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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 #189, 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 to 188 and ##190 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.

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 establish thresholds for candidates for a covered office to petition onto a primary election ballot;
6. To establish the manner in which ballots are prepared for a primary election for covered offices;
7. To establish the manner in which voting is conducted for a primary election for covered offices;
8. 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;
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 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 that the secretary of state release preliminary ranked voting tallies as soon as practicable on election night and update the tallies at regular intervals until the official canvass of the vote is complete; 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. The following questions relate to proposed subsection 1-4-207(8) concerning preliminary reporting of final four general election results:
 - a. Is it the proponents' intent that if the secretary of state is not tabulating the election results for an election conducted using ranked choice voting, the county clerk and recorders or designated election officials will be required to provide to the secretary of state the information required in subsection (10) of Section 2? Is this substantial addition to their current duties on election night under current law? Have the proponents considered any fiscal impact that may occur resulting from any increased work load from this reporting requirement?
 - b. Does the secretary of state currently possess the resources and capacity to perform functions required to release preliminary ranked voting tallies as soon as practicable on election night and to update the tallies at regular intervals until the official canvass of the vote is complete?
 - c. Should the proposed initiative specify a platform or manner through which preliminary tallies should be released by the secretary of state?
 - d. The subsection is within the "Final four general elections" section, but it references "any election for a covered office using a ranked voting method." To which elections is the subsection meant to apply?

Technical Comments

No new technical comments were raised by this proposed initiative.