

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@state.co.us



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Kathy Turley and Emily Martini
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 3, 2020
SUBJECT: Proposed initiative measure 2019-2020 #286 concerning Initiated Measure
Economic Impact Statements

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.

This initiative was submitted together with proposed initiative 2019-2020 #285. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed 2019-2020 #285, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments 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 eliminate the requirement that the director of research of the legislative council prepare fiscal impact statements for initiated measures; and
2. To require that a qualified and approved contractor prepare economic impact statements for initiated measures.

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 will be the effective date of the proposed initiative?
3. Does proposed section 1-40-105.5 (2)(a)(I) require the selection of a contractor in years when no initiated measures appear on the statewide ballot?
4. Who is to determine whether a contractor is qualified to prepare objective fiscal impact statements?
5. What is "a joint selection process" for the purpose of proposed section 1-40-105.5 (2)(a)(I)?
6. Are "the two highest-ranking senate officers from different major political parties" the same as the president and minority leader of the senate?
7. Does the measure contemplate or provide guidance for a circumstance wherein the senate officers are unable to identify a contractor qualified to prepare objective economic impact statements?
8. For a measure expected to cause different effects for different local governments' revenues, expenditures, taxes, and fiscal liabilities, does the measure require that the economic impact statement include the effects on all local governments together, the effects on all local governments individually, or the effects on only some local governments?

9. Is it correct to interpret the measure as requiring the selection of a single contractor per year who will prepare economic impact statements for all initiated measures appearing on the statewide ballot during that year?
10. The number of economic impact statements that the contractor must prepare appears to depend on the number of initiated measures for which the secretary of state issues a statement of sufficiency. Is it correct that the state will not be able to inform bidders of the number of economic impact statements required at the time at which the contract is negotiated?
11. Is 30 days a sufficient amount of time for a contractor to complete the economic impact statement required in the measure?
12. The measure requires the contractor to complete the economic impact statement within 30 days of the statement of sufficiency and requires that certification by the director also occur within this time period. Based on these deadlines, the director may be required to certify the content of the economic impact statement immediately upon receipt. Is this the proponents' intent?
13. What does it mean for the director to "certify the content of the economic impact statement"? Is there any instance in which the director would not issue such a certification?
14. What, if anything, should the secretary of state do upon receiving the certified content of the economic impact statement?
15. Proposed section 1-40-106 (3)(e) requires a summary of the economic impact statement.
 - a. Who is to prepare this summary?
 - b. When is the summary to be prepared?
 - c. Does the measure provide any mechanism for formal review or editing of the summary after it is authored?
 - d. Is there any judicial review of the summary?
16. What does it mean for a summary of the economic impact statement to precede each ballot title? Does this refer to the ballot title set by the title board, the ballot title printed on circulated petitions, the printed ballot mailed to voters, the ballot information booklet, or some combination of these? Does it refer to both the ballot title and the ballot question?

17. Proposed section 1-40-106 (3)(e) would appear after section 1-40-106 (3)(d), C.R.S., which requires ballot titles for statewide referred measures to be in the same form as ballot titles for initiatives as required by section 1-40-106 (3)(c), C.R.S. Is it your intent that the requirement in proposed section 1-40-106 (3)(e) apply to referred measures?
18. What, if anything, is to be done with the economic impact statement prepared by the contractor after the summary is created?
19. You have repealed the introductory portion in subsection (3) of section 1-40-105.5, C.R.S., but left subsections (3)(a), (3)(b), (3)(c), and (3)(d) unchanged as a sentence fragment. It is unclear how to interpret this change.
20. The requirement in sections 1-40-105.5 (4) and 1-40-110 (3), C.R.S., that an abstract for a measure be included in a petition section still applies, but the basis for what is in an abstract has been partially repealed.
 - a. Do you intend to eliminate the abstract?
 - b. If not, what is included in the abstract and who prepares it?

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. Although the text of the proposed initiative is in correctly written in small capital letters, please use an uppercase letter to indicate capitalization where appropriate.
2. Section 2 of the proposed initiative amends all of subsection (2) and repeals (3)(c) of section 1-40-105.5, C.R.S., and so the preceding amending clause should be written as follows:

In Colorado Revised Statutes, 1-40-105.5, **amend** (2); and **repeal** (3)(e) as follows:

3. Additionally, it is standard drafting practice to show stricken language before adding new language in small capital letters. For example, the existing language in subsection (2) (which is currently mislabeled as (III) in the initiative) should be

shown as stricken before the newly added (2)(a)(I). The remaining stricken (b) and (c) paragraphs can follow. For example:

(2) (a) (I) ~~For every initiated measure properly submitted to the title board under section 1-40-106, the director shall prepare an initial fiscal impact statement, taking into consideration any fiscal impact ...~~ A CONTRACTOR QUALIFIED TO PREPARE OBJECTIVE ECONOMIC...

(II) THE ECONOMIC IMPACT STATEMENT MUST INCLUDE...

(III) WITHIN THIRTY DAYS OF THE STATEMENT...

(b) ~~The designed representatives of the proponents...~~

4. Regarding subsection (3)(e), please leave the introductory portion unstricken, as that language will remain to serve as the introduction for the other paragraphs. For example:

(3) The abstract must include:

(e) ~~The following statement: "The abstract includes...~~