

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 1, 2014

**TO:** Ryan Ross and Mark McIntosh

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #112, concerning a two-stage election system

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.

### Purposes

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

1. To create a two-stage election system in which all candidates for federal or state offices who qualify for the ballot compete against each other in each stage regardless of their party affiliation or non-affiliation;

2. To enable every registered voter to vote for any candidate on the ballot in their district regardless of their declared party affiliation or non-affiliation; and
3. To provide funding for the purchase of elections equipment by counties.

## **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.

### Regarding Amending Clauses:

1. It is standard drafting practice to number each section, part, etc. that is being amended or added with a section number (e.g., **SECTION 1.**, **SECTION 2.**) before the amending clause. For example:

**SECTION 1.** In Colorado Revised Statutes, 1-2-218.5, **amend** (2) as follows:

2. It is standard drafting practice to include an amending clause that indicates each part(s) of the Colorado Revised Statutes being added to, amended, or repealed. Examples include:

- a. In the case of repealing and then adding new language to part 1 of article 4 of title 1, the amending clause should read:

**SECTION \_\_\_\_.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 1 of article 4 of title 1 as follows:

- b. In the case of repealing several sections and parts within article 4 of title 1, the amending clause should read in order, for example:

- i. **SECTION \_\_\_\_.** In Colorado Revised Statutes, **repeal** 1-4-303, parts 5 and 6 of article 4 of title 1, 1-7-201, and parts 8 and 10 of article 4 of title 1.

- c. In the case of part 9 of article 4 of title 1, what do the proponents mean by the repeal of (2)? Does the proponent mean to repeal 1-4-909 (2)?

- d. In the case of article 8 of title 1, the actual statutory language to be amended must be shown with strike-type and small caps.

Regarding correlation to current law:

3. Have the proponents considered the need to add conforming amendments that may be required due to the repeals in the proposed initiative? A conforming amendment is a technical change that is required when an internal reference becomes obsolete due to a repeal of that referenced section. For example:
  - a. 1-4-1301 (1) contains a reference to section 1-4-502 (1) (part 5 is repealed in the proposed initiative).
  - b. 30-10-501.5 contains a reference to section 1-4-601 (3) (part 6 is repealed in the proposed initiative).
4. The proposed initiative does not account for the manner in which bills enacted during the 2014 session have altered current law. For example, the initiative directs all references to primary elections in Article 8 of title 1 to be amended to refer instead to “first-round balloting”. However, article 8 was repealed in its entirety by House Bill 14-1164. How should this be reconciled (i.e., do the proponents want to recreate, reenact, and amend that article 8, or omit that instruction to make those conforming amendments)?

Regarding statutory formatting:

5. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.
6. Statutory provisions are divided into component parts using the following hierarchy: Subsections, [denoted by numbers “(1)”, “(2)”, etc.]; followed by paragraphs, [denoted by lowercase letters, “(a)”], followed by subparagraphs, [denoted by Roman numerals “(I)”], followed by sub-subparagraphs, [denoted by capital letters “(A)”].
7. Although the text of the proposed initiative is in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
8. It is standard drafting practice to place the subsection that immediately follows the headnote on the same line (instead of the first subsection appearing on the line after the headnote).

9. It is standard drafting practice to use a capital letter only in the first word of a headnote.
10. Use a comma after the second-to-last item in a series (often known as an Oxford comma or serial comma).
11. The following is the standard drafting language used for creating a definition: “As used in this [part][section][subsection], unless the context otherwise requires:
  - (1) '[Term]' means (the definition for the term)...
  - (2) '[Term]' means (the definition for the term)...\*The definitions should be in alphabetical order.
12. Numbers should be spelled out as words. For example, “60” is written as “SIXTY”.

### **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? Does the funding component of proposed section 1-7-409 fit within the single subject?
2. Generally, what benefits does the two-stage system in the proposed initiative have over the current system of elections?
3. Regarding proposed section 1-4-101: The term “first-round balloting” is not defined in the proposed initiative. Because the concept is new, a definition might be useful to help persons understand what it means. Would the proponents consider adding such definition to new article 4 or to section 1-1-104, C.R.S.?
4. Regarding proposed section 1-4-102: Why are those who were previously on a general election ballot given special access to the first-round ballot?
5. Regarding proposed section 1-4-103 (2):
  - a. There has been a lot of research detailing the insecurity of online voting mechanisms. Are the proponents confident in the security of

state's ability to secure an internet petition system? How will the system ensure that an individual is signing for himself? For example, it seems like it would be easy for an individual with a (publicly available) list of registered voters to enter information for as many people as needed. This provision also has the potential to be very expensive to implement.

