

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Suzanne Staiert and Frank McNulty

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

**DATE:** March 27, 2020

**SUBJECT:** Proposed initiative measure 2019-2020 #305, concerning Filings with Independent Ethics Commission

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 change the date by which complaints alleging violations of Article XXIX of the state constitution must be brought from within the preceding 12 months of the alleged violation to within 8 years of the alleged violation.

## **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. What is your rationale in seeking to move the statute of limitations for bringing an action alleging a violation of article XXIX of the state constitution ("Amendment 41") from within the preceding 12 months of the alleged violation to within 8 years of the alleged violation?
4. How did you make the determination that the new statute of limitations specified in the proposed initiative should be 8 years?
5. Is the proposed 8-year statute of limitations intended to address any particular elected official, group of elected officials, or type or kind of alleged misconduct?
6. In Colorado, the presumption is that changes in the law are applied prospectively only unless a contrary intent is clearly manifest. Is it your intent that the proposed initiative be applied on a prospective basis only -- meaning that the new statute of limitations would only apply to alleged violations of Amendment 41 committed on or after the date of the proposed initiative? If your intent is that the change in the proposed initiative apply as well to alleged violations committed prior to the date of the proposed initiative, have you considered whether such application raises legal concerns as a retrospective application of the law in violation of section 11 of article II of the state constitution?
7. The proposed initiative amends the state constitution. You are aware that, if passed, the new language could only be further changed by another constitutional amendment? Moreover, you are aware that, to become law, the proposed initiative must be approved by at least 55% of the votes cast thereon?
8. 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 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](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. Each constitutional and statutory 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, **amend** section 5 (3)(a) of article XXIX as follows:".
2. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 1 of the proposed initiative and be in bold-face type as follows:

**Section 5. Independent ethics commission.** (3)(a) Any person may...

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.