

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Jon Caldara and Jake Fogleman
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 31, 2023
SUBJECT: Proposed initiative measure 2023-2024 #34, concerning recovery of costs by investor-owned utilities

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 another initiative addressing the same topic, proposed initiative 2023-2024 #33. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiative 2023-2024 #33, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

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

1. Prohibiting investor-owned utilities supplying electric or gas service, or both, to customers in Colorado from recovering from ratepayers the direct and indirect costs associated with accelerated depreciation or premature retirement of assets; and
2. Requiring the public utilities commission to adopt rules implementing these restrictions within twelve months after the proposed initiative becomes effective.

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 proposed initiative refers to "assets." Do you want to define this term? Would this be limited to physical infrastructure or include intangible items?
3. The proposed initiative refers to "accelerated depreciation." Do you want to define this term?
4. The proposed initiative refers to "premature retirement of assets." Do you want to define this term?
5. What if assets are prematurely retired through no fault of the utility, such as assets that have been severely damaged or destroyed by extreme weather or a natural disaster? Do you intend that the utility not be able to recover costs in those circumstances as well?
6. A number of sections within title 40 of the Colorado Revised Statutes, such as section 40-3.2-109 (5)(b)(II), Colorado Revised Statutes, incentivize programs that the Colorado General Assembly deems to be in the public interest, such as encouraging investor-owned utilities to pursue beneficial electrification through

accelerated depreciation.¹ Have you considered the cost to the public of removing these incentives?

Technical Comments

The technical comments set forth in the review and comment memorandum on proposed initiative 2023-2024 #33 are applicable to proposed initiative #34 and, as such, will not be repeated.

¹ See also § 40-3.2-104 (5)(b), C.R.S.