

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Jessi Cudd and Ben Gelhaus

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** March 17, 2026

**Subject:** Proposed Initiative Measure 2025-2026 #268, Concerning the Creation and Administration of a Colorado Consumer Protection and Automation Mitigation Enterprise

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

This proposed initiative 2025-2026 #268 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #266 and 2025-2026 #267. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #266 and 2025-2026 #267, except as

necessary to fully understand proposed initiative 2025-2026 #268. Comments and questions addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

## **Purposes**

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

1. Create the Colorado Consumer Protection and Automation Mitigation Enterprise (CCPAME) as a government-owned business operating as a state enterprise;
2. Authorize the CCPAME to assess and collect a variety of "enterprise mitigation revenues" (fees) from covered automation operators, including a universal civic utility surcharge, digital severance assessments, and silicon-to-carbon reclamation fees;
3. Allocate certain CCPAME revenues to civic infrastructure lending, and require the CCPAME to provide loans to municipal borrowers for non-surveillance civic infrastructure projects;
4. Establish a "hard allocation" waterfall fund distribution structure that dictates exactly how the collected enterprise revenues must be distributed across nine prioritized program tiers, such as the child solvency fund and the civic infrastructure lending pool;
5. Establish the "resident mitigation dividend," an overflow distribution paid to eligible Colorado residents only after all nine statutory program reserve caps are fully funded;
6. Establish an "algorithmic risk pool" consisting of contributions or fees paid by "algorithmic gatekeepers" in order to provide rapid restitution to Colorado residents who suffer any of certain types of harm;
7. Mandate that covered compute facilities install thermal recapture systems and achieve "water replacement" to offset the thermal and consumptive water externalities of their operations; and

8. Direct the CCPAME to maintain a real-time, public-facing "mitigation enterprise public accountability dashboard" that describes program fill levels and projected dividend distributions.

## **Substantive Comments and Questions**

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

1. **Single Subject Requirement:** 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. **TABOR and Enterprise Status:** The proposed initiative creates the CCPAME and asserts it is a "TABOR-exempt enterprise."
  - a. To qualify as an enterprise under article X, section 20 of the Colorado Constitution (TABOR), an entity must be a government-owned business authorized to issue its own revenue bonds and required to receive less than 10% of annual revenue in grants from all Colorado state and local governments. Do the proponents intend for the CCPAME to have the authority to issue revenue bonds?
  - b. What are the specific business services that the enterprise, as a government-owned business, will provide?
  - c. The proposed initiative characterizes the various assessments (e.g., digital severance assessments) as "fees." However, due to the broad redistributive nature of the programs they fund (e.g., childcare, legal access, and direct resident dividends), a court may determine that the assessments are actually taxes, requiring that the amount of the assessments and any increase in the assessments requires voter approval, rather than fees.
  - d. Who appoints the five independent resident appointees of the enterprise board?
3. **Constitutional Amendment Directive:** Proposed section 1 (2)(f) states the intent to "[Implement] a constitutional amendment directive in concert with Bill 1." Because this directive language is not included in the codified statutory text of this specific measure, what is its legal effect if "Bill 1" does not become law?

4. **Dormant Commerce Clause:** The initiative imposes fees on commercial inference outputs and API calls based on a "Colorado nexus." Will attributing these digital transactions to Colorado for the purpose of assessing fees violate the dormant Commerce Clause of the United States Constitution by impermissibly burdening interstate commerce?
5. **Retroactivity:** The initiative states that "Any covered entity that can be demonstrated through Audit Marker detection or Legacy Use Settlement Agreement proceedings to have scraped, ingested, or trained upon Colorado resident Digital Soul data during the decade preceding the effective date of this act shall be subject to a retroactive historical scraping surcharge." How does this language comport with the Colorado Constitution's prohibition on retrospective laws (article II, section 11)?
6. **Civil and Criminal Penalties:** Section 24-20-103 (5) of the proposed initiative references "Ghost Folio" penalties and "Ghost Folio Evasion".
  - a. What does "Ghost Folio" mean? You might consider adding a definition of the term in the proposed initiative.
  - b. The language references "treble damages payable to the CCPAME." Do you intend that the CCPAME is the only party that could sue against the conduct described as "Ghost Folio Evasion"?
  - c. Section 24-20-103 (5) of the proposed initiative creates a class 4 felony for knowingly authorizing, directing, or participating in Ghost Folio evasion. In creating the class 4 felony of utilizing "a Ghost Folio, fraudulent identifier, or false attestation to circumvent child essentials category restrictions or to obtain duplicate benefits," however, there is no reference to engaging in the conduct knowingly. Do you intend strict liability for that class 4 felony?
7. **Effective Date:** The initiative refers repeatedly to "the effective date" of the initiative. However, the initiative does not appear to specify any actual effective date. Article V, section 1 (4)(a) of the Colorado Constitution dictates that an approved initiative takes effect from and after the date of the official declaration of the vote by proclamation of the governor. The proponents may consider adding language to this effect.
8. **Appropriation Note:** In the "Appropriation Note" of the proposed initiative, it indicates that "Startup costs incurred prior to first enterprise mitigation revenue

collections are authorized as a contingency loan from the General Fund, to be repaid from first-year revenues within eighteen (18) months of the CCPAME's first revenue collection event."

