

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

December 29, 2008

TO: Page Penk and Chester Penk

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2009-2010#3, concerning elections to fill vacancies

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 appear to be:

1. To amend the Colorado constitution to require a vote of the people to fill the vacant seats of elected officials in Colorado.

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. Under section 1 (5) of article V of the Colorado constitution, the proponent of an initiative is directed to submit the text of a proposed constitutional amendment for review and comment. The proponents have submitted an idea rather than the actual language that would be added to the Colorado constitution.

a. Generally, the text begins with an amending clause describing where the new language is to appear, for example "Article __ of the Colorado constitution is amended by the addition of a new section to read: . . .". Would the proponents be willing to amend their proposal to include an amending clause?

b. Following the amending clause, the new language would appear. Would the proponents be willing to amend their proposal to include the actual text of their proposed constitutional change?

2. It is standard drafting practice to use small capital letters to show the language being added to the Colorado constitution. Would the proponents consider using this standard drafting practice?

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. What do the proponents believe would be the effect of this initiative?

4. How do the proponents believe that this initiative would be implemented and enforced?

5. Does the proposed initiative prohibit vacancies from being temporarily filled by vacancy committees or designated public officials to complete the remainder of unexpired terms of office, as permitted under current law?

6. Does the proposed initiative apply to all elected offices in the state, including congressional, state legislative, special district, county and municipal offices? Are there any elected offices not covered?

7. Do the proponents intend that vacancies be filled at special elections or general elections? If it is a special election, how soon after the vacancy occurs does the election need to take place? If it is a special election, how soon after the special election is scheduled would a candidate have to declare his or her candidacy?

8. On occasion public offices becomes vacant with a relatively short period of time remaining in the term of office. In this event, have the proponents considered specifying a point in time prior to the end of an unexpired term after which a vacancy election would not be required to avoid unnecessary election costs?