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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 #85, 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 #86. 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 #86, 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.

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 allow consumer choice in energy; and
3. To prohibit the state or a political subdivision of the state from inhibiting 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. With regard to the language in subsection (1) of the proposed initiative that "energy consumption is a matter of statewide concern":
 - a. Do the proponents intend the "statewide concern" language to preempt local governments' existing authority to make land use, easement, leasing, right-of-way, franchise, or license determinations that could affect specific energy sources?
 - b. Does that language conflict with article XXV of the Colorado Constitution that acknowledges "the power of municipalities to exercise reasonable police and licensing powers [including] the power to grant franchises" with respect to the regulation of the facilities, service, and rates of public utilities?
 - c. Declaration language that a statutory provision is of statewide concern has persuasive value but does not bind a court in its interpretation of the provision.
 - i. What makes the proposed initiative a matter of statewide concern?

- ii. Would the proponents consider adding to the declaration an explanation as to what makes the proposed initiative a matter of statewide concern?
3. What is meant by the word "code" in subsection (3) of the proposed initiative?
 - a. Is it intended to include a constitutional provision?
 - b. Is it intended to include a state statute?
 - c. Would it include building and fire codes that may restrict the use of certain energy sources based on safety concerns? If so, do the proponents intend the proposed initiative to preempt the state and local governments from imposing the safety restrictions set forth in building and fire codes?
4. Does the reference to "adopting" in subsection (3) of the proposed initiative mean that existing ordinances, rules, county resolutions, or codes that predate the proposed initiative can remain in effect after the proposed initiative becomes effective?
5. Subsection (3) of the proposed initiative also lists uses for energy sources, "... for cooking, hot water systems, generators, cooling systems, and heating systems" Use of the conjunctive word "and" before "heating systems" in the sentence implies that the energy source must be used for all of the purposes listed. For subsection (3) to apply to an energy source used only for one or some, but not all, of the activities listed, the proponents might consider changing "and heating systems" to "or heating systems."

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. Article 43 has already been added to title 40, Colorado Revised Statutes, in House Bill 23-1039. Therefore, the proposed initiative would need to add another article to title 40. The next available article is article 44 of title 40, Colorado Revised Statutes.

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. In this case, since the proponents are intending to add a new article to title 40 of the Colorado Revised Statutes, the proponents would include the following amending clause: "In Colorado Revised Statutes, **add** article 44 to title 40 as follows:".
3. Dashes used to separate topics in a headnote should be shorter en dashes instead of longer em dashes. Here is an example:

40-44-101. Energy choice - declaration - definition.

4. It is standard drafting practice to show the statutory text being added immediately following the headnote. For example, (1) would immediately follow "**definition.**" on the same line. Here are two examples:

SECTION 1. In Colorado Revised Statutes, **add** article 44 to title 40 as follows:

40-44-101. Energy choice - declaration - definition. (1) Declaration.
THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT...

5. Subsection (3) of the proposed initiative includes the phrase "unless context otherwise requires." The proponents might consider adding the article "the" before "context" in that sentence to read as "unless the context otherwise requires."
6. The heading following "**SECTION 2.**" should be shown in bold. For example:

SECTION 2. Effective Date.