

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Kathleen Curry and Toni Larson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 30, 2018
SUBJECT: Proposed initiative measure 2017-2018 #171, concerning legislative redistricting

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 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 Constitution appear to be:

1. To stop political gerrymandering of legislative districts;

2. To establish an independent legislative redistricting commission (the Commission) to redraw the boundaries of state senate and state representative districts;
3. To establish the number of members of the Commission, their qualifications, and their methods of appointment;
4. To authorize the Commission to adopt rules;
5. To require the affirmative vote of at least eight Commissioners, including one unaffiliated Commissioner, to elect officers of the Commission and the affirmative vote of at least eight Commissioners, including at least two unaffiliated Commissioners, to remove a Commissioner or to adopt a final or revised final plan;
6. To require the Commission to provide for public input on redistricting maps by:
 - a. Conducting at least three hearings in each congressional district that are attended either in person or electronically by at least 10 Commissioners; broadcasting the regional meetings through its website; and maintaining an archive of the hearings online;
 - b. Maintaining a website through which the public may submit proposed maps or written comments without attending a hearing; and
 - c. Publishing the written comments on its website;
7. To specify that Commissioners are:
 - a. Subject to Colorado statutes on anti-bribery and abuse of public offices;
 - b. Subject to Colorado statutes regarding open meetings and open records; except that maps not submitted to the Commission are not public records, but that work product and communications between staff are public records once a plan is submitted to the Colorado Supreme Court;
 - c. Prohibited from communicating with the Commission's staff concerning mapping of state legislative districts unless during a public hearing and must be removed for such communication;
8. To prohibit communications by Commission staff concerning any plan outside of a public meeting except for public input and comment and communications with other staff members;

9. To require any person who receives compensation for advocating to the Commission or its members to be deemed a lobbyist and required to report through the Colorado Secretary of State all compensation contracted for or received and the person contracting or paying for the services;
10. To specify the criteria that the Commission and its staff is to use in redrawing the state legislative districts;
11. To require staff to publish the preliminary plans within 45 days after the Commission is convened;
12. After the public hearings, to require staff to prepare and present at least three senate and three house of representative plans to the Commission unless the Commission adopts a final plan;
13. To require the Commission to finalize and submit its plans to the Colorado Supreme Court by a date specified; except that, if the Commission is unable to approve a plan by that date, staff is to submit its third plan to the Court;
14. To provide that the Colorado Supreme Court reviews the final plans for compliance with the criteria in the measure and may return a plan to the Commission for changes;
15. If the Commission is unable to adopt a new plan, to direct the staff to submit a plan that complies with the Colorado Supreme Court's directives; and
16. To specify a date by which the Colorado Supreme Court must approve state legislative redistricting plans.

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. What will be the effective date of the proposed initiative?
3. Section 46 (3)(e) defines the staff as staff from the Legislative Council or the Office of Legislative Legal Services. Staff for the Commission will be required to begin working for the panel of justices or judges in January of the redistricting year and for the Commission starting in at least March of the redistricting year while the General Assembly is in session. May the directors of these offices hire new, temporary staff to work as Commission staff?

4. Under section 47 (2)(b), an applicant's political affiliation is determined "at the time of the application," but the criteria in section 47 (2)(c) is from the date on which applications for appointment are due.
 - a. Is there a reason why different language is used for these qualifications?
 - b. By "the date on which applications ... are due," do the proponents mean November 10, the last day that applications may be filed?
5. In section 47 (3)(a), the language refers to "the year in which the federal decennial census is conducted." Elsewhere in the measure, the language is "the year prior to the redistricting year." Do these refer to the same year?
6. Section 47 (3)(a) requires nonpartisan staff to hold one or more public hearings on the application form. Is the purpose of the public meetings to solicit input on the form or to provide notice to the public of the form?
7. In section 47 (6), nonpartisan staff is to make a finding as to whether an applicant meets the qualifications.
 - a. What is the effect of the nonpartisan staff's finding?
 - b. Is there any appeal if an applicant disagrees with the nonpartisan staff's finding?
8. Section 47 (7) requires the panel of justices or judges to randomly select by lot the names of 300 applicants from each of the two major political parties and the names of 450 applicants who are not affiliated with a political party. If there are fewer than 300 applicants from a major political party or 450 unaffiliated applicants, does the panel still need to select names?
9. Section 47 (8)(a) requires the panel of justices or judges to select the names of 50 applicants from each of the two major political parties and from the unaffiliated applicants. If there are fewer than 50 applicants from a political party or unaffiliated applicants, does the panel still need to select names?
10. Section 47 (8)(b) requires the panel to choose by lot six members of the Commission, but does not specify a date by which this must be done. Does the February 15 date in section 47 (8)(a) apply to section 47 (8)(b) as well?
11. In section 47 (9)(a), legislative leaders are to select a pool from all of the applications submitted to nonpartisan staff. Does this include applicants that staff determined did not meet the qualifications under section 47 (6)?

