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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Steven Ward
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: September 6, 2023
SUBJECT: Proposed initiative measure 2023-2024 #86, concerning consumer choice in energy

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 with a series of initiatives, including proposed initiative 2023-2024 #85. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2023-2024 #85, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

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

1. To declare that energy consumption is a matter of statewide concern;
2. To declare that the intent of the proposed initiative is to protect consumer choice in energy; and
3. To require the state and local governments to allow consumer choice in energy.

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. Subsection (2)(a) of the proposed initiative:
 - a. Uses both the word "consumer" and the word "customer." Is this distinction intentional, or should the same word be used in both cases?
 - b. Includes the language "by prohibiting an ordinance, regulation or code that restricts an energy source ..." as part of the definition of "consumer choice." Because the "by prohibiting" language is embedded in a definition, the language does not clearly prohibit the state or local governments from restricting an energy source. The proponents might consider removing the "by prohibiting ..." language from the definition of "consumer choice" and instead adding language to that effect in subsection (3), which is the subsection of the proposed initiative that provides the operative language setting forth the responsibilities of the state and local governments with regard to consumer choice in energy.
3. For the definition of "energy" in subsection (2)(b) of the proposed initiative:
 - a. There are other energy sources that are not listed in the definition of the word "energy" that may also be used for heating or cooling, such as geothermal and biomass energy sources. Do the proponents intend to allow the state or a local government to restrict consumer choice regarding use of those other energy sources?

- b. It appears that the requirement to meet interconnection standards applies only to wind electric generation. Do the proponents intend the requirement to meet interconnection standards to apply to the use of a solar energy device as well? If so, the proponents might consider adding the words "and, with respect to a solar energy device or wind electric generation," before the phrase "that meets the interconnection standards ..." to clarify that the interconnection standards requirement applies to more than just wind electric generation.
4. What kinds of state or local government conduct constitutes "favoring or discriminating against an energy source," as referenced in subsection (2)(d) of the proposed initiative?
 - a. Do the proponents intend that the proposed initiative would prohibit state and local government regulations related to permitting, taxation, safety, and labor standards regarding energy sources because those regulations could be viewed as favoring or discriminating against certain energy sources?
 - b. Do the proponents intend that the proposed initiative would prohibit state and local government tax credits, rebates, or other financial incentives offered for the use of certain energy sources?

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. According to standard drafting practice, the word "their" is typically only used as a pronoun for a plural subject. Therefore, to avoid using the word "their" as a pronoun for a singular subject in the proposed subsection (2)(a), the phrase in the proposed initiative could be written as follows: "...MEANS ALLOWING A CONSUMER TO CHOOSE THE CONSUMER'S PREFERRED ENERGY SOURCE...".
2. When listing three or more items, a serial comma is used before the conjunction (i.e. "and"/"or"). For example, in the proposed subsection (2)(a), a serial comma should be added in the following two phrases: "...ORDINANCE,

REGULATION, OR CODE..." and "...COOKING, HOT WATER SYSTEMS, GENERATORS, AND HEATING SYSTEMS...".

3. In subsection (2)(b) of the proposed initiative, an article should be added before the phrase "solar energy device." For example: "... A SOLAR ENERGY DEVICE AS DEFINED IN SECTION 38-32.5-100.3...".
4. For purposes of the definition in subsection (2)(d) of the proposed initiative, it is preferable to use the verb form "RESTRICT" instead of "RESTRICTS." For example: "(d) "RESTRICT" MEANS FAVORING OR DISCRIMINATING AGAINST AN ENERGY SOURCE."