

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



Dan L. Cartin, 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: John Hereford and Tyler Thompson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 6, 2016
SUBJECT: Proposed initiative measure 2015-2016 #140, concerning presidential 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.

Purposes

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

1. To recreate a presidential primary election in Colorado that would be held on a date to be selected by the Governor subject to parameters specified in the proposed initiative in years in which a United States presidential election will

be held. The primary will allocate delegates to the nominating conventions of the major political parties.

2. To specify procedures governing the manner in which major political parties will participate in the primary election, eligible electors will be able to vote in the election, including unaffiliated eligible electors, ballots will be prepared and used, and the state will reimburse counties for expenses incurred and shown to be directly attributable to the preparation and conduct of the primary election.
3. To specify additional procedures concerning write-in candidates, surveying returns, and certifying election results in connection with the primary.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Are the proponents aware of this possibility?
3. Beyond the fiscal impacts on the counties, which is addressed in proposed section 1-4-1203, are the proponents aware of any other fiscal or other impacts that may result from the enactment of the proposed initiative on the state and local governments? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?
4. To what presidential election years is the proposed initiative intended to apply?
5. Is it a correct reading of proposed section 1-4-1201 that, if the proposed initiative becomes law, the General Assembly will be forced to adopt conforming amendments in the 2017 regular legislative session? Are the proponents aware of any issues or problems in particular that will necessitate legislative attention?
6. With respect to proposed section 1-4-1203 (2):
 - a. what is a "qualified candidate"? Would the proponents consider adding a definition of this term?

- b. What is the rationale for allowing an unaffiliated eligible elector to vote in a political party's presidential primary without affiliating with that party?
 - c. Is it a correct reading of the proposed initiative that an unaffiliated elector may vote in a presidential primary election but someone otherwise affiliated with one of the major political parties is not able to vote in the presidential primary of another political party unless he or she has changed or withdrawn his affiliation by the 29th day before the primary election? What is the rationale for precluding affiliated voters from voting in the presidential primary of another party unless they have satisfied the 29-day requirement but allowing an unaffiliated voter to presumably affiliate with a particular major political party the day of the primary election?
7. What determines whether a political party is entitled to participate in the presidential primary election in accordance with the introductory portion of proposed section 1-4-1203 (4)?
 8. With respect to proposed section 1-4-1203 (4) (a), what is the rationale for having a single combined ballot to be used by unaffiliated electors? What is the objection to having a single party ballot for use by all electors, already affiliated and unaffiliated, who wish to cast a ballot in that party's presidential primary election? To what extent will the use of this separate ballot drive additional fiscal impacts?
 9. To what extent does the use of a mail ballot system that is in place in the state affect any of the processes by which an unaffiliated voter may vote in the presidential primary? How will it work for unaffiliated voters to be casting ballots for a specific political party in an election conducted as a mail ballot election? Will an unaffiliated voter receive both the Democratic and Republican combined ballots with his or her mail ballots (assuming those are the two major political parties participating in the presidential election)?
 10. With respect to proposed section 1-4-1203 (6), would the proponents consider adding the requirement that all such rules be promulgated in accordance with article 4 of title 24, Colorado Revised Statutes (the "State Administrative Procedures Act")?
 11. With respect to proposed sections 1-4-1203 (7) and 1-4-1204 (4), C.R.S., what do the proponents mean by "active registered electors," which is a term that is not a defined term under the "Uniform Election Code of 1992"? Would the proponents consider adding a definition of this term?

12. With respect to proposed section 1-4-1204 (1) (b), which bases reimbursement to counties on the number of “active registered electors” participating in the primary election:
 - a. What does “participating” mean? Voting? Receiving a ballot?
 - b. What do the proponents mean by a "bona fide candidate"? Is that a legally defined term or a term of art? Does this term need to be defined in the proposed initiative?
13. With respect to proposed section 1-4-1207 (3), is it a correct reading of this provision that all of the delegates to the national convention of a respective political party will be allocated to the candidate receiving the highest number of votes in the presidential primary election? In other words, it appears that this would make Colorado a so-called "winner take all" state? If this is not a correct reading of this provision, would the proponents consider clarifying their intent here?
14. With respect to proposed section 1-4-1207 (1), how will it be determined whether a noncommitted delegate has generated sufficient votes to be included among the delegation of that major political party to the party's nominating convention?
15. With respect to proposed section 1-4-1207 (3) that the results would bind the delegation to vote for that candidate at the party's national convention, does this provision conflict with any other provision of Colorado law? To what extent does this provision require a delegate to the national convention to cast her or her vote at the convention for the winner of the presidential primary election? For all ballots at the national convention? For only the first or a limited number of ballots? Would the proponents consider adding any additional requirements applicable to the vote that would be cast by delegates who are selected in the presidential primary concerning their voting at the upcoming national convention?
16. With respect to the changes made to section 1-2-218.5, C.R.S.:
 - a. What is the connection between a presidential primary election and allowing an elector to declare a partisan affiliation online? Since the elector need not declare an affiliation to vote in a presidential primary election, why is this provision part of the proposed initiative?
 - b. Currently, an unaffiliated elector may declare his or her affiliation via a letter or form furnished by the county clerk and recorder, which letter or form is submitted by mail or in person. Under the proposed initiative, it

appears that an elector may declare his or her affiliation by mail or in person, but that such methods do not involve documentation provided by clerk and recorder. Is this the proponents' intent?

17. With respect to the changes made to proposed section 1-3-102, C.R.S, what is the connection between the presidential primary election and moving the date of the precinct causes to the first Saturday following the presidential primary election? Why is this change made in the proposed initiative?

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 separate sections of the legislative declaration should be numbered or lettered, as appropriate.
2. Following standard drafting practice, the proposed subsections 1-4-1203 (2) and (4), C.R.S., should be renumbered as (2) (a) and (2) (b); and (4) (a) and (4) (b).