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Colorado General Assembly

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MEMORANDUM

To: Steven Ward and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 2, 2025

Subject: Proposed initiative measures 2025-2026 #56 and #57, concerning prohibiting government bans on energy source

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 initiatives.

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.

Proposed initiatives **2025-2026 #56** and **#57** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives **2025-2026 #56** and **#57**.

Additionally, earlier versions of these proposed initiatives, proposed initiatives **2025-2026 #28, #29, #44, and #45**, submitted by the same designated representatives, were the subject of memoranda dated February 26, 2025, and March 19, 2025, and were discussed at public meetings on February 28, 2025, and

March 21, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in earlier memoranda or at earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #56

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

1. Prohibit the state and local governments from banning a product or service connection powered by an energy supply in common use based on the energy source that powers or fuels that product or service connection; and
2. Make an exception to the above prohibition:
 - a. For health and safety restrictions of the International Building Code, or its successor code; or
 - b. In the case of a public safety emergency, such as a fire or the imminent risk of a fire.

Purposes for Proposed Initiative 2025-2026 #57

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

1. Prohibit the state and local governments from banning or restricting a product or service connection powered by an energy supply in common use based on the energy source that powers or fuels that product or service connection; and
2. Make an exception to the above prohibition:
 - a. For health and safety restrictions of the International Building Code, or its successor code; or
 - b. In the case of a public safety emergency such as a fire or the imminent risk of a fire.

Substantive Comments and Questions

The substance of the proposed initiatives 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 each of the proposed initiatives?
2. 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 initiatives do not contain an effective date, this would be the default effective date. Does this default effective date satisfy the proponents' intent? If not, the proponents should include in each proposed initiative the desired effective date, which should not be earlier than the default effective date, to comply with this constitutional requirement.

3. Both the proposed initiatives provide an exemption for health and safety restrictions of the International Building Code, or its successor.
 - a. State law adopts the National Fire Code for safely installing electrical components of a building. This code does not fit under the exception. Does the requirement that the exemption be based on the International Building Code mean that the exception does not apply to electrical building safety?
 - b. The International Code Council publishes the International Building Code. The council also publishes other codes, such as the International Residential Code or the International Fuel Gas Code. Many local jurisdictions have also adopted these codes. Do these codes fit under the exemption? Does the requirement that the exemption be based on the International Building Code mean that those codes cannot be the bases for the health and safety exemption?
 - c. State agencies and local governments regularly adopt the International Building Code and then amend it to fit local conditions. Would these amendments fit under the exemption?
4. Both proposed initiatives provide an exemption, "in case of a public safety emergency such as fire or imminent risk of fire", which circumstances imply a

temporary condition. Both proposed initiatives prohibit banning certain products or service connections. The word "ban" implies a permanent prohibition against those products or service connections. With the addition of the "in case of a public safety emergency such as fire or imminent risk of fire" language, do the proponents intend the word "ban" to include a temporary moratorium imposed in such circumstances that can then be lifted when the circumstances no longer exist?

5. With regard to the reference in both proposed initiatives to "an imminent risk of fire":
 - a. How should the state or a local government make that determination?
 - b. According to the [National Weather Service](#), a red flag warning is issued if there is high confidence that weather and fuel conditions will result in a fire in the next 24 to 48 hours, but a fire weather watch is issued instead if there is high potential for the development of a red flag warning in the next 12-72 hours. Would the issuance of a fire weather watch warrant a determination by the state or a local government of an "imminent risk of fire"?
6. For proposed initiative #57 that prohibits the state and local governments from restricting products and service connections powered by an energy supply in common use based on the energy source that powers or fuels the product or service connection. Would laws that favor one energy source over another constitute such restriction? For example, would section 39-22-550, C.R.S., be an impermissible restriction on gasoline-powered lawn equipment where the statute provides a tax credit for the purchase of electric-powered lawn equipment "to incentivize the voluntary transition from gasoline-powered to electric-powered lawn equipment"?
7. Both proposed initiatives prohibit the state and local governments from banning certain products and service connections. With respect to the term "local government":
 - a. Do the proponents intend that to include the conduct of a municipally owned utility?
 - b. Do the proponents intend that to include the conduct of a special district?
 - c. Do the proponents intend that to include the conduct of a school district?

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 initiatives as follows:

1. In section 6-7.2-102, C.R.S., of both proposed initiatives, consider:
 - a. Rephrasing "State and local government" to "The state government and local governments";
 - b. Adding a comma after the word "connection" located before "except for";
 - c. Capitalizing the initial letter of each word in the phrase "international building code";
 - d. Adding a comma after "international building code" in order to set off the phrase "or its successor" with commas; and
 - e. Adding a comma after "public safety emergency" because the phrase beginning with "such as ..." is an unrestrictive phrase, which means it is not intended to narrow the type of public safety emergencies to the types listed, "fire or imminent risk of fire."