



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

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## Memorandum

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April 10, 2020

**TO:** Individuals Interested in Participating in the Preparation of the Ballot Information Booklet

**FROM:** Natalie Mullis, Director of Research, 303-866-3521  
Cathy Eslinger, Research Manager, 303-866-3521

**SUBJECT:** Process for Writing the Ballot Information Booklet

Article V, Section 1 (7.5), Colorado Constitution, and Section 1-40-124.5, Colorado Revised Statutes, require the Legislative Council Staff to prepare a ballot information booklet prior to each election in which a statewide issue appears on the ballot. The booklet's purpose is to provide voters with the text, title, and a fair and impartial analysis of each initiated or referred constitutional amendment, law, or question on the ballot. The analysis must include a summary of the measure, the major arguments both for and against the measure, and a brief fiscal assessment of the measure. The analysis may also include any other information that will help voters understand the measure's purpose and effect. Any person may file written comments for Legislative Council Staff to consider during the preparation of an analysis. The staff considers all comments and/or proposed amendments submitted on or before the established deadlines, but uses its discretion when incorporating changes to an analysis.

### **Process of Writing the Ballot Information Booklet**

The ballot information booklet preparation involves writing and distributing several drafts of each analysis for public comment. The process culminates in a public hearing on each analysis before a legislative committee, the Legislative Council, in late August or early September. This memorandum describes the steps for soliciting public comment, the process for writing and distributing each analysis, and the issues the staff considers when writing an analysis and evaluating public comments. Please note that electronic communication is the primary method of transmitting information throughout the process. All information for each measure—drafts of analyses, the staff writing team, deadlines, and the text of the measure—is posted on the web at:

[coloradobluebook.com](http://coloradobluebook.com)

## Soliciting Public Comment

A mailing list is established for each measure when an analysis is drafted. To create the mailing list, staff compiles a list of potentially interested persons, including the proponents, opponents, and individuals or organizations who might be affected by the measure or who are knowledgeable about the subject matter. The staff contacts all of these individuals via email and asks that anyone wanting to receive the drafts of the analysis reply to the staff email in the affirmative. Individuals may also ask to be included on the mailing list by calling the office at 303-866-3521, contacting a member of the staff team that is assigned to a particular analysis, or emailing the office at [lcs.ga@state.co.us](mailto:lcs.ga@state.co.us)

Everyone electing to remain on or be added to the mailing list for a particular ballot measure receives a copy of subsequent drafts of the analysis and has the opportunity to comment on these drafts throughout the process. Once a draft is complete, it is emailed and placed on the internet, allowing comments by any interested person. By law, all comments submitted to Legislative Council Staff must include the name of the person(s) submitting the comment and the name of the organization the person(s) represents or is affiliated with for purposes of making the comments. Legislative Council Staff also requires a phone number, and, if available, an email address. The mailing lists and all comments become public information upon release of the next draft.

## Process for Writing an Analysis

*Preparation of an analysis involves a number of drafts.* Up to three drafts of each analysis are prepared over the course of the summer. The number of drafts depends on the complexity of the measure and the time available. Each draft has a deadline for submitting comments.<sup>1</sup> These deadlines are contained in a document that accompanies the first and subsequent drafts, and are posted on the internet. Anyone may file written comments for consideration by the Legislative Council Staff during any of the draft analysis preparation. Please note, the written comments become part of the public record.

For the *first draft*, a staff writing team interviews a limited number of individuals who are knowledgeable about the measure, including the proponents and organized opposition. Based on these interviews and on their own research, staff members develop a first draft of an analysis. This draft is posted on the internet and emailed to anyone who has indicated an interest in reviewing the draft. Individuals generally have about seven or eight calendar days to comment on the first draft. The staff reviews the public feedback to determine whether it can be incorporated into the next draft. The staff considers all comments and/or proposed amendments submitted on or before the established deadlines, but uses its discretion when incorporating changes to an analysis.

Generally within two weeks after receiving comments on a draft, staff sends out a *second draft*, after considering the suggestions received on the prior draft. This draft follows the same process as the first draft. On most occasions, a third draft is also sent out. Please note that comments on each draft are reviewed independently of comments received on prior drafts. Thus, any unresolved issues must be resubmitted for additional consideration. All comments must be submitted in writing. A *final draft* is prepared for the Legislative Council meeting in late August or early September.

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<sup>1</sup>Rule XIV of the Rules of the Legislative Council.

*Staff follows some general criteria when writing analyses and when reviewing comments to drafts.* Because voters have varying levels of familiarity with the issues on the statewide ballot, the goal in developing the voter information booklet is to present issues in a factually correct manner while also keeping the booklet concise and readable. To that end, staff focuses on the most important points of a measure and presents these points in language a layperson can understand, limiting the use of technical terms and jargon associated with programs and maintaining balance in the arguments for and against. Staff also avoids using slogan-type language that triggers a favorable or negative response to a measure but does not contribute to voter understanding of the underlying issue. Other criteria used in evaluating comments from proponents and opponents include:

- Can the proposed language be verified? Is it a statement of fact or an interpretation or opinion of the results of the measure? Does the proposed language or fact directly apply to the measure? Does it have the potential to mislead the reader?
- Does the language add or detract from an argument? Is it weakening the opposition's argument? Does it repeat language already contained in the analysis?
- Does the language detract from the balance of the explanation?
- Is the suggested language best left to the campaign to be conducted by the opposing parties?

