

# STATE OF COLORADO

## 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 #188, 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 require an all-candidate primary election for covered offices to be held in which one ballot containing the names of all candidates that have petitioned onto the ballot are listed regardless of political party affiliation and all eligible electors regardless of political party affiliation are allowed to vote for candidates on the ballot;
2. To define the term "covered office";
3. To generally require the four candidates that receive the highest number of votes at the primary election to be placed on the ballot for the general election for the corresponding covered offices and provide for exceptions when there are fewer than four candidates or when a candidate who would otherwise be placed on the ballot becomes unavailable to be placed on the ballot;
4. In the event of a tie for the final advancing position, to require the final candidate to advance to the general election to be determined by lot;
5. To require the secretary of state to promulgate rules to implement changes to the methods of placing names on a primary ballot;
6. To allow political parties to choose to nominate candidates by assembly or conversion for primary elections for covered offices;
7. To establish thresholds for candidates for a covered office to petition onto a primary election ballot;
8. To establish the manner in which ballots are prepared for a primary election for covered offices;
9. To establish the manner in which voting is conducted for a primary election for covered offices;
10. To require that general elections for covered offices be conducted by instant runoff voting;
11. Establishing requirements for the formatting of general election ballots for covered offices for elections that will be conducted by instant runoff voting;

12. 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;
13. To establish the mechanism for tabulating votes in an instant runoff election;
14. 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
15. 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. Proposed section 1-4-102(1) concerning placing names on the primary ballot applies to candidates "designated and certified by assembly for an office other than a covered office." The proposed section also specifies that "[c]andidates by petition for any particular office shall follow assembly candidates and shall be placed on the primary election ballot in an order established by lot." Was your intent for proposed subsection (1) to apply to covered offices?

## **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. The amending clause for Section 6 says that (3) is being added but it is not. That reference should be deleted.

2. In proposed section 1-4-102, the subsection number (1) is duplicated, and the text that is proposed to be added to current section 1-4-102(1) is not in small capitalization.
3. Proposed section 1-4-502(1.5) provides that a candidate "may be made . . . by petition for nomination for as provided in section 1-4-802.5." The second "for" should be deleted.
4. Proposed section 1-4-702.5 references nominations "by convention" in the headnote and in subsection (2), but references nominations by "conversion" in subsection (1). Should subsection (1) also reference "convention"?