

# 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:** July 9, 2025

**Subject:** Proposed initiative measure 2025-2026 #107, concerning State Purchase of Refineries

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.

Earlier versions of this proposed initiative, proposed initiatives 2025-2026 #55, 2025-2026 #68, and 2025-2026 #89, submitted by the same designated representatives, were the subject of memoranda dated April 1, 2025, April 15, 2025, and May 22, 2025, and were discussed at public meetings on April 3, 2025, April 17, 2025, and May 27, 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 initiative. 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 #107**

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

1. Create the “Just Compensation for Refinery Purchase Act”;
2. Make legislative findings and declarations;
3. Authorize the State Treasurer to issue revenue anticipation notes, in the State Treasurer’s discretion, as soon as possible after the proposed measure takes effect, in a maximum amount of \$400 million with a maximum repayment cost of \$600 million, and for a maximum repayment term of twenty years;
4. Require the State Treasurer to distribute the proceeds from the revenue anticipation notes, to exclude such proceeds from state fiscal year spending limits, use the proceeds to pay just compensation of no more than \$390 million for the eminent domain purchase of two refineries in Commerce City (refineries), designate up to \$2 million of the proceeds for legal fees in connection with the purchase of the refineries, transfer \$250,000 of the remaining proceeds after just compensation and legal fees are paid to the Department of Natural Resources (DNR) and the remainder of such remaining proceeds to the Department of Personnel and Administration (DPA) for specified purposes, and require the State Treasurer to create cash funds into which the proceeds will be transferred;
5. Undertake the eminent domain purchase of the refineries without approval from the Colorado Public Utilities Commission (PUC) or the Colorado Energy and Carbon Management Commission;
6. Require the State Treasurer to create a fund for the DNR to use to hold the income and pay the expenses of the refineries and a future solar energy

farm and to require the DNR to use the money in the fund in part to repay the revenue anticipation notes;

7. Without raising taxes or fees, require the DNR to identify and pay, as soon as possible after the effective date of the proposed measure and each year thereafter until the revenue anticipation notes are paid in full, the repayment cost of the notes;
8. Without raising taxes or fees, require the DNR to manage all personnel, improvements, contracts, and use of the income and expenses of the refineries and a new solar energy farm, which management will be audited by the Office of the State Auditor (OSA);
9. Without raising taxes or fees, require the DPA to manage the transition of all Colorado refinery employees to the state and from the refineries to a new solar energy farm and hire additional employees for the refineries and the solar energy farm;
10. Require that refinery employees will automatically become employees of the DNR, that non-Colorado refinery employees be let go, and that any refinery employees who decline to become employees of the DNR also be let go;
11. Require that payroll costs for refinery employees who become state employees will come out of their payroll checks, that such employees will have the same rights in connection with state employee pension benefits as other state employees, and that such employees may vote to become members of the state employee labor union or may choose to remain in their current labor union, if applicable;
12. Specify that the income and expenses of the refineries and the new solar energy farm are exempt from the limitation on state fiscal year revenue and spending specified in section 20 of article X of the state constitution (TABOR), require the State Treasurer to transfer such income to the DNR, and require the DNR to manage the income subject to audits by the OSA;
13. Allow the DNR, in its discretion, to use the income from the refinery and a new solar energy farm to pay for, in the following preferred priority order, refinery operations, refinery repairs and improvements, compensation to

certain residents who live near the refineries and satisfy certain conditions, phasing out the refineries within twenty years and replacing them with public parks, and a solar energy farm;

14. Require the DNR to use award fee contracts with public and private organizations to accomplish the purposes for which the income from the refinery and the solar energy farm are to be used, and specify a system by which bonuses will be awarded to contractors when the contractors exceed performance expectations; and
15. Require the DNR to enter into partnerships with public and private organizations and local governments to achieve the purposes for which the income from the refinery and solar energy farm is to be used, require the State Treasurer to transfer refinery and solar farm income to the DNR in connection with the partnerships, and specify the organizations that will be paid in connection with the partnerships and the amounts of the payments.

## **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 following comments and questions relate to section 40-44-102, C.R.S., of the proposed initiative:
  - a. Subsection (1)(G) states that the borrowed money and the interest from the revenue anticipation notes will be excluded from the state's fiscal year spending limit and the proceeds will be excluded from the state's fiscal year revenue limit. Is the "borrowed money" different from "the proceeds", and, if so, what is the difference? What is the difference, if any, between the "state's fiscal year spending limit" and the "state's fiscal year revenue limit? Consider using consistent terminology to the extent that different terms currently used have the same meaning.
  - b. Legislative declarations are not generally considered substantive law. Does the proposed initiative specify that the borrowed money and proceeds are

excluded from the state's fiscal year spending and revenue limits anywhere other than in the legislative declaration? If not, consider clarifying your intent to ensure that the proposed initiative accomplishes what you want it to by adding this language to one of the sections in the proposed initiative that includes substantive law.

