

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 011
Denver, Colorado 80203-1716
303-866-3521
lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
1375 Sherman St., Suite 300
Denver, Colorado 80261
303-866-2045
olls.ga@coleg.gov

MEMORANDUM

To: John Retrum & Craig Donaldson

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 13, 2026

Subject: Proposed Initiative Measure 2025-2206 #264, Concerning elect General Assembly through mixed member proportional representation

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

This proposed initiative 2025-2026 #264 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #262 through #264. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #262 and #263, except as necessary to fully understand proposed initiative 2025-2026 #264. Comments and questions

addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

Purposes

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To change the method of electing members of the Colorado General Assembly to a system of mixed-member proportional representation;
2. To divide the composition of both the state senate and the state house of representatives into a mix of single-member district seats and statewide proportional seats;
3. To cap the number of single-member senatorial districts at twenty-five and the number of single-member representative districts at forty-five;
4. To create at least ten statewide seats in the state senate and at least twenty statewide seats in the state house of representatives;
5. To require that the statewide seats be allocated in a manner that ensures a political party's total number of statewide seats in a chamber is proportional to the party's share of the statewide party vote;
6. To authorize the General Assembly to establish a minimum vote threshold of up to five percent that a party must receive to qualify for statewide seats;
7. To provide each voter with a single statewide vote for a political party that serves as their vote for the statewide seats in both the senate and the house of representatives;
8. To require that nominations for statewide seats be made by rank-ordered lists determined at party assemblies or conventions held no later than thirty days after the primary election;
9. To allow candidates to run for both a district seat and a statewide seat, provided they are removed from the statewide list if they win their district election;
10. To establish the Jefferson Method as the mathematical formula for tallying the statewide vote and awarding statewide proportional seats; and

11. To create a specialized vacancy committee structure to fill vacancies that occur in statewide general assembly seats.

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. The following questions relate to section 1 of the proposed initiative:
 - a. Proposed section 45 (2) of the Colorado Constitution limits the state senate to having "not more than thirty-five members", while mandating "no more than twenty-five members shall be elected from senatorial districts" and "no fewer than ten members shall be elected statewide". If the redistricting commission draws exactly twenty-five districts, and the proportional math outlined in proposed section 1-7-1102 of the Colorado Revised Statutes necessitates awarding eleven statewide seats to achieve proportionality, the senate would have thirty-six members. Does the "not more than thirty-five members" limit override the proportional math, or is it the proponents' intent that the chamber size could expand?
 - b. Proposed section 45 (2) of the Colorado Constitution reduces the number of state senate districts from thirty-five to no more than twenty-five. Article V, section 1 (2.5) of the Colorado Constitution requires that "a petition for an initiated constitutional amendment shall be signed by registered electors who reside in each state senate district in an amount equal to at least two percent of the total registered electors" Is the proponents intent to lower the signature threshold for initiated constitutional amendments?
 - c. Proposed article V section 45 (4) of the Colorado Constitution and proposed section 1-7-503 (2) of the Colorado Revised Statutes state that each voter may cast a single vote for a political party that dictates the statewide proportional seats for both the state senate and the state house of representatives simultaneously. Does mandating a single vote for two distinct legislative chambers conflict with a voter's ability to split their

ticket or vote for different parties for different offices, and does this conflict with any provisions of the Colorado Constitution regarding free and open elections?

- d. Proposed article V, section 45 (4)(a) of the Colorado Constitution authorizes the General Assembly to establish a minimum share of the statewide party vote that a party must receive to qualify for statewide seats. What is the effective threshold for the initial election conducted under this system? Does the threshold default to zero percent until the General Assembly passes implementing legislation?
 - e. Proposed article V, section 45 (4)(b) of the Colorado Constitution states that the General Assembly may establish rules to "prevent manipulation of the system of mixed-member proportional representation". Because the term "manipulation" is undefined, does this provision grant the General Assembly broad constitutional authority to alter the mechanics of the voter-approved proportional representation system without subsequent voter approval?
3. Proposed Article V, Section 45 (2) and (3) of the Colorado Constitution establish maximums and minimums for district and statewide seats. Proposed article V, section 46 (2) of the Colorado Constitution directs the independent legislative redistricting commission to divide the state into "as many senatorial and representative districts as there are members of the senate and house of representatives, excluding statewide members". Because the constitution provides ranges rather than fixed numbers, which entity has the legal authority to determine the exact number of district versus statewide seats prior to redistricting?
 4. Proposed section 1-3-103 (16) of the Colorado Revised Statutes creates a vacancy committee for statewide seats that includes "all of the statewide party officers", various elected members of the general assembly, and "the county party chairs from the same party as the vacated member". Does "county party chairs" refer to all 64 county party chairs across the state, and if so, what constitutes a quorum for this newly established committee?
 5. The following questions relate to section 5 of the proposed initiative:

