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Colorado General Assembly

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MEMORANDUM

TO: Jason Bertolacci & Owen Alexander Clough
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 20, 2024
SUBJECT: Proposed initiative measure 2023-2024 #197, concerning elections to fill vacancies in the general election

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 Revised Statutes** appear to be:

1. To require the governor to set a day to hold an election to fill a vacancy in the general assembly to be held in the district for the vacant general assembly seat;

2. To require an election held to fill a vacancy in the general assembly to be conducted using a ranked choice voting method;
3. To allow a governor to decide not to set a day to hold an election to fill a vacancy in the general assembly in certain circumstances and instead require the vacancy to be filled at the next regularly scheduled general election;
4. To require the secretary of state to promulgate rules to allow candidates to fill a vacancy in the general assembly to petition onto the legislative vacancy election ballot;
5. To require legislative vacancy elections to be conducted in accordance with the "Uniform Election Code of 1992;" and
6. To repeal existing statutory provisions that require vacancies in the general assembly be filled by vacancy committees.

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 does the term "legislative election" mean as it is used in the proposed initiative? Should this term be defined?
3. What does the word "appoint" mean as it is used in subsections (1)(a), (1.5)(a), and (1.7)? Should the word "elect" be used instead?
4. It appears to be the proponents' intent that if the governor decides to not call an election to fill a vacant general assembly seat because there is not enough time before a regularly scheduled general election, then the seat will be filled at that general election. If that is the case, in the case of a vacancy for a state representative seat or for a state senate seat that would be scheduled to be contested at the general election even if there was not a vacancy in the seat:
 - a. Would the legislative vacancy election to fill the seat for the brief remainder of the current term be separate from the election for the next regular term of office for the seat? If so:

- i. Could different pools of candidates could be on the ballot at the same time for the legislative vacancy election and the regular election for the same seat?
 - ii. Would the vacancy election be conducted by a ranked choice voting method while the election for the next regular term for the seat is simultaneously conducted by the current voting method? If so, would this lead to voter confusion or create administrative challenges for election officials?
 - b. If not:
 - i. Would the vacancy actually be filled at all or would the candidate elected simply take office at the beginning of the next regular term of office for the seat?
 - ii. Alternatively, would the candidate who wins the legislative vacancy election automatically continue in office for the next regular term of office for the seat?
- 5. Is it actually the proponents' intent that if governor decides not to call an election to fill a vacancy for a state representative seat or for a state senate seat that would be scheduled to be contested at the general election even if there was not a vacancy in the seat that no vacancy election be held and that the vacancy remain unfilled until the candidate elected to the seat for the next regular term of office takes office?
- 6. Will the election to fill the vacant general assembly seat at the general election be subject to existing statutory provisions governing the election of candidates to general assembly seats? If so, will there be sufficient time for the statutory provisions to be satisfied?
- 7. What does the term "legislative vacancy election ballot" mean as it is used in subsection (1.5)(b)? Should this term be defined?
- 8. Are the statutory provisions governing primary elections intended to apply to an election held to fill a vacant general assembly seat? If not, are there conforming amendments that should be made to ensure those provisions are not applicable as is otherwise suggested by subsection (1.7)?

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. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
2. When repealing a provision, it is standard drafting practice to show the existing language in strike-type only. It is not necessary to add the word "repealed" after stricken language.
3. It is standard drafting practice to place all new and small caps language after stricken language, rather than before *and* after.
4. It is standard drafting practice to set off nonessential phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas.
5. The number or letter of what you're referencing needs to be specified for every other level of reference, even when you're referring to a provision within the same statutory subdivision:
 - a. Title: "this title 1"
 - b. Article: "this article 1"
 - c. Part: "this part 1"
 - d. Subsection: "this subsection (2)"
 - e. Paragraph: "this subsection (2)(a)"
 - f. Subparagraph: "this subsection (2)(a)(I)"
 - g. Sub-subparagraph: "this subsection (2)(a)(I)(b)".
6. In the amending clause for section 1 of the proposed initiative, delete "and" before "**repeal**".

7. In section 2 of the proposed initiative, replace "subsection (4) of section 1 of article v" with "section 1 (4) of article V".