12. In section 47 (9)(a) legislative leaders are each to select a pool of 10 applicants from the two major political parties. Is the leader required to select applicants who are members of the leader's political party?
13. In section 47 (9)(d), who determines if an applicant meets the requirements of section 47 (9)(b)?
14. If this measure and proposed initiative 2017-2018 #170 both pass, may the public hearings for both commissions be held at the same time?
15. Section 48 (3)(d) requires the Commission to publish all written comments, including the name of the person submitting the comment. Have the proponents considered whether publishing the person's name may have a chilling effect on the comments submitted to the Commission?
16. In section 48 (4)(b)(I)(C), by the phrase "public input and comment," are the proponents referring to the submission of proposed maps or written comments submitted through the website pursuant to section 48 (3)(c)?
17. Section 48 (4)(b)(II) states that maps in draft form not submitted to the Commission are not public, but the section goes on to state that after a final plan is submitted to the court, work product and communications among staff are subject to disclosure. After the final plan is submitted, are all work product and communications subject to disclosure, or are only work product and communications concerning the final plan subject to disclosure?
18. May the Commission divide a community of interest or a political subdivision in order to satisfy the population requirements of section 48.1 (1)(a) or to comply with section 48.1 (1)(b)?
19. The Colorado Supreme Court has interpreted the current constitutional language to require the Commission to draw as many whole districts within a county as the population will permit.
 - a. Is it the proponents' intent that this interpretation be followed under the proposed language of this measure?
 - b. If so, may the Commission find that preserving a community of interest outweighs the benefit of drawing as many whole districts within a county?
20. By the word "thereafter" in section 48.1 (3)(a), do the proponents mean that the criteria in section 48.1 (1) and (2) have priority over the criteria in section 48.1 (3)(a)?

21. Do the proponents anticipate that the public hearings conducted prior to July 21 will be on the preliminary plans submitted by the staff or that the preliminary plans may be amended before the hearings?
22. May the Commission vote to direct staff to use a specific plan as the next staff plan? Or to include a specific amendment in the next staff plan? If so, is there a voting requirement for such direction?
23. Section 48.2 (6)(b) authorizes the Commission to "adjust the deadlines . . . if conditions outside of the commission's control require such an adjustment."
 - a. Could the proponents give an example of something outside of the Commission's control that might justify adjusting the deadlines?
 - b. Would adjusting the deadlines require a vote of the Commission?
24. 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. Provisions that follow an introductory portion -- for example "(1) **Declaration of the people.** THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE

THAT:" -- should end in semicolons, unless they contain more than one sentence, when they should end in a period. For example, in section 46 (1)(a), subsection (1)(a) should read: "THE PRACTICE OF ... MUST END;"

2. The introductory portion to section 46 (3) is new language and should appear in small caps.
3. When referencing the section you are currently in, the section number does not need to be referenced. For example, in section 47 (12), subsection (12) should begin: "FOR THE PURPOSES OF THIS SECTION, THE STATE'S"
4. In section 48 (1)(e), the reference to the "STATE ADMINISTRATIVE PROCEDURE ACT" should be initial capped and set off by quotation marks.
5. In section 48 (4)(a), the reference to the Colorado Revised Statutes should read: "PARTS 3 AND 4 OF ARTICLE 8 OF TITLE 18 OF THE COLORADO REVISED STATUTES."