

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Kristi Burton Brown and Michael Tsogt
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 15, 2024
SUBJECT: 2023-2024 #224, concerning amendments to initiated statutes

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 modify the requirements to enact legislation that modifies state legislation passed by an initiative by:

- a. Increasing the number of votes required for the general assembly to enact such legislation from a simple majority of the members of each chambers to three-quarters of the members of each chamber; and
 - b. Requiring such legislation to be signed by the Governor.
2. To make an exception to the requirements of the proposed initiative that allows state legislation passed by an initiative to be modified without a supermajority vote or the signature of the governor if the modification is approved by a subsequent vote of the people.

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. As used in the proposed initiative, what is the scope of the term "state legislation passed by initiative"? Does it include both initiated constitutional amendments and initiated statutes? If not, what does it include?
3. Pursuant to article V, section 1 (4)(a) of the Colorado constitution, the proposed initiative will, if approved by the voters, take effect "from and after the date of the official declaration of the voter thereon by the governor, but not later than thirty days after the vote has been canvassed." Do the proponents intend that the requirements of the proposed initiative apply only to modifications of state legislation that is passed by initiative on or after the effective date of the proposed initiative or to both such state legislation and state legislation that was passed by initiative before the effective date of the proposed initiative?
4. The proposed initiative, allows state legislation passed by initiative to be modified by a "subsequent vote of the people".
 - a. May the "subsequent voter of the people" be a vote on either a proposed initiative or on state legislation referred to the people by the general assembly?
 - b. Is the level of voter approval required for such a modification the same as under current law, which is a simple majority of voters voting on a measure to modify a state statute or to modify the Colorado constitution

only by wholly or partly repealing one or more provisions and fifty-five percent of voters voting on an initiated or referred measure that adds language to the Colorado constitution?

- c. With respect to a referred measure to obtain voter approval to modify state legislation passed by initiative, would the current requirements for passage and referral, which do not include gubernatorial consideration or approval but do include an affirmative voter of a majority of the members of each chamber for a measure to change state statute and an affirmative vote of two-thirds of the members of each chamber for a measure to amend the Colorado constitution, apply? If not, what requirements would apply?

5. How would a statutory provision that was first passed by the general assembly, then amended by an initiative, and then further amended by the general assembly be handled? For example, section 22-32-109.4, C.R.S., which was originally enacted by the general assembly, then amended by an initiative, and then further amended by the general assembly. Would it be subject to a simple majority or supermajority vote requirement?

6. Pursuant to article IV, section 11 of the Colorado constitution, the governor must be presented with a bill passed by the general assembly, but the governor is not required to sign the bill for the bill to be enacted. If a bill is not signed within a specified period after it is presented to the governor, and no objections are made by the governor, the bill is enacted, and if the governor vetoes a bill, the General Assembly may override the veto by an affirmative vote of two-thirds of the members of each chamber.

- a. The proposed initiative appears to conflict with article IV, section 11 by requiring the governor to sign legislation passed by the general assembly that modifies state legislation passed by initiative for the bill to take effect. Is it the proponents' intent to require the Governor's signature for such legislation rather than just requiring the governor to have the opportunity to sign such legislation, have it become law without signature, or veto it? If so, would the proponents of the initiative consider making a conforming amendment to article IV, section 11 of the Colorado constitution to avoid a conflict with the proposed initiative?

7. Article V, section 22 of the Colorado constitution specifies that a bill requires "a vote of a majority of the members of each house" to become law, and article XIX, section 2 (1)(a) of the Colorado constitution requires a two-thirds vote of the members of each chamber to refer a proposed constitutional amendment to the voters. Would the proponents consider making conforming amendments to these provisions of the

Colorado constitution to make exceptions for the heightened voting requirements of the proposed initiative?

Technical Comments

1. The headnote for Section 1 should not be written in ALL CAPS. It should be written as it currently exists in the Colorado constitution: "**Section 1. General assembly – initiative and referendum.**"
2. Would the proponents consider writing out "three-fourths" to conform with standard drafting practices?