

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Michael Edwin Kelley and Maria Suzanne Noble

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 1, 2025

Subject: Proposed initiative measure 2025-2026 #55, concerning State Debt for Refinery Eminent Domain

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

Purposes for Proposed Initiative 2025-2026 #55

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

1. Increase state debt by \$100 million with a maximum repayment cost of \$150 million without raising taxes or fees;
2. Increase state debt as specified above by a change to the Colorado Revised Statutes requiring the issuance of energy revenue anticipation notes;
3. Require that proceeds from the energy revenue anticipation notes be retained as a voter-approved revenue change; and
4. Require that the proceeds from the energy revenue anticipation notes be used exclusively to fund:
 - a. A just eminent domain purchase of the refinery in Commerce City that is owned and operated by Canada's Suncor Energy Inc.;
 - b. Repairs to the refinery;
 - c. The operation of the refinery;
 - d. Compensation to nearby residents; and
 - e. A solar energy farm that will provide jobs.

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. 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 must be added to the beginning of the proposed initiative.

3. Article V, section 1 (4)(a) of the Colorado constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the designated representatives should include a desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
4. Under article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or the Colorado Revised Statutes. It appears that your intent is that the proposed initiative will amend the Colorado Revised Statutes. Is that correct?
5. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent 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. However, the text of the proposed initiative appears to be a ballot title rather than actual language that would be included in the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
6. Is the text following the heading "Justification" intended to be part of the initiative? If so, please amend your proposal to indicate where it would be located in the Colorado Revised Statutes and consider rephrasing it as a legislative declaration. If not, please remove this text.
7. In accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed?
8. The following questions are related to the issuance of energy revenue anticipation notes:

- a. What is an “energy revenue anticipation note”? Is it different in any way from a standard revenue anticipation note?
 - b. Revenue anticipation notes are generally paid off in one year. Do you anticipate that the state will be able to repay its debt from the energy revenue anticipation notes within that timeframe?
 - c. What entity or official in the state would be responsible for issuing and managing energy revenue anticipation notes?
 - d. Is there a deadline by which energy revenue anticipation notes would have to be issued?
9. The following questions are related to the purchase of the refinery currently owned and operated by Suncor Energy Inc. (refinery):
 - a. How did you determine the current value of the refinery? If you have not determined the current value of the refinery, how will the value be determined?
 - b. What happens if the refinery’s value is more than \$100 million?
 - c. How will the state purchase the refinery if it is not for sale? The justification included in the measure indicates that eminent domain would be used. Is that your intent? If so, would this be considered a taking?
 - d. Regardless of the legal method used to purchase the refinery, do you anticipate that Suncor Energy Inc., will sue the state in connection with the purchase? If so, how will the state pay for the legal costs associated with the lawsuit?
 - e. How would a lawsuit, if there is one, impact the anticipated repayment of the revenue anticipation notes?
10. The following questions are related to the state’s ownership and operation of the refinery:
 - a. How would the ownership and operation of the refinery be incorporated into state government? For example, which state entity would operate and oversee the functions of the refinery?

- b. What would happen to the current employees of the refinery? Would they become state employees? If so, how would the state accomplish this transition? If not, what entity would employ the current employees?
 - c. Does the state currently have officers or employees with the expertise to operate and manage the refinery? If so, in which department does the expertise reside?
 - d. If the state does not currently have the expertise to own, operate, and manage the refinery, how will the state acquire the knowledge and expertise needed to successfully own, operate, and manage the refinery?
 - e. Would it be the responsibility of the General Assembly to make decisions regarding the ownership, oversight, management, operation, and other logistics in connection with the refinery?
- 11. The following questions are related to the proceeds of the sale of energy revenue anticipation notes and the revenue generated by the ownership and operation of the refinery:
 - a. The measure specifies that proceeds from the issuance of energy revenue anticipation notes constitute a voter-approved revenue change. Is the intention to raise the state's revenue limit imposed by the Taxpayer's Bill of Rights in article X section 20 of the Colorado constitution (TABOR) by the \$100 million, which is the amount of energy revenue anticipation notes issued?
 - b. Would the energy revenue anticipation notes be repaid with revenue generated from the ownership and operation of the refinery?
 - c. Would the revenue generated from the ownership and operation of the refinery be subject to TABOR or is it the intent to raise the state's TABOR revenue limit by the amount of such revenue? If so, what amount of such revenue could the state retain? This should be clarified in the measure so voters understand the TABOR impact of the measure.
 - d. If the revenue generated by the ownership and operation of the refinery is subject to TABOR, how would that impact the rest of the state's budget?
- 12. The following questions are related to the authorized uses of the proceeds from the notes:

- a. Is the list of uses of the proceeds in priority order, such that each authorized use will be accomplished using available money before the next authorized use is accomplished? Or is the intent that portions of the proceeds be applied to all of the purposes at the same time?
- b. If the intent is for portions of the proceeds to be applied to all of the authorized uses at the same time, how will the state determine the amount to be spent for each purpose and when it will be spent? Which state entity or official would make these decisions?
- c. What repairs need to be made to the refinery? What is the estimated cost of the repairs?
- d. How much will it cost annually to operate the refinery?
- e. For what purpose would compensation be paid to “nearby residents”?
- f. What form of compensation to “nearby residents” is intended? Do you envision state-funded programs that benefit residents in the community? Grant programs for certain recipients and for certain purposes? Cash payouts?
- g. Which residents are “nearby” residents? Who will determine which “nearby residents” qualify for compensation? How will the amount of compensation be determined?
- h. How much will it cost to build and operate a solar energy farm? Where will the solar energy farm be located? How many jobs need to be provided in connection with the solar energy farm?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. Each constitutional or statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".
2. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1.) For example:

SECTION 1. In Colorado Revised Statutes, **add** article __ to title 39 as follows:

2. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to each section of the proposed initiative and be in bold-face type.
3. 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 to use SMALL CAPITAL LETTERS [and not 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.

6. 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.