

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Carla Cecilia Castedo Ribero and Robert DuRay  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** December 29, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #95, concerning 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 the Colorado 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 change the entity that redraws congressional boundaries from the General Assembly to a new Citizens' Congressional Redistricting Commission (commission);

2. To establish the number, appointment process, and qualifications for members of the commission, including requiring that four members be from each of the state's two largest political parties and that four members be unaffiliated with any political party;
3. That in drawing districts, the commission must: First, comply with the equal population requirements of the United States Constitution and with the federal "Voting Rights Act of 1965"; then prioritize communities of interest that need congressional representation; and then consider preserving political subdivisions, the compactness of each congressional district, and the competitiveness of each district;
4. To establish that approval of a map to set congressional districts requires the approval of eight commissioners, but that the four unaffiliated commissioners may veto a plan approved by the other eight;
5. To require, prior to adopting a plan, the commission hold public hearings throughout the state, including at least three in each congressional district, one west of the continental divide, and one south of El Paso County and east of the continental divide;
6. To require the public hearings throughout the state to be broadcast live, and recorded for later viewing, on the commission's website;
7. To establish a process for the Colorado Supreme Court to review and approve plans;
8. To provide that commissioners are subject to anti-bribery and abuse of public office criminal statutes, and that commissioners and commission staff are subject to the state's open records and open meetings laws;
9. To require persons who receive compensation for advocating to the commission, commissioners, or the commission staff to register with the Colorado Secretary of State and disclose the compensation and from whom the compensation was received; and
10. To authorize the commission to adopt procedural rules by a majority vote but to require seventy-two-hour advance notice of such procedural rules.

## **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 is meant by the addition of the phrase "notwithstanding any other provisions of law" at the end of section 44 (3)?
3. If both this measure and proposed initiative 2017-2018 #96 pass, may a person apply to be a member of both the nonpartisan reapportionment commission and the citizens' redistricting commission? If so, once a person was appointed to one of the commissions, would the person then be ineligible to serve on the second? Or do the proponents envision that a person appointed to both could choose the commission on which he or she serves?
4. Under section 44 (4)(b), nonpartisan staff is to determine whether an applicant meets the qualifications to be a member of the commission. How will staff determine if an applicant has been compensated by a member of, or served on a campaign committee to elect a candidate to, the House of Representatives under section 44 (4)(h)(III)? May staff rely upon an applicant's statement in his or her application that the applicant is not disqualified under those provisions?
5. In section 44 (4)(b)(I), what constitutes "experience in representing or advocating the interests of groups, organizations, or associations . . ."? May staff limit the pool of applicants based on the extent of such experience or is an applicant who can show any experience qualified to be in the pool?
6. Under section 44 (4)(b), how many applicants do the proponents envision being in the pool limited by nonpartisan staff?
7. Section 44 (7)(b)(III) requires the commission to consider whether the district drawn will be competitive. Is it the proponents' intent that the commission look at the competitiveness of each district individually? Or should the commission look at a plan as a whole and consider whether it draws the most number of competitive districts? Or is there something else that the commission is to consider?
8. Section 44 (4)(d) indicates dates but does not specify a year. Do the proponents believe that the measure is clear or should language such as "in the year following the census," "the following," or "the next" be added to clarify the dates?
9. Section 44 (4)(d) directs legislative leaders to pick ten names of persons registered with one of the two largest political parties to be submitted to the Chief Judge of the Colorado Court of Appeals:

