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Colorado General Assembly

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MEMORANDUM

TO: Jason Bertolacci and Owen Alexander Clough

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 20, 2024

SUBJECT: Proposed initiative measure 2023-2024 #187, concerning the conduct of elections

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2023-2024 ##186 to 196. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #186 and ##188 to 196, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. To allow the all-candidate primary election to be conducted using instant runoff voting such that each elector may rank in order of preference up to four candidates for each covered office;

2. To define the term "covered office";

3. To specify that each all-candidate primary election ballot shall count as one "vote" for the candidate that is ranked the highest on that ballot, and the four candidates that receive the highest number of votes at the end of the ranked vote tally advance to the general election;

4. To specify that the ranked voting tally for the all-candidate primary election shall proceed in rounds, such that if there are more than four active candidates on the ballot, the candidate that ranked highest on the fewest number of ballots is eliminated, and the ballots that ranked the eliminated candidate as the highest are counted as votes for the second-ranked candidate on those ballots and a new round begins;

5. To address scenarios in which two or more candidates are tied with the fewest ballots, in which there are four or fewer candidates for a covered office in an all-candidate primary election, and in which a candidate who advances from the all-candidate primary election withdraws, dies, or is deemed disqualified prior to the general election;

6. To establish thresholds for candidates for a covered office to petition onto a primary election ballot;

7. To establish the manner in which ballots are prepared for a primary election for covered offices;

8. To establish the manner in which voting is conducted for a primary election for covered offices;

9. To require that general elections for covered offices be conducted by instant runoff voting;

10. To establish requirements for the formatting of general election ballots for covered offices for elections that will be conducted by instant runoff voting;

11. To establish that voters may rank as many or as few candidates as they wish for covered offices, including ranking just one candidate per office, in an election conducted by instant runoff voting;

12. To establish the mechanism for tabulating votes in an instant runoff election;

13. To require the secretary of state to promulgate rules to implement certain changes to the election code as added or amended by the proposed initiative; and

14. To make necessary conforming amendments in the election code regarding primary elections, petitions, and general elections to implement the proposed initiative.

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 following comments and questions relate to the provisions concerning the addition of section 1-4-101.5 concerning all-candidate primary elections for covered offices:

   a. Proposed sections 1-4-101.5 concerning all-candidate primary elections anticipate election ranking schemes, ranked tally voting, multiple rounds, and other types of voting which would require new procedures in order to administer and count ballots. Are districts equipped with sufficient resources to develop and administer these new procedures?

   b. Who is responsible for the tabulation of the ballots? County clerks and recorders? The designated election official? The secretary of state?

   c. Does the proposed initiative require any change to the current mechanisms of reporting votes and election returns to implement?

   d. Should risk limiting audits be required for elections conducted by ranked choice voting as contemplated under the proposed initiative?

Technical Comments

No new technical comments were raised by this proposed initiative.