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MEMORANDUM

TO: Nita J. Gonzales and Sofia Solana

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 6, 2016

SUBJECT: Proposed initiative measure 2015-2016 #144, concerning the commission to conduct legislative reapportionment and congressional 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 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 establish the Colorado Legislative and Congressional Redistricting Commission ("Commission") to redistrict congressional, state senatorial, and state representative districts in Colorado.

2. To specify the number, appointment process, and qualifications of members of the Commission.
3. To authorize the Commission to adopt rules governing its procedures by a majority vote but requiring the approval of any plans for state legislative and congressional districts ("plans") to require the affirmative vote of at least six commissioners.
4. To specify that the Commission cannot adopt a plan until specified hearings throughout the state have been conducted.
5. To require that the Commission establish a website through which any Colorado resident may submit a plan or written comment.
6. To establish timelines for when action must be taken by the Commission and the Colorado Supreme Court.
7. To establish a procedure whereby the Commission or a commissioner submits a state legislative redistricting plan to the Colorado Supreme Court for its review.
8. To establish criteria for the Commission to use in adopting a congressional redistricting plan.
9. To specify a different procedure for how certain persons may appeal the adoption of a congressional redistricting plan to either the Colorado Supreme Court or the Denver District Court.
10. To provide that commissioners and staff are subject to certain criminal statutes and statutes concerning open meetings and open records.
11. To provide that persons who advocate for plans are lobbyists who must disclose information concerning compensation that is then posted on the secretary of state's website.

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. Section 48 (2) (a) (II) provides that "the members of the senate and house of representatives SHALL BE apportioned among [the districts]". This means that the Commission could establish multi-member districts. This seems to conflict with article V, section 46 of the Colorado constitution, which requires that the state be divided into as many senatorial and representative districts as there are members of the senate and house.
 - a. Do the proponents intend that the Commission may establish multi-member districts?
 - b. If so, the language does not properly follow the introductory portion to section 48 (2) (a) that starts with the Commission "SHALL:". In section 48 (2) (a) (II), after section 48 (2) (a)'s introductory portion, it would be proper to write in subparagraph (II), "and APPORTION the members of the senate and house of representatives ~~apportioned~~ among them."
 - c. If not, should this language be amended?
 - d. If not, since members are not apportioned, should this procedure be referred to as "reapportionment" or "state legislative redistricting"?
3. When the current procedure was adopted, the lieutenant governor served as the president of the senate. Since he or she was not always in the party that held a majority in the senate, at that time, the majority leader of the senate made appointments on behalf of that party. Now the president of the senate is elected by the senate and is a member of the majority party. Should the president of the senate, rather than the majority leader, make the appointments under section 48 (2) (c)?
4. Under section 48 (2) (c):
 - a. The legislative appointee must be affiliated "WITH THE POLITICAL PARTY OF HIS OR HER CHOICE". Does this mean that a legislative appointee can be a member of any political party or the party of the legislative leader making the appointment?
 - b. What do the proponents mean by "MAJOR" political party?
 - c. May any of the judicial appointees be members of a political party other than a major political party?
5. In section 48 (2) (d), staff is to determine whether applicants for judicial appointment meet the "QUALIFICATIONS SPECIFIED IN SUBSECTION (b)".

- a. Do the proponents mean the qualifications in paragraph (c) rather than subsection (b)?
 - b. Do the proponents intend that staff rely upon an applicant's statements in the application or conduct additional research into the applicant's qualifications?
6. In section 48 (2) (e), the proposed initiative provides that only one commission member may reside in any congressional district. Currently, Colorado has seven congressional districts, although current projections suggest that Colorado may be apportioned an eighth district after the 2020 census. How would this provision work since there are nine commissioners?
7. Under section 48 (2) (h), must the Commission accept and consider public comments on proposed procedural rules?
8. The first three sentences of section 48 (2) (i) appear to apply to both congressional and state legislative plans, but the fourth, fifth, and seventh sentences make reference to "REAPPORTIONMENT". The rest of subsection (2) seems to relate to both congressional and state legislative plans. Should all of paragraph (i) relate only to state legislative plans, or should the references to "REAPPORTIONMENT" be removed?
9. In section 48 (3):
 - a. Is the August 10 date in the year following the year in which the census was conducted?
 - b. The Colorado Supreme Court has established a hierarchy for the criteria under sections 46 and 47. Do the proponents intend that the Commission and the court continue to apply the priority adopted by the court?
 - c. Are the proponents adding a new criterion for the Commission and court to consider by the reference to "A PLAN THAT FOSTERS COMPETITIVENESS WITHIN DISTRICTS"? If so, where in the hierarchy of criteria does this new criterion fall?
10. In section 48 (3) (k), if the court sends one or more plans back to the Commission, may the Commission only make the technical revisions authorized by the court, or may the Commission make other amendments to the plan it approves?

11. Regarding the judicial processes set forth in the proposed initiative, under section 48 (3), only a commissioner may submit plans to the Colorado Supreme Court, and there is no provision for public appeal regarding the plans. Section 48 (4), though, allows any "QUALIFIED APPELLANT" to appeal an adopted plan or the Commission's failure to adopt a plan. Is it the proponents' intent to provide legal standing to the public in the context of redistricting but not reapportionment?
12. In section 48 (4) (a), should the reference to "SUBSECTION (1) (e)" be to "PARAGRAPH (2) (i)"?
13. In section 48 (4) (c), does the phrase "WHERE CONSISTENT WITH THE OTHER CRITERIA SET FORTH IN THIS SUBSECTION" mean that the other criteria in the section have a higher priority than fostering competitiveness within districts?
14. In section 48 (4) (e) (I), should the reference to "SUBSECTION (8) (a)" be to "PARAGRAPH (4) (e)"?
15. By section 48 (5) (a), is it the proponents' intent that a commissioner be deemed a "public servant" for purposes of those provisions of title 18, C.R.S.?

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. There are several errors concerning internal references. The Colorado constitution is divided into sections, and each section may contain subsections, paragraphs, sub-paragraphs, 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

For example, in section 48 (2) (d), the reference to "SUBSECTION (b)" should read "PARAGRAPH (b) OF THIS SUBSECTION (2)". Consider reviewing the proposed initiative for other internal reference errors.

2. In the first sentence of section 48 (2) (d), the word "IN" appears to be extraneous.
3. In section 48 (2) (g), it appears that new language ("plans are") is underlined rather than small-capped.
4. At the start of section 48 (3), it appears that there should be an "(a)" after "**reapportionment.**", and section 48 (3) (k) should be relettered (b).
5. In section 48 (4) (b), it appears that the second introductory paragraph on factors without weight should be lettered paragraph (c) and the remaining paragraphs relettered.
6. In section 48 (4) (e) and (f), the subparagraphs do not rely on the first language in the paragraph. Therefore, the initial language should be preceded by a "(I)" and the succeeding subparagraphs renumbered.
7. In section 48 (7), since some of this language is taken from the existing section 48 (1) (f), "~~(f)~~" should precede "(7)".