

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

TO: Anna Rose Kummerlowe and Hattie Lou Reed

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 4, 2018

SUBJECT: Proposed initiative measure 2017-2018 #175, concerning runoff primary 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #175 to #177. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #176 and #177, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## Purposes

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

1. To move the date of primary elections in Colorado from the last Tuesday in June to the third Tuesday in April;
2. To require a runoff primary election on the last Tuesday in June following a primary election if no political party primary candidate receives a majority of the votes in that primary election; and
3. To limit the runoff primary election requirement to candidates for United States senator, representative in congress, governor and lieutenant governor, secretary of state, treasurer, attorney general, state senator, state house of representatives, state board of education, regent of the university of Colorado, district attorney, or any county office.

## 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. 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](mailto:BallotImpactEstimates.ga@state.co.us).

3. Section 6 of the proposed initiative has the headnote "**Effective date**" but appears to be an applicability clause. Is it the proponent's intent that the effective date is the same date on which the initiated law becomes applicable? For clarity, consider formatting the clause as follows:

**SECTION 6. Effective date – applicability.** This act takes effect January 1, 2019, and applies to elections held on or after said date.

4. What is the proponents' rationale for instituting a runoff primary system? How did the proponents determine which offices would be covered under the runoff primary election system?
5. It is assumed that the modifications to sections 1-1-104 (51), 1-4-1005 (1) and (2), and 1-4-1006 are included in the proposed initiative as conforming amendments intended to incorporate the concept of the "runoff primary election" into existing election provisions that reference the term "primary elections". In fact, there are a multitude of other provisions in title 1 of the Colorado Revised Statutes that refer to primary elections, the number of which may exceed 100, that may need to be modified to properly include the term "runoff primary elections". Moreover, the existing election calendar would also need to be substantially modified to accommodate the change in the date of the initial primary election to April. How do the proponents anticipate that these significant changes to existing law would be made if the proposed initiative were enacted?
6. With respect to the new requirements for section 1-4-104 under the proposed initiative:
  - a. Please describe how the manner of selecting nominees in the runoff election differs from the method of selecting nominees under the existing primary election?
  - b. Does the requirement that the winning nominee "receive a majority of the total number of votes received by all of the candidates for that office" mean that the total vote for all candidates seeking a major political party nomination for that office is aggregated to see if any one candidate obtains at least a majority of the total number of votes received by all of the candidates seeking that office? Or, is the "total number of votes received" determined by examining only the total votes for all the candidates seeking the nomination of either of the major political parties?

- c. Does the phrase "the two candidates receiving the highest number of votes at the primary election," used to determine which parties make the runoff primary election ballot, refer to the two candidates receiving the highest number of votes within each major political party? Or is it possible that the two top vote-getters regardless of political party affiliation would be placed on the runoff primary election ballot?
  - d. Insofar as there is any confusion, would the proponents seek to clarify their intent on these questions?
7. Have the proponents considered whether and to what extent the changes to Colorado election law required by the passage of Proposition 108 at the 2016 general election will accommodate the requirements of the proposed initiative, or will additional changes to the law need to be made to accommodate the proposed initiative if approved by the voters? For example, existing section 1-4-101 (2)(a), Colorado Revised Statutes, requires an affiliated elector to receive a separate party ballot. Section 1-4-101 (2)(b), Colorado Revised Statutes, requires unaffiliated electors to be sent a ballot that contains the mailing of all the major political parties. Section 1-4-101 (2)(a) and (2)(b) is not addressed in the proposed initiative. Is it the proponents' intent that these requirements for ballot mailings would also apply to a runoff primary election or is some other requirement intended?
  8. With respect to proposed new section 1-4-104 (2)(c), does this subsection mean that unaffiliated electors are only permitted to vote in runoff primary elections for the party for which they cast a ballot in the primary election?

## 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 Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:
  - X-X-XXXX. Headnote.** (1) Subsection.
  - (a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

While it is standard drafting practice to use SMALL CAPITAL LETTERS to show new statutory language being added, it is not necessary to use small caps for statutory divisions (ex. Use (2)(a), not (2)(A)) or in headnotes.