

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: Marla Fernandez-Benavides and Iesha Wood
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 27, 2023
SUBJECT: Proposed initiative measure 2023-24 #7, concerning Environmental, Social, and Governance investing

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.

Purposes

The major purpose of the proposed initiated measure appears to be:

1. To request the drafting of legislation that prohibits Environmental, Social, and Governance investing and reporting.

Substantive Comments and Questions

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

1. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 of the Colorado Revised Statutes require the proponents to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statutes. The proponents have submitted an idea, rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
2. Under article V, section 1 (2) of the Colorado constitution proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). Is the proposed initiative intended to amend the Colorado constitution or the Colorado Revised Statutes? The Colorado constitution and the Colorado Revised Statutes are accessible from the General Assembly's website, here: <https://leg.colorado.gov/laws>.
3. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
4. 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?
5. What will be the effective date of the proposed initiative?
6. How should the Environmental, Social, and Governance investing be defined?

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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.).
For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In Colorado Revised Statutes, **amend** section __ as follows:".
3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
6. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
7. For purposes of a statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty."

The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."

8. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.