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Colorado General Assembly

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MEMORANDUM

To: Steven Ward and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 23, 2025

Subject: Proposed initiative measures 2025-2026 #76 through #80, concerning consumer right to energy choice

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 and questions 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 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 Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives **2025-2026 #76** through **#80** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives **2025-2026 #76** through **#80**.

Additionally, earlier versions of these proposed initiatives, proposed initiatives **2025-2026 #28, #29, #44, #45, #56, and #57**, submitted by the same designated representatives, were the subject of memoranda dated February 26, March 19, and April 2, 2025, and were discussed at public meetings on February 28, March 21, and April 4, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in earlier memoranda or at earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiatives 2025-2026 #76, #77, #78, #79, and #80:

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

1. Give consumers the right to:
 - a. For proposed initiatives #76 and #77, access energy to power and heat homes, to cook, and to operate equipment;
 - b. For proposed initiative #78, energy choice in products and services that are powered by a commonly used energy supply; and
 - c. For proposed initiative #79, choose from energy sources in common use to fuel their own products and services;
2. For proposed initiatives #76 and #77, require a governmental entity that furnishes an energy source to provide that source to inhabitants that demand, apply for, and are reasonably entitled to receive the energy source;
3. Require the state government and local governments to allow products and service connections powered by an energy supply in common use without restrictions, for proposed initiative #76, or without penalties or limitations, with certain exceptions, for proposed initiative #77;
4. For proposed initiative #80, prohibit the state government and local governments from banning or restricting products or service connections

powered by a commonly used energy source based on the energy source that powers or fuels the product or service connection; and

5. For each proposed initiative, exempt from the proposed initiative's duties health or safety restrictions of the International Building Code, or its successor, or in case of a public safety emergency.

Substantive Comments and Questions

The substance of the proposed initiatives 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 each of the proposed initiatives?
2. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because proposed initiatives #76, #77, and #80 do not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the designated representatives should include a desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. This comment and question relates to the provisions in proposed initiatives #76, #77, #78, and #79 that grant consumers the right to energy, the choice of products and services, or energy sources: A right is also a duty that is placed on other people. For example, the right to life means that other people have the duty to not kill the person with the right. The right to property means that other people have a duty to not take, use, destroy, etc. the property of the owner. Given that these proposed initiatives grant rights:
 - a. Who has these duties?
 - b. What is the nature of these duties? Do they mean that the person with the duty must actively provide the energy, products and services, or energy sources? Do they mean that the person with the duty must not prevent the person from accessing the energy, products and services, or energy sources?

- c. In proposed initiative #79, the right is prohibited from being encumbered, which means the placing of a condition, burden, limitation, or restriction on the right. For example, if a property right is encumbered by a mortgage, the lender has a legal interest in the property until the loan is paid off. Similarly, an easement might encumber a property by granting someone else the right to use part of the land for a specific purpose, such as a utility company maintaining power lines. Would the requirement that a person pay for the energy be an encumbrance? Would the requirement that a person pay higher fees for more expensive types of energy be an encumbrance?
4. The following comments and questions relate to the sentence “CONSUMERS SHALL HAVE THE RIGHT TO CHOOSE FROM ENERGY SOURCES IN COMMON USE, SUCH AS SOLAR, WIND, ELECTRICITY, NATURAL GAS, GASOLINE, AND PROPANE, TO FUEL THEIR OWN PRODUCTS AND SERVICES.” in proposed initiative #79 and the similar sentence in proposed initiative #78:
 - a. The word “SHALL” means “has a duty to,” so the phrase “SHALL HAVE” means “has a duty to have,” which does not make sense. The provision should read “CONSUMERS HAVE THE RIGHT TO...” Would the proponents consider deleting the word “SHALL”?
 - b. The phrase “SUCH AS SOLAR, WIND, ELECTRICITY, NATURAL GAS[, GASOLINE,] AND PROPANE” follows the words “IN COMMON USE.” This “SUCH AS” phrase is listing energy sources, so it should be placed after the phrase “ENERGY SOURCES.” An elegant way to rewrite this would be “CONSUMERS HAVE THE RIGHT TO CHOOSE FROM COMMONLY USED ENERGY SOURCES, SUCH AS SOLAR, WIND, ELECTRICITY...” Would the proponents consider moving the “SUCH AS” phrase to follow the words “ENERGY SOURCES”?
5. Each of the proposed initiatives uses the phrase “IN COMMON USE” or a variant of the phrase. What would qualify as being in common use? What percentage of people using the energy source, product, etc. would make the use “common”?
6. Proposed initiative #79 has a sentence that begins with “THIS RIGHT SHALL NOT BE ENCUMBERED AND SHALL INCLUDE...” The word “shall” means “has a duty to.” So the sentence gives the right a duty to not be encumbered and gives the right a duty to include certain energy choices. This raises the following comments and questions:

