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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 #267, Concerning the Secure Administration of Protected Digital Soul Interests

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 #267 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 #268. 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 #268, except as necessary to fully understand proposed initiative 2025-2026 #267. 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. Establish the "Colorado Trust of Unique and Identifying Information" as an "air-gapped, decentralized storage and audit environment";
2. Create a "Triad Review Panel" and a "Judicial Cryptographic Token" (JCT) system to oversee and authorize unmasking or access to protected data;
3. Mandate the implementation of a "Non-Circumventable Incident Reporting System" and the deployment of "Justice Bridge Kiosks" within detention facilities to securely log and route incident reports;
4. Limit the use of "item-level eligibility identifiers";
5. Require covered emergent automation systems to implement a "Black Screen Protocol" that provides a hardware-level physical circuit-break and disconnection capability;
6. Require two-step human verification before a covered entity can issue an adverse action based on an automated alert or "Shadow Person Output";
7. Establish an "Isolated Diagnostic Environment" to evaluate and remediate covered automation systems subjected to a "Critical Severance Directive";
8. Mandate that correctional capital projects funded under the initiative achieve net-annual energy neutrality and net-annual water neutrality; and
9. Allocate collected fees into specific funds using an automated routing system.

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. **Effective Date:** Proposed section 4 states that the initiative "takes effect upon passage." However, Article V, section 1 (4)(a) of the Colorado Constitution states that an approved initiative takes effect from and after the date of the official declaration of the vote by proclamation of the governor. Are the proponents aware of this constitutional default?
3. **Undefined Entities and Companion Measures:** The proposed initiative grants significant authority to the "ODO" (Office of Digital Oversight) and references "Enterprise Mitigation Revenue established under article 20 of title 24."
 - a. Are these entities and statutes established in current Colorado law, or do they rely on the passage of a companion ballot measure?
 - b. If the intent is to create the ODO in this proposed initiative, you should consider adding language expressly creating the ODO in statute and placing it within a principal department of the executive branch of government.
 - c. Although the "Independent Operability" section claims no provision is conditioned on another measure, how will this initiative function practically if the ODO is never legally created?
4. **Triad Review Panel Implementation:** Proposed section 10-10-105 creates a "Triad Review Panel" consisting of a prosecutor, defense attorney, and magistrate designated by the chief judge of each judicial district. Directing the judicial branch to appoint members to a panel that authorizes data access may raise separation of powers concerns under article III of the Colorado Constitution. Also, how will this panel be funded and staffed across all judicial districts?
5. **Administrator Rules and Definitions.** The proposed initiative references "the administrator" throughout and grants the administrator the authority to define terms and adopt rules. The proposed initiative also references a "regional administrator" and a "program administrator." Who is the "administrator" and what is their role in comparison to a "regional administrator" or a "program administrator"?

6. **Appropriations:** The "Appropriation Note" states that no General Fund appropriation is required because the ODO and the "verification, accountability, and facility safety infrastructure established" by the proposed initiative will be funded by "enterprise mitigation revenues allocated from the CCPAME."
 - a. However, the CCPAME is not created by the proposed initiative. So how will the initiative be funded if the CCPAME is not created?
 - b. If the intent is to finance the ODO with enterprise mitigation revenues, is the ODO then part of the enterprise? If not, what is the basis for using enterprise revenues to finance a separate government entity that is not part of the government-owned business of the enterprise?
 - c. If the proposed initiative is intended to be effective upon passage, how do you intend the startup costs for the ODO and the "verification, accountability, and facility safety infrastructure" to be financed given that CCPAME enterprise revenue generated from fees would not be immediately available?
7. **Fourth Amendment Construction:** Proposed section 10-10-104 authorizes the state to use state-held "mitigation custodial custody" to "reduce third-party seizure risk and to require judicially supervised procedures for access." How does this language comport with existing legal requirements for compliance with a court-issued search warrant?
8. **Extraterritorial Enforcement:** The initiative mandates "Hash-Sentinel egress monitors" and "Black Screen Protocols" for covered entities that commercially deliver systems to Colorado residents. Do the proponents anticipate that the state may need to defend against legal challenges under the dormant Commerce Clause of the United States Constitution if the state attempts to enforce these mandates on out-of-state operators?

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 2," "A Bill for an Act Concerning...," and "AMPLIFY Act Bill 2 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. **Nonsequential Section Numbers:** The numbering of statutory sections skips erratically. For example, the text jumps from 10-10-105 to 10-10-150, then from 10-10-153 back to 10-10-109, jumps from 10-10-108.6 to 10-10-123 to 10-10-160 to 10-10-190, then backward to 10-10-108.7 and 10-10-108.8, then jumps to 10-10-200, 10-10-350, and eventually 10-10-900, and then backward to 10-10-360. Section numbers must be sequential.
 - b. **Floating Sections:** The initiative contains several unnumbered floating sections, such as "DORMANT DIAGNOSTICS; PROACTIVE AUDIT NODES; SEVERANCE DIRECTIVE" and "POST-QUANTUM CRYPTOGRAPHIC TRANSITION DIRECTIVE." These must be integrated into standard statutory sections (e.g., 15-15-110, 15-15-111, etc.) with proper subsection numbering.
 - c. The inclusion of an "Appropriation Note" 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, "10-10-104. Colorado Automation Mitigation Custodial Account - Fourth Amendment Protection Architecture." should be changed to:

10-10-104. Colorado automation mitigation custodial account - fourth amendment protection architecture.

6. **Statutory Placement:** The proponents have placed the language of the initiative as article 10 of title 10, Colorado Revised Statutes. However, such an article 10 already exists; therefore, the proponents should locate the language of the initiative elsewhere in statute.
7. **Unnecessary Headings:** The initiative includes apparently random subheadings over some of the statutory sections (e.g., "TRIAD REVIEW PANEL AND JUDICIAL CRYPTOGRAPHIC TOKEN," "EYE IN THE SKY – CHAIN-OF-COMMAND REPORTING SYSTEM"). These subheadings should be removed, leaving only a numbered headnote to precede each statutory section.
8. **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 "Panel," "Data Tap," "Digital Soul," "Shadow Person Output," and "Trust" 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.

9. **Definitions:** The definitions in section 10-10-101 of the proposed initiative should appear in alphabetical order so that readers can find them more easily. Also, since section 2-4-102, C.R.S., states the statutory rule of construction that the singular includes the plural, it is standard drafting practice to use the singular form of nouns.

Also consider that the word "the" is usually not part of a defined term. Please review the definitions in section 10-10-101 (3) and (5) of the proposed initiative and consider rewriting without the "the," as shown below:

(3) "COLORADO TRUST OF UNIQUE AND IDENTIFYING INFORMATION" OR "TRUST" MEANS THE PROPRIETARY, DECENTRALIZED, AIR-GAPPED STATE STORAGE AND AUDIT ENVIRONMENT

(5) "PANEL" MEANS A PAID, HUMAN-IN-THE-LOOP WORKFORCE

10. In section 10-10-103 (1) of the proposed initiative, please review the use of the em dash; it will likely be clearer to the reader to use words, such as "or the," instead of punctuation.
11. In section 10-10-151 (4) of the proposed initiative, "an Non-Circumventable" should be changed to use the correct article, "A NON-CIRCUMVENTABLE" The same issue occurs in proposed section 10-10-153 (5).
12. 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.