

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
Facsimile 303-866-3855
Email lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

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

MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 5, 2025

Subject: Proposed initiative measure 2025-2026 #19 concerning the prohibition of government bans on energy sources

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 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.

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. Temporal words such as "currently" or "future," when used in the Colorado Constitution or Colorado Revised Statutes, are ambiguous because it is unclear if they are intended to reference the date when the language became effective or the date when the language is being read and interpreted, which date could be decades after the effective date. With respect to the use of the word "currently" in the proposed initiative:
 - a. Do you intend that the word "currently" refers to the time of the effective date of the proposed initiative, so that it would be interpreted to mean an energy source in common use in the years 2025-2026?
 - b. If you intend that the word "currently" refers to the effective date of the proposed initiative, consider changing the phrase "currently in common use" to "in common use on the effective date of this section" to clarify that the relevant time for considering common usage is the time that the proposed initiative takes effect.
 - c. If you instead intend that the word "currently" refers to the time when the language is being read and interpreted, which may be decades after the effective date of the proposed initiative, consider striking the word "currently" so that the language reads "powered by an energy supply in common use," which language would be interpreted to mean "in common use" at the time it is being read.
4. The proposed initiative is specific to "products or services currently in common use":

- a. 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?
 - b. Do you intend that the state and local government may ban or restrict products or services that are not in common use, such as products or services that use new technologies or energy sources that are not widely available to the general public?
 - c. The phrase "energy source of that product or service" could be interpreted to mean that the product or service provides its own energy source. 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."
5. Article V, section 1 (4)(a) of the Colorado constitution states, in relevant part, that an initiative "shall take effect from an after the date of the official declaration of the vote thereon by proclamation of the governor ...". Given this language, section 2 of the proposed initiative appears to be redundant and could be removed without changing the effective date of the proposed initiative.

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. Although the text of the new language in 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:
 - a. GOVERNMENT REGULATIONS...
2. Consider hyphenating these terms as follows:
 - a. "Common-use" when it describes products; i.e., "common-use products"
 - b. "Gas-powered"; and
 - c. "Propane-fueled."