- a. A right does not have volition and cannot perform duties. If the intention is to give a person a duty, then the provision may be written “A PERSON SHALL NOT ENCUMBER THE RIGHT.” Alternatively, this provision can be written to expand the right: “A CONSUMER MAY EXERCISE THE RIGHT WITHOUT ENCUMBRANCES.” Would the proponents consider using one of these alternatives or otherwise writing the provision without giving rights a duty?
 - b. To clarify that the right includes the listed energy choices, write “THE RIGHT INCLUDES ENERGY CHOICES RELATED TO: ...” Would the proponents consider removing the word “SHALL” from this provision?
7. In proposed initiative #80, the legislative declaration declares access to energy for certain purposes a matter of statewide concern. If a utility and its customer both reside in one jurisdiction, is this a matter of statewide concern? If so, please explain.

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 hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. Each constitutional section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **add** section __ to article __ as follows". The amending clauses need to be changed in proposed initiatives #76 through #79 to reflect the correct format.
2. In the amending clauses of proposed initiatives #76, #77, and #79, a new section 17 is being added to article XXVIII of the Colorado Constitution. Section 17 is already an existing section in article XXVIII of the Colorado Constitution. And article XXVIII concerns campaign and political finance. Is article XVIII the article you meant? If so, please consider changing the amending clauses in proposed initiatives #76, #77, and #79 to parallel the amending clauses in proposed initiatives #78 and #80 to add a new section 17 to article XVIII of the Colorado Constitution.

3. Proposed initiatives #76 and #77 begin with this language: “BECAUSE ACCESS TO ALL ENERGY SOURCES IN THE COMMON USE ENHANCES...” The article “THE” is grammatically incorrect. Please consider deleting the word “THE.”
4. Proposed initiatives #76 and #77 contain the phrase “HAVE A RIGHT TO ACCESS TO ENERGY.” This phrase should read “HAVE A RIGHT TO ACCESS ENERGY.”
5. In proposed initiatives #78 and #79, an “AND” needs to be added to the end of subsection (2)(b), after “LAWN EQUIPMENT;”, per drafting conventions.
6. In proposed initiatives #76, #77, and #80, consider unbolding the subsection numbers in parentheses (for example, “**(2)**” should be “(2)”).
7. New headnotes should not be written in SMALL CAPITAL letters. The subsection headnotes in proposed initiatives #76, #78, and #79 should be in normal, lowercase letters.
8. In proposed initiatives #78 and #79, all paragraph letters should be in lowercase. Currently, “(2)(c)” in both proposed initiatives reads as “(2)(C).”
9. In proposed initiatives #76 and #77, consider rewording “STATE AND LOCAL GOVERNMENTS” to “THE STATE GOVERNMENT AND LOCAL GOVERNMENTS.” Similarly, in proposed initiative #80, consider rewording “STATE AND LOCAL GOVERNMENT” to “THE STATE GOVERNMENT AND LOCAL GOVERNMENTS.”
10. In proposed initiative #80, a comma should be added between the word “CONNECTION” and the phrase “EXCEPT FOR.”
11. In proposed initiatives #78 and #79, subsection (1)(b), the phrase “...MEANS AS ANY PERSON...” in the definition is grammatically incorrect. This phrase should be changed to “...MEANS ANY PERSON...” with no “AS.”
12. In subsection (1) of proposed initiatives #76 and #77, a comma should be added before the phrase “SUCH AS.”
13. In proposed initiative #78, a comma should be added before the word “AND” and after the phrase “NATURAL GAS” in subsection (2).
14. In proposed initiatives #76 through #79, consider deleting the phrase “THE PROVISIONS OF” in the exception that reads “THE PROVISIONS OF THIS SECTION DO

NOT APPLY....” Those words do not add anything to the rule, so they are equivalent to writing “THIS SECTION DOES NOT APPLY....”

15. In proposed initiatives #76 through #80, consider:
 - a. Capitalizing the initial letter of each word in the phrase “INTERNATIONAL BUILDING CODE”;
 - b. Adding a comma after “INTERNATIONAL BUILDING CODE” to offset the phrase “OR ITS SUCCESSOR” with commas; and
 - c. Adding a comma after “PUBLIC SAFETY EMERGENCY,” because the phrase beginning with “SUCH AS” is an unrestrictive phrase, which means it is not intended to narrow the type of public safety emergencies to the types listed, i.e., “FIRE OR IMMINENT RISK OF FIRE” or “FIRE OR NATURAL DISASTER.”
16. Although the text of the proposed initiatives should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names (this does not include the word “governor” unless used directly before a name).