. Some special districts and other local governments have boundaries in more than one county. What is the county election office for those districts?
8. What is a draft review?
9. Who conducts the draft review and who participates in it?

10. Does a state initiative begin when it is filed with the secretary of state or a county election office?
11. Is there any draft review process for local initiatives?
12. 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. Currently, the Colorado Supreme Court requires that a ballot title for an initiative include the single subject and identify the central features of the measure. What will a ballot title under this measure include?
14. Who sets the state ballot title or a local ballot title?
15. Do you intend for there to be deadline for the secretary of state or a county election office to set a ballot title? If so, what language establishes that deadline?
16. How does the 6-day notice requirement work?
17. Why repeal the single-subject rule in section 5 of the proposed initiative, if it is supposed to remain in effect?
18. What part of the 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?
19. What type of protests of a ballot title are there?
20. Who can file a protest for a ballot title?
21. If the court fails to make a timely decision, is the ballot title valid as originally set?
22. If a title was set on a Friday, when is the deadline for protesting a ballot title?
23. Is 6 days enough time for the Colorado Supreme Court to decide title protests?
24. The Colorado Supreme Court's review of the single-subject is unclear. In enforcing the single-subject, can it reject a measure that has more than one subject or is it required to remove the extra subjects until there is just one?

25. 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?
26. If an unchallenged ballot title is approved by voters, can there be single-subject challenge after the election?
27. Will the Colorado Supreme Court be able to handle the additional workload that may be required by the proposed initiative?
28. "Four days later" is after what day?
29. Who delivers a petition section and to whom?
30. 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.

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

31. What is an entry?
32. Who is responsible for annually determining the number of required entries that would be required for the thousands of local governments in the state?
33. Constitutional amendment entries shall be "5% of district active registered electors, up to 111,000 entries at first," "may increase up to 9,000 every four years," and "shall remain 50% more than statutory entries." How do all of these requirements work together?
34. Is "address" the "street address"?
35. If random or statistical entry sampling is inadmissible, is a line-by-line analysis the only permissible way to verify signatures?
36. Is a district required to verify the signatures?

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

37. Who files the required entries and with whom are they filed? Must they be filed with a neutral election office?

38. What is a neutral election office and who determines it?
39. Who is responsible for the cost of verifying the signatures?
40. Does counting the entries include verification of their validity?
41. What types of protest are permitted under this proposed subsection?
42. 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?
43. Is "that report" the Colorado Supreme Court's determination about a protest?
44. If signer registration is "presumed valid," does that mean that the neutral election office must likewise presume validity when counting the signatures? Or is that just a standard for a court?
45. Who is a "foe"?
46. What is an "invalidity report"?
47. Who issues an invalidity report? Is it the neutral election office, the Colorado Supreme Court, or both?
48. Do the deadlines for the court protest and the 15-day cure period run at the same time?
49. Have you considered whether the Colorado Supreme Court will be able to add the appeals required by this subsection and subsection (1) of this section to its current workload?

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

50. What does "first filed" mean?
51. What does the first sentence of this subsection mean?
52. How does this deadline work for local governments that conduct elections on a date other than the statewide November election?
53. What is a "topic"?
54. Who can file election notice comments?
55. Is there any information required in the election notice comments?

56. Is there any review of the election notice comments? If not, what happens if the comment is incorrect?
57. 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?
58. Given the requirement for the ballot, must a person who wants to bring an initiative also create a website?
59. With whom are the filer websites filed?
60. Who determines which foe website to use?
61. What happens if there are no foe websites?
62. Is the filer website deadline the "August 2" prior to the November election on which the initiative will be on the ballot?
63. 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?
64. 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.

65. The General Assembly currently enacts bills with petition clauses. Do you intend those clauses to be annually used on all but the 13 identified bills or less?
66. Can the 12 bills be on any topic? Can they be exempted for any reason?
67. Is the "one budget" the general appropriation bill that is described in article V, section 32 of the Colorado Constitution?
68. What are "rejected topics" as used in the last sentence?
69. Is a topic broader than a single-subject that is expressed in the ballot title for an initiative?
70. Using this example—Shall section 3 of HB21-0000 be rejected?—are the following statements correct: (1) 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 (2) If a majority of voters vote "no," then section 3 becomes law and there are no limits on a topic.
71. If the voters reject a bill that made a certain act a felony in 2020, would all future bills creating felonies be required to have voter approval?

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

72. Do you intend for the definitions to only apply to article XXII or the entire constitution? If the former, then you should clarify the scope of the definitions.
73. Are home-rule governments a type of local government or different from a local government? The initiative is written as if it is the latter.
74. What is an example of an authority that you intend to include in the definition of "district"?
75. 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?
76. In the definition of "petition," what does the phrase "on legislative policy" mean? How does this change the definition?
77. Why have you exempted zoning measures from the proposed initiative?

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

78. Does the fine apply after a criminal conviction?
79. Is the second sentence a statement of intent? Do you intend for the provision to have a legal effect?
80. The meaning and scope of the third sentence is unclear. What do you intend it to mean?
81. 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?

The following questions and comments relate to section 5 of the proposed initiative.

82. Do you intend for this measure to repeal all of the provisions identified?
83. It is standard drafting practice to have a separate amending clause to repeal a provision of the constitution.
84. Section 5 of the proposed measure states that article XXII "shall . . . repeal all conflicting laws." What other conflicting laws are there?
85. How will it be determined if a law conflicts with article XXII and should be repealed? Do you expect the Revisor of Statutes to repeal any provisions of the

state constitution the next time it is published after the initiative is approved by voters?

86. Is the parenthetical at the end of the sentence instruction to someone? If so, who?
87. The second and third sentences appear to have ongoing impact. Why don't you want those printed? If they are not printed, then they do not appear to be part of the constitution. If they are not part of the constitution, then arguably have no legal effect.
88. 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?
89. 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.

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. For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXII as follows:

2. The proponents appear to be adding a new Article XXII to the Colorado Constitution. Article XXII, regarding "Intoxicating Liquors" already exists, and though it is repealed, the heading is preserved for historical purposes. Would the proponents consider relocating the new article?
3. 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. The use of italics for emphasis is not a standard drafting practice.
4. Please write numbers as words rather than digits. For example, "fifty percent" and "ten days".
5. Section 3 of the proposed initiative is a definitions section. Definitions are typically formatted in the following manner, with an introductory portion explaining to what section of law the definitions apply, and with quotations around the defined term for clarity:

Section 3. Definitions. AS USED IN THIS ARTICLE XXII, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DISTRICTS" MEAN THE STATE AND ALL LOCAL AND HOME RULE GOVERNMENTS...

6. Section 5 of the proposed initiative concludes with the phrase "(Do not print section 5)." Initiative language includes everything following the enacting clause. Please amend or remove any notes or initiative language the proponents do not wish to include. Additionally, section 5 includes a series of commands regarding the repeal of constitutional provisions, which should be presented with the appropriate amending clauses (see technical comment 1).