

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 8, 2012

TO: Samuel Babcock and Elise van Grinsven

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #62, concerning state of Colorado senate districts

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 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.

#### Purpose

The major purpose of the proposed amendment appears to be to require state senate districts to be determined by combining no more than two geographically neighboring counties in their entirety, except that a certain number of the most populous counties may each form one district until the number of senatorial districts is equal to the number of members of the senate.

#### 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. The amending clause for section 1 of the proposed initiative should be written as follows:

**SECTION 1.** In the constitution of the state of Colorado, **amend**  
section 46 of article V as follows:

2. In the headnote for section 46 of article V of the Colorado constitution, "Section 46" should be followed by a period, not a colon. For example:

**Section 46. Senatorial and representative districts.** The state  
shall be divided . . .

3. In the text of the proposed initiative, where you have added a new sentence to the end of section 46, please consider changing the punctuation as follows:

. . . the most populous and the least populous REPRESENTATIVE district. ~~in~~  
~~each house.~~ EACH SENATORIAL DISTRICT SHALL BE DETERMINED BY  
COMBINING NO MORE THAN . . .

### **Substantive Comments and Questions**

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

1. Section 1 (5.5) of article V 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. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. The proposed initiative appears to require the Colorado Reapportionment Commission to draw state Senate districts by placing two whole neighboring counties in each district, except that, as necessary to attain the requisite number of Senate seats, the most populous counties each comprise their own single Senate district.
  - a. Is this reading of the proposed initiative correct? If not, can the proponents clarify their intent?
  - b. Is "neighboring" intended to be synonymous with "contiguous"?
  - c. Current constitutional provisions (e.g., maximum population deviation, keeping communities of interest intact, etc.) apply to both the drawing of state House and state Senate seats. However, the narrow parameters within which Senate districts would be drawn seem to render inapplicable some of those such provisions (such as

population deviation, compactness, or minimization of county splits). Under this proposal, by what criteria is the Reapportionment Commission bound? Would the proponents consider making conforming amendments to sections 46 and 47 of article V of the state constitution?

5. It is well-settled that, under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, substantial equality of population is of paramount importance in drawing districts of a bicameral state legislature.
  - a. Under the proposed initiative, population is principally taken into account to create the few single-county Senate districts (and then, only to the extent that the most populous counties are excepted from the two-county scheme). Is the Reapportionment Commission required to factor in population when drawing the two-county senate districts? Do the proponents believe that population is sufficiently taken into account under the proposed approach to reapportionment?
  - b. In the proposed reapportionment scenario, it is likely that the populations of the Senate districts will vary significantly. For example, using figures from the 2010 Census, when San Juan County is paired with the most populous adjacent county (La Plata County) to form a Senate district, that two-county Senate district would include 52,033 persons. In comparison, the single-county senate district comprising the state's most populous county (El Paso County with 622,263 persons) would contain more than ten times as many persons. How can this result be reconciled with the requirement that substantially proportionate population be achieved?