

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Patsy Dishmon and Sherry Parks-Harris
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 30, 2024
SUBJECT: Proposed initiative measure 2025-2026 #4, concerning Cap on Homeowners Association Fees

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 initiative measure appear to be:

1. To cap homeowners' association (HOA) fees at between \$150 and \$300 depending on the amenities;

2. To set the HOA fee at the lowest price of \$150 per month or bi-monthly when the property has no amenities; and
3. Once the HOA fee is set as monthly or bi-monthly it must remain at the frequency set.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 of the Colorado Revised Statutes require the proponents to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statutes. The proponents have submitted an idea, rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
2. Under article V, section 1 (2) of the Colorado constitution proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). Is the proposed initiative intended to amend the Colorado constitution or the Colorado Revised Statutes? The Colorado constitution and the Colorado Revised Statutes are accessible from the General Assembly's website, here: <https://leg.colorado.gov/laws>.
3. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the Initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
4. Additionally, in accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? (Please indicate through an amending clause where the proposed initiative will be placed. See Technical Comment 1 for an example of an amending clause.)

5. 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?
6. What will be the effective date of the proposed initiative?
7. What is meant by the term "fee"?
 - a. Does a "fee" include an "assessment" or "dues"?
 - b. Does it include a "special" assessment for an unexpected cost or liability?
8. What if a cap of \$300 is not enough to pay for the amenities in the community?
9. Section 38-33.3-315 (1) and (2), Colorado Revised Statutes, require that "... assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association." and "all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2)." If the costs of the association exceed the amount accrued based on the \$300 cap, how will the association adopt a budget to assess expenses in compliance with this law?
10. Section 38-33.3-315 (3)(c), Colorado Revised Statutes, requires that "The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage." What will happen if the cost of insurance and utilities exceeds the revenue raised by the \$300 cap?
11. Is the amount of the cap the same regardless of the type of community, such as single-family detached homes, townhomes, or condominiums?
12. The proposed initiative states that "[i]t will be up to the HOA Board to determine the fee between \$150 to \$300 for all amenities, but if the property has no pools, fitness center/recreation center or clubhouse, the fee must be set at the lowest price of \$150.00 per month or bi-monthly basis."

What if an HOA's budget calculated pursuant to section 38-33.3-315, Colorado Revised Statutes, would require monthly fees in an amount that is less than \$150? Is it your intent that those homeowners would still be required to pay "the lowest price of \$150.00" under your proposed initiative, even though lower fees would sufficiently cover the HOA's budget?

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. Each section, part, etc. that is being amended or added begins with a section number (e.g., SECTION 1., SECTION 2.) followed by an amending clause. For example:

SECTION 1. In Colorado Revised Statutes, add 38-33.3-315.5 as follows:

2. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section.
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

4. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.

6. 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.
7. For purposes of a statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty." If you later submit the full text of the measure being proposed and include within that text some of the language from the proposed initiative, the phrase "... the fee must be set at the lowest price of \$150.00 ..." should instead be written as "... the fee *shall* be set at the lowest price of \$150.00"