- a. Is a leader to pick only names from his or her political party, or can the leader pick names from either political party?
  - b. Can an applicant be picked by more than one leader?
  - c. What if there are fewer than forty names remaining in the pool of qualified applicants who are members of the state's two largest political parties?
  - d. What if there are fewer than ten names remaining in the pool of qualified candidates who are not affiliated with one of the two largest political parties?
10. Section 44 (4)(e) requires that no commissioner may be chosen if a previously appointed commissioner resides in the same congressional district. Under section 44 (4)(d), the Chief Judge of the Colorado Court of Appeals makes the final six appointments in no particular order. Does the limitation in the first sentence of section 44 (4)(e) only apply to the first six appointments under section 44 (4)(c)? Should the restriction on no more than two commissioners from the same congressional district and the requirements that one commissioner must reside in each congressional district and west of the continental divide be directed to the Chief Judge's appointments?
11. Section 44 (4)(f) directs that the "pools" should reflect "the state's then-existing racial and gender diversity." Is this an additional qualification that nonpartisan staff is to consider in limiting the pools under section 44 (4)(b)?
12. Section 44 (4)(g) concerns filling vacancies on the commission:
- a. Is the pool for unaffiliated commissioners chosen by lot by nonpartisan staff the entire pool of unappointed and unaffiliated applicants remaining under section 44 (4)(c)?
  - b. Are legislative leaders allowed to add to the pool of selected names, or is the Chief Judge limited to the names originally submitted?
13. In section 44 (6)(b), does the phrase "must not conclude its map drawing" mean that the commission must not approve a final plan until at least three hearings have been held?
14. Is a commissioner attending a hearing if the commissioner is watching the hearing live as broadcast on the commission's website? If not, what other requirements must be met for a commissioner to be attending "electronically," as stated in section 44 (6)(b)?

15. Section 44 (8)(a) requires the Colorado Supreme Court to determine if the approved map "fosters fair and effective representation, and is consistent with the weight of credible, non-repetitive evidence in the record developed before the commission":
- a. What do the proponents mean by "fosters fair and effective representation"?
  - b. Is this additional criteria that the commission must consider? If so, where does it fit in the priority of factors to be considered?
  - c. What do the proponents intend by the phrase "consistent with the weight of credible, non-repetitive evidence in the record"? How is the Court to determine if a plan is consistent with that?
16. Do the proponents believe that the phrase "redistricting factors approved by the voters in 2018" in section 44 (8)(b) is sufficiently clear? Are not all of the redistricting factors approved by the voters in 2018 set forth in section 44?
17. Section 44 (9)(b) makes "the commission, the commissioners, and the commission's staff" subject to the state's open meetings and open records laws:
- a. Is it the proponents' intent that any meeting between a commissioner and a member of the commission's staff is open to the public?
  - b. Is it the intent of the proponents that any meeting between two or more members of the commission staff is public?
  - c. Is it the proponents' intent that notice be given prior to any meeting at which more than half of the commission's staff is expected to be present?
  - d. Is it the proponents' intent that any preliminary draft of a plan prepared by the commission's staff is a public record?
18. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Colorado 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 Colorado Legislative Council staff at [BallotImpactEstimates.ga@state.co.us](mailto: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. 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.

For example:

(2) **Definitions.** FOR PURPOSES OF THIS SECTION:

(a) "CITIZENS' COMMISSION" OR "COMMISSION" MEANS . . . .

2. In section 44 (2)(f), the proper name of the legislative council is simply "legislative council." Would the proponents consider changing the name from "office of legislative council" to "legislative council"?
3. Section 44 (8)(a) is not an introductory portion, and thus should not be followed by subparagraphs (I) and (II). It would be more appropriate to construct subsection (8) as follows:

**(8) Judicial consideration . . .**

(a) (I) IF THE CITIZENS' COMMISSION . . . .

(II) UPON RECEIPT OF DIRECTIONS . . . .

(III) IF THE CITIZENS' COMMISSION . . . .

If the proponents choose to make this change, the internal reference in the new subsection (8)(a)(II) would read ". . . which map may be appealed to the supreme court as provided in subsection (8)(a)(I) of this section."

4. In section 44 (9)(c) there is a reference to "mapping criteria in subsection (8)." The mapping criteria appears to be in subsection (7); if this is correct, the reference should be written as follows: "mapping criteria in subsection (7) of this section."