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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 #227, 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 #226. 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 #226, except as necessary to fully understand the issues raised by the revised 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 purpose of the proposed amendment to the Colorado Constitution appears to be:

1. Prohibiting state and local governments from banning or restricting products or services currently in common use based on the energy sources of those products or services because banning or restricting those products or services creates financial, safety, and practical burdens for working citizens.

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. The first sentence in the proposed initiative appears to be a declaration of intent. To provide you an opportunity to expand on this declaration of intent, would you like to provide examples of how the types of government regulations referenced in the proposed initiative burden citizens financially, practically, or with respect to safety, either in the proposed initiative itself or on the record at the review and comment hearing?
3. The first sentence of the proposed initiative is specific to "products," but the second sentence refers to "products or services." You might consider adding "or services" to the first sentence to better align with the prohibition set forth in the second sentence.
4. Because the proposed initiative is specific to "products or services currently in common use":
 - a. For the reasons indicated in substantive comment #5 of the review and comment memorandum for proposed initiative 2023-2024 #225, you might consider deleting the word "currently."
 - b. When compared to other products or services, is there a threshold percentage of the market that would make a product or service be considered "in common use"? If so, what is that threshold percentage?

- c. If you do not intend that "common use" be interpreted as requiring a threshold percentage of the market, how do you intend the phrase to be interpreted?
 - d. Do you intend that the state and local governments may ban or restrict products or services that are not in common use, such as products or services that utilize new technologies or unique energy sources that are not widely available to the general public?
5. Because there is one state government but multiple local governments in the state of Colorado, consider rephrasing the beginning of the second sentence of the propose initiative to read "The state and local governments...."
6. The phrase "energy source of that product or service" could be interpreted as though the product or service provides its own energy source. You might consider rewording the phrase to read "energy source used for that product or service." Alternatively, you could reword the phrase to read "energy source that powers or fuels that product or service."
7. Various state or local government regulations could be viewed as restricting products or services. Do you intend that the proposed initiative would prohibit or limit the enactment or implementation of the types of land-use and environmental permitting, taxation, safety, labor standards, and utility service regulations listed in substantive comment #13a. to #13e. of the review and comment memorandum for proposed initiative 2023-2024 #225?

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. To conform to drafting conventions:
 - a. Because there is no subsection (2) in the proposed initiative, "(1)" is not needed before the language after the headnote.
 - b. Both "ENERGY CHOICE. (1)" on its own line and "ENERGY CHOICE. (1)" on the following line are redundant and should be removed.

- c. The headnote should be lowercase (except for an initial-capitalized first word) and should end in a period, followed by the first sentence of the proposed initiative.

As a result of the changes in this technical comment #1a. to #1c., the beginning of the section following the amending clause should read:

SECTION 17. Energy choice. GOVERNMENT REGULATIONS...

2. Although the text of the proposed initiative is, correctly, in small capital letters, the first letter of the first word of each sentence should be initial-capitalized as well. For example:

GOVERNMENT REGULATIONS...

3. To conform to drafting conventions, please add a comma after "safety" in the phrase that currently reads "creates severe financial, safety and practical burdens."
4. The first sentence in the proposed initiative appears to be a declaration of intent. To conform to drafting conventions, please add "**- declaration.**" to the headnote "**Energy choice.**"
5. Consider hyphenating these terms as follows:
 - a. "Common-use," when it describes products; i.e., "common-use products" [note that when "common use" is not acting as an adjective, it does not need to be hyphenated];
 - b. "Gas-powered"; and
 - c. "Propane-fueled."