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MEMORANDUM

TO: Donald Creager III and John Ebel
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 22, 2021
SUBJECT: Proposed initiative measure 2021-2022 #54, concerning petitions

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.

Earlier versions of this proposed initiative, proposed initiatives 2021-2022 #6, 2021-2022 ##8-12, 2021-2022 ##23 and 24, 2021-2022 ##35 and 36, and 2021-2022 ## 43 and 44, were the subject of memoranda dated November 27, 2020, December 31, 2020, March 22, 2021, April 16, 2021, and July 16, 2021, which were discussed at public meetings on November 30, 2020, January 6, 2021, March 25, 2021, April 19, 2021, and July 20, 2021. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not

restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To modify the following aspects of the petition process: Filing procedures, deadlines, government administration, signature form and review, number of signatures required, protest and appeals, voter information, enforcement, and election timing;
2. To extend initiatives and referenda to counties and other local governments;
3. To restrict the Colorado General Assembly's authority to make bills petition exempt; and
4. To allow laws enacted by initiative to be changed only by another initiative.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. How does the single-subject requirement of article V, section 1 (5.5) of the Colorado constitution interact with the requirements of proposed section 1-40-137 sec. 1 (1) that "protests of ballot titles, and to enforce the single subject rule... shall be filed... *only* two days after setting" and that "[o]nly timely court decisions may reset ballot titles and remove subjects"?
2. Article V, section 1 (6) of the Colorado constitution states that "[t]he petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state." Does this contradict the requirement of proposed section 1-40-137 sec. 1 (2), which limits what must be on the "entry lines"?
3. Proposed section 1-40-137 sec 1. (2) states in relevant part that "[r]equired entries shall be 5% of active district registered electors, up to 120,000 entries at first." This likely contradicts the requirements of article V, section 1 (2), (2.5), and (3) of the Colorado constitution which require, in addition to other requirements, that the number of entries equal "at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election." If there is a contradiction, would the requirement in

- the Colorado constitution control and render the language in the proposed initiative ineffective?
4. Proposed section 1-40-137 sec 1. (4), states that "any November election shall apply to ballot issues *on any topics*." Does this contradict article V, section 1 (4)(a) of the Colorado constitution?
 5. Does the statement in proposed section 1-40-137 sec. 2 that "[s]ufficient statutory entries filed by 90 days after the session ends shall further delay effective dates until elections" contradict the statement in article V, section 1 (3) of the Colorado constitution that "[t]he filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative"?
 6. Proposed section 1-40-137 sec. 3 (1) defines districts to include "all local and home rule governments." Article V, section 1 (9) of the Colorado constitution reserves the power of determining how the initiative and referendum power are exercised for cities, towns, and municipalities. Does this mean that a municipality could overrule the requirements of proposed section 1-40-137?

Technical Comments

There are no new technical comments.