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Colorado General Assembly

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MEMORANDUM

TO: Kristi Burton Brown and Michael Tsogt
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 15, 2024
SUBJECT: Proposed initiative measure 2023-2024 #226, concerning consumer energy choice

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 initiatives 2023-2024 #225 and 2023-2024 #227. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #225 and 2023-2024 #227, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Comments and questions in this memorandum are new.

Purposes

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

1. To ensure the right of energy choice; and
2. To ensure that the right to energy choice includes the right of consumers to choose from energy sources in common use, such as solar, wind, electricity, natural gas, gasoline, and propane, to fuel their own products and services.

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. In subsection (2) of section 1 of the proposed initiative, the phrase "to fuel their own products and services" is used. With regard to this phrase:
 - a. It is not clear that the phrase "to fuel" would describe the use of solar, wind, or other forms of electricity. You might consider adding "power or" to the phrase to read "to power or fuel."
 - b. References to ownership of a product or service generally refer to a type of product or service that a manufacturer or service provider sells, offers to sell, or otherwise provides to consumers, not to the individual product or service plan that a consumer purchases or uses. The phrase "their own products and services" could then be interpreted as referring to products and services that a consumer provides. You might consider changing the phrase "their own products and services" to "products and services for the consumers' use."
3. Regarding the prohibition that a consumer's right to choose energy sources "shall not be encumbered," in subsection (2) of section 1 of the proposed initiative, the phrase is written such that no clear actor is indicated.
 - a. Do you intend that the prohibition would apply only to government actors, such as state agencies or municipal or county governing bodies or agencies? If so, you might consider adding clarification to that effect in subsection (2) of section 1 of the proposed initiative.

- b. If you instead intend that the prohibition would also apply to private actors, such as utilities, homeowners' associations, and landlords:
 - i. Would a utility be in violation of subsection (2) of section 1 of the proposed initiative if the utility, as part of its resource planning:
 - 1. Enforced different rules for different types of energy sources, such as imposing interconnection rules related to connecting solar generation facilities to the utility's electric grid?
 - 2. Indicated an intent to expand the portion of its electric generation portfolio served by renewable energy sources?
 - ii. Would a homeowners' association be in violation of subsection (2) of section 1 of the proposed initiative if the homeowners' association imposed certain time, place, and manner restrictions on the use of energy sources, such as prohibiting the use of gas-powered lawn equipment during certain hours of the day for the purpose of noise reduction or prohibiting the installation of solar panels on street-facing roof sides for aesthetic purposes?
 - iii. Would a landlord be in violation of subsection (2) of section 1 of the proposed initiative if the landlord installed an electric stove in each of its rental units and included in each rental lease a prohibition against replacing the electric stove with a gas stove?

Technical Comments

The technical issues raised in the technical comments for proposed initiative 2023-2024 #225 apply to this proposed initiative as well. There are no additional technical comments for this proposed initiative.