- a. When do you intend the loan from the general fund to be made under the proposed initiative?
- b. To move money out of the general fund as a loan, the state treasurer needs explicit direction to move a specific amount of money from the general fund on a specific date. The "Appropriation Note" of the proposed initiative does not provide such specificity. You should consider specifying in the proposed initiative that the loan concerns a specified amount of money moved from the general fund on a specified date.
- c. Would the loan from the general fund be credited to the Colorado Automation Mitigation Trust, which is described in the proposed initiative as "a restricted enterprise fund" that is subject to the "hard allocation schedule in section 24-20-106"? If so, is your intent that the money loaned from the general fund would then be allocated pursuant to the allocation schedule or instead that the loaned money be used only for startup costs?
- d. What is the intended interest rate for the loan from the general fund?
- e. What happens if the enterprise fails to repay the loan within 18 months after the first revenue collection event?

## 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 meeting only if the designated representatives 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 follows:

1. **Bill Format Removal:** The proposed initiative includes language used for bills drafted by the General Assembly, such as "BILL 3," "A Bill for an Act Concerning...", and "AMPLIFY Act Bill 1 of 3". Because this is a citizen initiative, this language should be removed.

For an example of an initiative that added new language to the Colorado Revised Statutes and that used correct formatting, see [2015-2016 #145](#).

2. **Enacting Clause Placement:** Article V, section 1 (8) of the Colorado Constitution requires the following enacting clause: "Be it Enacted by the People of the State of Colorado." After removing the extraneous language mentioned in technical comment #1, this phrase should be placed at the very beginning of the measure, and the headers "ENACTING CLAUSE & SINGLE SUBJECT" should be removed.
3. **SMALL CAPITAL LETTERS:** It is standard drafting practice to use SMALL CAPITAL LETTERS to show language being added to the Colorado Revised Statutes. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
4. **Statutory Numbering and Organization:**
  - a. The proposed initiative contains extensive, unnumbered textual blocks and floating sections interspersed throughout the draft. All text intended to be codified must be placed within standard numbered sections (e.g., 24-20-102, 24-20-103) and subsections.
  - b. The numbering of statutory sections is nonsequential and erratic. The statutory sections should be placed in sequential order.
  - c. The inclusion of "ANNEX A," "ANNEX B," "ANNEX C," etc., does not conform to Colorado statutory structure. If these provisions establish legal rules, they should be codified within the standard Title-Article-Part-Section framework.
5. **Headnote Formatting:** Each section in the Colorado Revised Statutes has a headnote that briefly describes the content of the section. It is standard practice to use sentence case capitalization for headnotes and to bold them.

For example, "24-20-101. Definitions." should be changed to:

**24-20-101. Definitions.**

6. **Formatting of Tables in Statute:** The draft incorporates several visual tables directly into the text. While tables can be published in the Colorado Revised

Statutes, standard statutory organization (e.g., using lettered subsections to list the percentages and destinations) is preferred for clarity and codification.

7. **Capitalization:** It is standard drafting practice not to capitalize common nouns or defined terms in the statutes unless they are proper nouns. Terms such as "Enterprise Mitigation," "Roadmap" and "Digital Soul" should be converted to lowercase.

Only proper nouns, like "Colorado," the first letter of each word of a sentence, and the first letters of the names of private entities, should be capitalized.

8. The proposed initiative repeatedly refers to "this act." The proposed initiative is not a bill that will be enacted as an act. It should, instead, be referred to as a "measure."
9. In section 24-40-119 (1) of the proposed initiative, the phrase "locally-developed automation systems systems" should be changed to read "locally-developed automation systems." There appears to be duplication in section 24-20-102 (1), "enterprise mitigation revenue revenue collection" and ANNEX D, "Colorado Automation Mitigation Trust Trust."
10. The word "kilogallon" is misspelled as "killogallon" in section 24-20-156 of the proposed initiative.
11. **Definitions:** The definitions in section 24-20-101 of the proposed initiative should appear in alphabetical order so that readers can find them more easily.

Also consider that the word "the" is usually not part of a defined term. Please consider rewriting the definition of "digital soul" as shown below:

(2) "DIGITAL SOUL" HAS THE MEANING SET FORTH IN ...