3. Section 40-44-103, C.R.S., of the proposed initiative states that as soon as possible after the effective date of the proposed initiative and depending on related lawsuits, "the State Treasurer is authorized to use discretion before issuing revenue anticipation notes..." Is it your intent that the State Treasurer is required to issue the revenue anticipation notes, but may use discretion in the timing of the issuance, based on any related lawsuits? If not, what is your intent?
4. The following comments and questions relate to section 40-44-104, C.R.S., of the proposed initiative:
  - a. This section states that the proceeds from the revenue anticipation notes are required to be used as just compensation for the eminent domain purchase of the refineries without approval by the PUC or the Colorado Energy and Carbon Management Commission. Would these two entities normally be required to approve such a purchase?
  - b. Are there any other federal, state, or local governmental entities that would usually be required to approve a state's eminent domain purchase of a refinery? If so, are those entities also not required or not allowed to approve the state's purchase of the refineries as required in the proposed initiative?
5. Section 40-44-106, C.R.S., of the proposed initiative states that the operations of the refineries and the solar energy farm will be audited by the OSA. Is it up to the State Auditor to determine when and how often the OSA will audit these operations? Will the OSA do financial audits, performance audits, or both?
6. Section 40-44-108, C.R.S., of the proposed initiative specifies various parameters for the proposed solar energy farm. Are the power capacity requirements intended to reflect the initial capacity of the facility, or are they ongoing requirements?
7. The following comments and questions relate to section 40-44-109, C.R.S., of the proposed initiative:

- a. Rather than explaining what an award fee contract is, consider defining it in a new definition section for article 44 or specifically for section 40-44-109 and then using the defined term.
  - b. On what grounds may the DNR determine not to use award fee contracts? Must the OSA audit every project for which the DNR uses an award fee contract? If so, how is this impacted by the limit on the payment to the OSA in section 40-44-110?
  - c. Do the details of the point system and the calculation of the bonuses in connection with the award fee contracts need to be specified in statute? What if the DNR and the OSA determine that a different scoring system makes more sense than the one specified in the proposed initiative? Instead, consider directing the DNR and the OSA to create a system by which contractors that exceed expectations can be awarded bonuses in connection with award fee contracts.
  - d. How will the OSA evaluate the contractor's work on various projects to determine whether to award points and how many points to award in connection with an award fee contract? For example, is there any existing criteria or evaluation process that would help the OSA determine whether a contractor has exceeded performance expectations?
8. The following comments and questions relate to section 40-44-110, C.R.S., of the proposed initiative:
- a. This section states that “[t]he State Treasurer will transfer refinery and solar farm income to the Department of Natural Resources” to be managed in conjunction with the partnerships that are required by the proposed initiative. Section 40-44-108 of the proposed initiative already requires the State Treasurer to transfer the income from the refineries and the solar energy farm to the DNR to be used for the purposes specified in that section. Are the proponents referring to the same money in both sections of the proposed initiative?
  - b. If you are referring to the same money in both sections, how do the payments required in section 40-44-110 fit in with the expenditures required in 40-44-108? Are the payments required in section 40-44-110 in addition to the expenditures required in 40-44-108? Will it be in the DNR's discretion to determine whether to prioritize the purposes specified in

section 40-44-108 or the payments required in section 40-44-110, or is it your intent that the requirements of one section be fulfilled before the other?

- c. Is it your intent that the State Treasurer create two different cash funds for use by the DNR: one cash fund to be used for the purposes specified in section 40-44-108 and another cash fund to be used for the purposes specified in section 40-44-110? If so, how will the State Treasurer determine the amount or percentage of the revenue from the refineries and the solar energy farm that should be deposited in each fund?
- d. The proposed initiative specifies the amounts of money that the DNR is required to pay to certain state and local governmental entities over time. What if the amounts specified in the proposed initiative are insufficient to cover the costs of the purposes for which the DNR is required to make the payment? For example, what if it costs Commerce City more than \$1 million to transition the refineries to a park?
- e. Is there a reason that the amounts of the payments contemplated in this section need to be so specific rather than giving the DNR the authority to enter into the contracts and to negotiate the payment associated with each contract?

## Technical Comments

The technical comments provided in the review and comment memoranda for proposed initiatives 2025-2026 #55, 2025-2026 #68, and 2025-2026 #89 continue to be relevant and are considered part of this memorandum. The following comments address additional technical issues raised by the form of the proposed initiative. 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. 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

Consequently, the letters (A) through (H) in section 40-44-102 (1) in the proposed initiative should be lowercase and the numbers in sections 40-44-108 and 40-44-110 in the proposed initiative should be lowercase letters.

2. The following is the standard drafting language used for creating a definition, if, for example, you choose to create a definition of “award fee contract”: "As used in this section, unless the context otherwise requires, 'award fee contract' means (the definition for the term)...".
3. It is standard drafting practice to use the terms “shall” or “must” rather than “will” to direct a particular action. 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."
4. Headnotes, the bold language that follows each statutory section number, are not shown in large and small capital letters. For example, “**SHORT TITLE.**” should be replaced with “**Short title.**”