

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Jon Caldara and Vanessa Rutledge
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 15, 2024
SUBJECT: Proposed initiative measure 2023-2024 #182, concerning titles for referred measures

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 require that "all measures referred to a vote of the people by the general assembly by bill, resolution, or similar process" have a title that is "fixed by the title board in accordance with the same standards that govern the fixing of a title of a proposed initiative measure";

2. To prevent the general assembly from referring a measure to the people that contains more than one subject or has a title that that is misleading, inaccurate, or fails to reflect the central features of the measure; and
3. To make the provisions of the proposed initiative "self-executing".

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. The proposed initiative requires titles of referred measures to be subjected to the same title review process as titles of proposed initiatives. Assuming that this means that the title board would conduct hearings on each referred measure:
 - a. Who, if anyone, would be required to appear before the title board as the designated representatives of the general assembly as the de facto proponent of a referred measure?
 - b. Would the title board be bound to follow the specific title language requirements of section 1-40-106 (3)(e) through (3)(j) when setting a title for the referred measure?
 - c. Would legislative council staff be required to prepare a fiscal summary for a referred measure in accordance with section 1-40-105.5?
 - d. If the title board determines that a referred measure has multiple subjects, would it lack jurisdiction to set a title, and would the proposed initiative therefore be barred from the ballot? If so, would the general assembly have any way to remedy the jurisdictional defect so a title could be set, and if so, what would that remedy be?
 - e. Would the title board's initial decision regarding the setting of a title be subject to rehearing and, if so, would its final decision regarding the setting of a title be subject to appeal to the Colorado supreme court in the same way that the title board's initial and final title setting decisions for proposed initiatives are subject to rehearing and judicial review?
3. How, if at all, does the proposed initiative interact with section 21 of article V of the Colorado constitution, which requires that all bills have a single subject that is clearly expressed in the title and section 2 (3) of article XIX of the

Colorado constitution, which requires that all concurrent resolutions to amend the Colorado constitution referred to the people by the general assembly have a single subject that is clearly expressed in the title? Specifically:

- a. How, if at all, is section 2 of the proposed initiative intended to be different from the requirements already applicable to bill and concurrent resolution titles, pursuant to section 21 of article V and section 2 (3) of article XIX of the Colorado constitution?
 - b. Is the proposed initiative intended to replace or supplant the review of titles of bills during the legislative process that referred measures undergo pursuant to section 21 of article V or section (2 (3) of article XIX of the Colorado constitution? Or, are these provisions, as applicable, intended to be enforced simultaneously? If so, how?
 - c. At what point during the legislative process would the title board be required to fix the title of a referred measure?
 - i. If the title board is required to fix the title of a referred measure prior to introduction of the referred measure in the general assembly, consider whether this would conflict with the requirement for confidentiality of requests for legislation. Also, consider whether this would waste resources since many bill requests are never introduced or fail to pass.
 - ii. If the title of a referred measure is required to be fixed by the title board before the bill is enacted by both chambers of the general assembly, what would happen if the general assembly subsequently amends the title?
 - iii. On the other hand, consider whether the title of a referred measure can or should be changed by the title board after the measure has been debated and voted on by the general assembly under its existing title. What would be the process if the title board changed the title after a measure's passage? Would the referred measure go back to the general assembly to be re-passed?
4. Consider whether the language in section 2 of the proposed initiative requiring that a title be "fixed by the title board in accordance with the same standards that govern the fixing of a title of a proposed initiative measure" is sufficient to

avail the public of the full scope of the proposal, since the title board and its processes and standards are created and described only in statute and not referenced anywhere in section 1 of article V, or in any other provision, of the Colorado constitution.

5. Section 1 (10) of article V of the Colorado constitution provides that the entire section is "in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed by law."
 - a. Is the language in section 4 of the proposed initiative intended to serve a different purpose than that expressed by the language in section 1 (10) of article V of the Colorado constitution? If not, consider whether section 4 of the proposed initiative is necessary or could create confusion because of its duplicative nature.
6. Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative?
 - a. Have the proponents considered the likelihood of delay in the legislative process due to the possible need to wait for the title board to approve titles or reconsider amended titles, or the delay in the legislative process if the general assembly must send legislation or the substance of legislation that has already been enacted back through the entire legislative process because the title board has denied title setting for or changed the title of a referred measure?

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 section being amended 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, **add** section __ to article X as follows:"

S:\PUBLIC\Ballot\2023-2024cycle\Review and Comment Memos\2023-2024
#182.docxs:\public\ballot\2023-2024cycle\review and comment memos\2023-2024
#182.docxs:\public\ballot\2023-2024cycle\review and comment memos\2023-2024 #182.docx

- a. The amending clause for section 1 of the proposed initiative should have a section number indicating its placement in section 1 of article V of the Colorado constitution and should not include the headnote "**Legislative Declaration**".
 - b. The amending clauses for section 1 and section 2 contain formatting and capitalization errors and should be changed to read as follows:
 - i. "**SECTION 1.** In the constitution of the state of Colorado, section 1 of article V, **add** [x] as follows:"
 - ii. "**SECTION 2.** In the constitution of the state of Colorado, section 1 of article V, **add** (11) as follows:"
2. It is unnecessary to capitalize "people" in section 1 of the proposed initiative.
 3. It is standard drafting practice to use Oxford commas.