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## MEMORANDUM

**TO:** Gregory Brophy and Dan Gibbs

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** February 12, 2016

**SUBJECT:** Proposed initiative measure 2015-2016 #97, concerning Petition Signature Requirements for Initiated Constitutional Amendments

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 state constitution appear to be:

1. To make it more difficult to amend the state constitution by requiring that the signatures constitutionally required to propose an initiated constitutional amendment shall include the signatures of registered electors who reside in

each state senate district equal to at least 2% of the total registered electors in such district; and

2. To specify that the boundaries of the senate districts and the number of registered electors in those districts shall be those in effect when the form of the petition has been approved for circulation as provided by law.

## **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. Does the phrase, "In order to make it more difficult to amend this constitution . . ." in section 1 and 2 of the proposed measure have any legal effect? Is it just a statement of intent?
3. Are there any other purposes for requiring a geographic distribution of petition signatures? If so, why include just this one?
4. If the proposed measure becomes law, there will be two signature requirements for petitions to amend the state constitution: The current constitutional requirement to have signatures from registered electors in an amount equal to at least 5% of the total number of votes cast for all candidates for secretary of state at the previous general election, and the new requirement that the 5% include signatures of registered electors from each state senate district equal to at least 2% of the total number of registered electors in the senate district. Is this your intent?
5. Because the percentages are of different bases, is it possible that satisfying the 2% senate district requirement could require a proponent to collect more than 5% of the total number of votes cast for all candidates for secretary of state at a previous general election with poor voter turnout? If so, which requirement would control? The proposed measure states that the 5% requirement "shall include" the 2% per senate district requirement. If the 2% requirement controls and must be met even if it exceeds the 5% requirement, then is it accurate to say that the 5% signature requirement in subsection (2) includes the number required in subsection (2.5), or is it really a separate requirement?

6. Does "such senate district"<sup>1</sup> mean 2% of the registered electors who reside in the senate district?
7. All of the 35 state senate districts are theoretically the same size, but the population of the district, number of registered voters in the district, and number of actual voters in the district may be very different from one state senate district to another at any given time. Do you anticipate that any inconsistencies may result from using the number of registered electors in a state senate district as the basis for the 2% requirement?
8. Is it your intent that a specific person or entity would be responsible for verifying the number of registered electors in and the boundaries of state senate districts at the time the form of the petition has been approved for circulation? If so, which person or entity would be responsible for verifying this information?
9. Does "at the time the form of the petition has been approved" mean on the day that the petition is approved by the secretary of state? If not, what is your intent?
10. Is it your intent that a specific person or entity would be required to review the signatures on a petition to verify that at least 2% of the total registered electors who reside in each state senate district have signed the petition? If so, which person or entity would be responsible for this verification process?
11. The proposed initiative does not apply to initiated or referred statutory changes, correct?
12. What will be the effective date of 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.

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<sup>1</sup> "Such" means "of the kind, character, degree, extent, etc., of that or those indicated or implied." Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc.

1. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.).  
For example:

**SECTION 1.** In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each constitutional section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, section 1 of article V, **add** (2.5) as follows:".
3. It is standard drafting practice to use SMALL CAPITAL LETTERS rather than ALL CAPS to show the language being added to the Colorado constitution.
4. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
  - a. The first letter of the first word of each sentence;
  - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.