These are among the issues considered when determining whether to incorporate proposed changes, where to place suggested changes (e.g., in the background section or in an argument), and the type of language to use. It is helpful to have the context for proposed changes—the concern with existing language or the reason for proposing additional language, for example—so that the rationale for the change can be considered when evaluating the language. A member of the staff will call or meet with an individual if there is any question about what is being suggested to clarify issues and to see if there is any way to accommodate the suggestion.

*Fiscal impact statements are also prepared by staff.* By law, the Legislative Council Staff is also responsible for preparing a fiscal impact statement for measures on the statewide ballot, taking into consideration fiscal impact information submitted by various state and/or local agencies and any proponent or other interested person. Individuals are invited to submit fiscal information for consideration by contacting the Legislative Council Staff at 303-866-3521 or [lcs.fiscalnotes@state.co.us](mailto:lcs.fiscalnotes@state.co.us). When completed, the fiscal impact statement for each measure is available on the website for the ballot information booklet. A summary of each measure's fiscal assessment is included in its analysis, following the arguments for and against. At a minimum, the summary must include:

- (1) an estimate of the effect of the measure on state and local government revenues, expenditures, taxes, and fiscal liabilities;
- (2) an estimate of the amount of any state and local government recurring expenditures or fiscal liabilities; and
- (3) for any measure that modifies the state tax laws, an estimate of the impact to the average taxpayer, if feasible.

*Questions or concerns about the process.* Each writing team is supervised by a team leader, whose name is posted on the website for the ballot information booklet. Please contact the team leader with any questions or concerns about the process for a particular analysis. Natalie Mullis, Director, can be contacted with concerns regarding that process or by anyone who believes that his or her concerns are not being addressed. All staff members can be reached at 303-866-3521.

*Information available for public inspection.* The ballot analysis drafts that are publicly distributed and any written comments received are available for public inspection under the open public records law after each draft. All written comments received by Legislative Council Staff and open for public inspection under the public records law will include identifying information noting the individual(s) submitting any written comments. Open records requests must be made to the custodian of records in writing either by mail, email, fax, or hand delivery. The request must include the applicant's name, street address, if any, and telephone number. The records will be made available electronically or for inspection in the Legislative Council Staff offices. Open records requests are not accepted from a group or website. The custodian of records for Legislative Council Staff is the staff director, available at [LCS.Director@state.co.us](mailto:LCS.Director@state.co.us). Information received to write fiscal impact statements is also available for public inspection once the fiscal impact statement is completed.<sup>2 3</sup>

*State law requires the Director of Research of the Legislative Council to conduct a public meeting before the draft of the ballot information booklet is finalized.* The purpose of this meeting is to provide the director and other members of the legislative staff the opportunity to ask questions that arise in response to the written comments received. Because staff members contact individuals directly throughout the process with their questions, this meeting is essentially a formality. To date, the staff has not asked any questions at this meeting, and this meeting is not an opportunity for the public to comment on the draft of the booklet.<sup>4</sup>

## **Finalization/Public Hearing on the Ballot Information Booklet**

A final draft of each analysis is submitted to the Legislative Council Committee. The final draft is the last draft that was distributed for public comment—the second or third draft, whichever is applicable—incorporating any staff clean-up changes or corrections.

## **Public Hearing on the Booklet**

*The Legislative Council Committee meets to review the language of all ballot analyses.* State law requires the 18-member Legislative Council Committee to review each ballot analysis. To that end, the Legislative Council holds a public hearing, scheduled for late August or early September. Anyone who is interested in testifying on the accuracy or fairness of an analysis may do so at this public hearing. The Legislative Council may modify the draft of the booklet upon the two-thirds affirmative vote of the council members.

*An information packet is compiled for the hearing.* The information packet provided to members of the Legislative Council and posted on the website generally includes the following documents: (1) the final draft of each analysis; (2) amendments submitted by interested individuals to the last draft; (3) a list of all individuals who were given an opportunity to comment of the last draft; and (4) the text of the measure.

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<sup>2</sup>The open public records law can be found in Section 24-72-201, *et seq.*, C.R.S.

<sup>3</sup>Please see General Assembly policies at: [www.leg.colorado.gov/open-records-requests](http://www.leg.colorado.gov/open-records-requests)

<sup>4</sup>The statutory language for this requirement can be found in Section 1-40-124.5 (1.7), C.R.S.

## **Distribution of the Ballot Information Booklet**

*The ballot information booklet is mailed to every registered voter household.* After the Legislative Council hearing, the ballot information booklet is printed and mailed to active registered voter households in Colorado at least 30 days before the election. In 2020, this date is October 2.