- a. Proposed section 1-4-502(1.5)(b) states that if a party fails to publish a statewide list of nominees, it defaults to a list of all the party's district nominees ordered by the "raw number of votes those nominees earned in the primary election". Candidates in heavily contested primaries are likely to receive a higher volume of raw votes than candidates running in uncontested district primaries. Does this statutory default inadvertently penalize district candidates who run unopposed in their primary by automatically forcing them to the bottom of the statewide proportional list of nominees?
 - b. Proposed section 1-4-502 (1.5) requires a political party to have "at least one candidate running in any district election" in order to nominate candidates for the statewide seats. What happens to a party's statewide candidate list if their sole district candidate withdraws, is disqualified, or passes away after the statewide list has been finalized?
 - c. Proposed section 1-4-502 (1.5)(b) dictates that if a party fails to publish a statewide list of nominees, it defaults to a list of all the party's district nominees ordered by "the raw number of votes those nominees earned in the primary election". Because minor political party nominees are not guaranteed a primary election and instead are nominated by assembly under proposed section 1-4-1304 (1.5)(b)(I), how is the default list ordered for a minor party that did not participate in a primary election?
6. The following questions relate to sections 12 and 13 of the proposed initiative:
- a. Proposed section 1-7-503 (2) states that the general election ballot shall display "the names of the first five candidates on the party's rank-ordered list for each chamber". Because proposed section 1-4-502 (1.5)(a) allows a party to nominate candidates "up to the total size of the chamber", is it the proponents' intent that voters will only see the top five names on the ballot, even if a party might mathematically win more than five statewide seats?
 - b. Proposed section 1-7-1102 (3)(d) states that if a party wins more statewide seats than it had candidates on its list, a vacancy is created and filled "pursuant to section 1-12-203". However, section 1-12-203 generally relies on vacancy committees established during the candidate petition and assembly process. Does the vacancy committee newly created in proposed

section 1-3-103 (16) legally function as the vacancy committee referenced in section 1-12-203 for the purposes of filling these exhausted-list vacancies?

7. The following questions relate to section 13 of the proposed initiative:
- a. Proposed section 1-7-1102 (3) requires that the mathematical allocation of statewide proportional seats occurs "[a]fter the state senate district and state house of representative districts seats have been elected". Pursuant to section 1-10.5-101, certain district races are required to have recounts that can delay the certification of the winner for weeks. If a single district race requires a recount, does this delay the calculation and certification of the entire statewide proportional seat allocation for that chamber, or can the statewide seats be calculated using provisional district results?
 - b. Proposed section 1-7-1102(3)(a) establishes the scoring formula for awarding proportional seats. It states the score is the party's votes divided by one plus "the number of seats the political party has won so far in the same election, including both districted and statewide seats". Because proposed section 1-7-503(2) creates a single statewide party vote that applies to both chambers, does this formula require aggregating a party's won state house seats and state senate seats together into a single denominator, or is the mathematical calculation executed separately for the state house and the state senate? If it is meant to be calculated separately, the proposed statutory text currently fails to specify "in the respective chamber". What does "won so far" mean since the provision begins with "After the state senate district and state house of representative district seats have been elected,"
 - c. The proposed initiative builds a proportional system based exclusively on statewide votes for recognized "political parties". If an unaffiliated candidate wins a single-member district seat, how does the mathematical formula in proposed section 1-7-1102 account for that seat? Does an unaffiliated district victory reduce the total number of proportional leveling seats available to the recognized political parties, or is the unaffiliated seat completely excluded from the proportionality math?
 - d. Proposed section 1-4-502 (1.5)(b) states that a candidate who wins their district seat is disqualified from the statewide candidate list. If a candidate appears to lose their district race and is subsequently awarded a statewide

proportional seat, but a later recount flips the district race in their favor, how is this discrepancy resolved? Is the statewide proportional seat retroactively vacated and awarded to the next person on the party's list?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. In section 3 of the proposed initiative, the amending clause states to add (19.6) and (20.5), but the subsection numbers in the body are different. Please consider amending the subsection numbers to reflect the changes being made.
2. Section 12 of the proposed initiative adds section 1-7-503 to the Colorado Revised Statutes, but that section already existed and has been repealed. As such, the amending clause should say to “**recreate and reenact**” section 1-7-503, rather than “**add**” it.
3. Given that section 1 of the proposed initiative amends the entirety of article V, section 45 as it currently exists in the Colorado Constitution, the amending clause can simply read “In the constitution of the state of Colorado, **amend** section 45 of article V as follows:” rather than listing out the newly added subsections.