- b. The term “SCORE” is not used in the Colorado Revised Statutes. Would the proponents instead consider employing the term “the statewide voter registration system created in section 1-2-301”?
6. Regarding proposed section 1-4-103 (3) (A) (1) (b) and section 1-4-105 (4): What type of three-word phrase would a candidate select to identify himself or herself? Are there any limits on these words? For example, could a candidate use threats, slogans (“Fracking For Freedom”), or vulgarity (“F--- You [other candidate’s name]”)?
7. Proposed section 1-4-103 (4) allows only “eligible electors” to sign candidate petitions. When no specific provisions are given, that term is defined in section 1-1-104 (16), C.R.S., to mean registered electors. Do the proponents intend for unregistered but otherwise eligible electors to be able to sign such petitions?
8. Proposed section 1-4-103 (6) requires candidates seeking placement on first-round ballot petitions to submit petitions “no later than 60 days prior”. Prior to what date or event? Would the proponents consider clarifying this?
9. In subsection (8) of proposed section 1-4-103, the secretary of state collects a fee of ten cents per petition signature. Does this disincentivize candidates from collecting more signatures than are necessary to ensure that the requisite number of valid signatures are submitted? Is the hardship waiver an all-or-nothing proposition, or can the secretary of state prorate the fee (for example, could he or she impose a reduced amount of three cents/signature)? Are the fees collected deposited into the department of state cash fund? Is the fee collected on resubmissions too? Because there is no fee imposed on signatures submitted on-line, are such signatures not independently verified by the secretary of state’s office?
10. Regarding proposed section 1-4-109: How do “joint elections” differ from coordinated elections? Given that first-round balloting occurs on the second Tuesday in September, is there a need for joint elections? Can a county clerk refuse to conduct joint elections requested by other jurisdictions? Did the proponents intend to omit municipal elections?

11. Regarding proposed section 1-4-207 (2), is it possible that the top three candidates could all be affiliated with the same political party?
12. Regarding ranked choice voting (proposed section 1-4-210) for the general election:
  - a. To prevent confusion, does the definition of “ranked choice voting” need to be reconciled with the definition of “ranked voting method” in section 1-1-104 (34.4), C.R.S.? More broadly, how, if at all, does this new article 4 relate to or affect local governmental use of ranked voting methods under part 10 of article 7 of title 1, C.R.S.?
  - b. Why limit the candidate list with first round balloting, as opposed to simply implementing ranked choice voting at the outset (especially if you preserve write-in candidacy)? What advantages does this “hybrid” approach confer?
  - c. What, if any, outreach should the state perform to apprise and educate voters of ranked choice voting and how it works?
  - d. Regarding subsection (4): What constitutes a vote credited to a candidate?
13. Repealing part 5 of Article 4 of title 1, C.R.S., eliminates some qualifications for candidates that seem unrelated to the proposal, like minimum age and the prohibition on being a candidate for more than one office. Is that the proponents’ intent?
14. Regarding proposed sections 1-4-1102 and 1-5-203: Are the proposed timelines sufficient for voters covered under the “Uniform Military and Overseas Voters Act”, article 8 of title 1, C.R.S.?
15. Proposed section 1-7-409 requires the sale of bonds to purchase elections equipment. Does the state treasurer currently have the ability to issue bonds? Would the proponents consider leaving the purchase of voting equipment to local governments, as is currently provided for in Article VII, section 8 of the state constitution?
16. Regarding proposed section 1-7.5-107: Why maintain the current subsection (2.3) (a) requiring the mailed notice for unaffiliated voters? Should this notice be for all voters or is notice adequately covered elsewhere?

17. Regarding proposed section 1-11-203: With this section repealed, do the proponents wish to identify a venue for challenges to first-round balloting results?
18. Regarding proposed section 1-45-119: Because many campaign finance laws are constitutional, is amending the Colorado Revised Statutes sufficient to effect the prescribed change?