

STATE OF COLORADO

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: March 5, 2024
SUBJECT: Proposed initiative measure 2023-2024 #219, concerning elections to fill vacancies in the general assembly

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.

An earlier version of this proposed initiative, proposed initiative 2023-2024 #197, was the subject of a memorandum dated February 20, 2024. Proposed initiative 2023-2024 #197 was discussed at a public meeting on February 22, 2024. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, 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 amendments to the Colorado constitution and Colorado Revised Statutes appear to be:

1. To repeal the section of the Colorado constitution that allows a vacancy in the general assembly to be filled by appointment and requires the vacancy to be filled by a member of the same political party, if any, as the person whose termination of membership created the vacancy;
2. To require the governor to set a day to hold an election with ranked choice voting to fill a vacancy in the general assembly and to require the election to be held in the district for the vacant general assembly seat;
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; and
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.

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. If the governor decides not to call a legislative election to fill a vacancy that occurs near the end of a legislative session, and this vacancy creates vacancies on interim committees or year-round committees, will there be a separate process for filling the vacancies on those committees?

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. In the amending clause for section 1 of the proposed initiative, the proponents should add "the" before "constitution" and replace "to" with "of."
2. In the headnote for section 2 of the Colorado constitution in section 1 of the proposed initiative, the proponents should change the capitalization of "Members," "Oath," and "Vacancies" so that the terms appear in all lowercase rather than initial capitalized type.
3. The word "REPEALED" that follows section 1 is unnecessary and should be removed.