

# STATE OF COLORADO

## Colorado General Assembly

Natalie Castle, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 E. Colfax Ave., Room 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
Email: lcs.ga@coleg.gov



Sharon L. Eubanks, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 E. Colfax Ave., Room 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Email: olls.ga@coleg.gov

## MEMORANDUM

**TO:** Marla Fernandez-Benavidez and Iesha Wood  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 21, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #12 concerning prohibition on the use of environmental, social, and governance standards and reporting

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.

## Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be to prohibit:

1. Any private business, including any bank in Colorado, foreign government agency, domestic government agency, the state, or any local government from adopting or enforcing corporate environmental, social, and governance (ESG)

- standards, also known as ESG scoring, including a prohibition on the "use of monetary incentives made possible by newly printed cash from central banks";
2. The state or any local government from interfering with any right guaranteed under the constitution, due process, equal protection, happiness, property ownership, freedom to pursue a business activity, the sale of goods, the right to be free from forced wearing, injection, or consumption of "biological drugs," parental rights, and education free from "social justice causes" and "a flawed history of America"; and
  3. The state from enacting any law recognizing climate change or that would expend state money to fund "green new deal projects," "social justice, equity, and inclusion causes," or "abortion providers".

## **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?
  - a. If the single subject is adoption or enforcement of ESG scoring, how do subsections (1) to (5) and (7) to (9) relate to the adoption or enforcement of ESG scoring?
  - b. Consider adding language to clarify the relationship between ESG and the requirements of each subsection.
2. Currently, the initiative would place the new section regarding ESG scoring in article XI of the Colorado constitution, which relates to public indebtedness. Would you consider alternative placement?
  - a. For instance, article II pertains to individual rights to be protected from government intrusion, including the inalienable rights to possess and protect property and to seek and obtain safety and happiness, which are protected under section 3
  - b. Consider reviewing the existing sections of article II to avoid duplication, confusion, or inadvertent conflict with existing constitutional protections.

3. Consider rewording subsection (10) to make clear that the intent is to prohibit banks from using ESG scoring because such use would cause losses to citizens. As written, it could be interpreted as stating that the banks are using ESG scoring to prevent such losses, which does not seem consistent with the proposed initiative.

## 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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

**SECTION 1.** In the constitution of the state of Colorado, **add** section 8 to article XI as follows:

2. Because the proposed initiative is to be added as a new section within an existing article of the Colorado constitution, it should include a section number and headnote. The headnote should be in bold; however, no other text in the initiative should be in bold font. For example:

**Section 8. Corporate environmental, social, governance scoring system – definition – prohibitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, CORPORATE ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) SCORING MEANS . . .

3. Definitions: The following is the standard drafting language used for creating a definition: "As used in this section, unless the context otherwise requires, '[term]' means (the definition for the term)...". See example above in 2.
  - a. In the definition section, including quotation marks around "ruling class" suggests that term may itself need to be defined.
  - b. Other terms used in the initiative that may to be defined for clarity include: "green new deal projects," "biological drugs," "monetary incentives," and "central banks".

4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado constitution. See example above in 2.
5. Although the text of the proposed initiative 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.
6. The capitalization at the beginning of subsection (10) needs to be corrected from "NO" to "No".