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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: August 8, 2025

Subject: Proposed initiative measure 2025-2026 #127, 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**, **2025-2026 #89**, and **2025-2026 #107**, submitted by the same designated representatives, were the subject of memoranda dated April 1, 2025, April 15, 2025, May 22, 2025, and July 9, 2025 and were discussed at public meetings on April 3, 2025, April 17, 2025, May 27, 2025, and July 11, 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 #127

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

1. Create the “Just Compensation for purchase of Refineries Act”;
2. Make legislative findings and declarations;
3. Authorize the State Treasurer to issue required 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. Exclude the proceeds of the revenue anticipation notes and any interest thereon from the state fiscal year spending limit;
5. Require the State Treasurer to distribute the proceeds from the revenue anticipation notes, 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 Personnel and Administration (DPA) and the remainder of such remaining proceeds to the Department of Natural Resources (DNR) for specified purposes, and require the State Treasurer to create cash funds into which the proceeds will be transferred;
6. 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, or any other governmental entity;

7. 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 grazing farm and to require the DNR to use the money in the fund in part to repay the revenue anticipation notes;
8. 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;
9. Without raising taxes or fees, require the DNR to manage all personnel, improvements, contracts and leases, and use of the income and expenses of the refineries and a new solar grazing farm, which management will be annually audited by the Office of the State Auditor (OSA);
10. 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 grazing farm and hire additional employees for the refineries and the solar energy farm;
11. 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;
12. 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;
13. Specify that the income and expenses of the refineries and the new solar grazing farm, including leases, 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, require the DNR to analyse the profits of the refineries and the solar grazing farm after three years, and require the DNR to manage the income subject to annual audits by the OSA;

14. 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 grazing farm;
15. Require the DNR to use award fee contracts with public and private organizations, when the estimated contract value is over \$100,000, to accomplish the purposes for which the income from the refinery and the solar grazing farm are to be used, and specify a system by which bonuses will be awarded to contractors when the contractors exceed performance expectations; and
16. 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 grazing farm is to be used; 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. Section 40-44-103, C.R.S., of the proposed initiative refers to “the sale of revenue anticipation notes with the proceeds, i.e. borrowed money, to be spent as just compensation” as directed in the proposed initiative. There are additional references to “borrowed money” in section 40-44-103 of the proposed initiative but all other sections of the proposed initiative seem to use the term “proceeds” when referring to revenue from the revenue anticipation notes. Is there a difference between “proceeds” and “borrowed money” in connection with the revenue anticipation notes? If so, what is the difference? If not, consider using one term consistently throughout the proposed initiative.

3. The proposed initiative uses the term “solar grazing farm”. What is a solar grazing farm? Does this term need to be defined?
4. The following comments and questions relate to section 40-44-108, C.R.S., of the proposed initiative:
 - a. This section specifies that the income and expenses of the refineries and the solar grazing farm, including leases, are exempt from the limitation on fiscal year revenue and spending specified in the Taxpayers’ Bill of Rights (TABOR). Which leases are you referencing? Will the state be able to lease portions of the solar grazing farm and realize revenue from those leases?
 - b. If your intent is that the state can profit from the leases on solar grazing farms, is your intent that the revenue from the leases is also excluded from the limitation on the amount of revenue that the state can retain and spend in a state fiscal year pursuant to TABOR?
 - c. This section refers to “income” from the refineries and the solar grazing farm and also refers to the “profits” from the refineries and the solar grazing farm. Is there a difference between “income” and “profits” in this context? If so, what is the difference? If not, consider using one term consistently throughout the proposed initiative.
 - d. This section requires the DNR to analyze, three years after the purchase of the refineries, the profit history of the refineries and potential future profits of the solar grazing farm. What is the purpose of this analysis? Is DNR required to report or use this information in any way? Why is the analysis conducted only once three years after the state’s purchase of the refineries?
 - e. What information or data will the DNR use to determine the future potential profits of the solar grazing farm?

Technical Comments

The technical comments provided in the review and comment memoranda for proposed initiatives 2025-2026 #55, 2025-2026 #68, 2025-2026 #89, and 2025-2026 #107 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. Section 40-44-109, C.R.S., of the proposed initiative specifies that “An award fee contract means” and then includes language in parentheses. It appears that this was an effort to incorporate a suggested change from a previous version of the proposed initiative. However, because you are not actually creating a defined term, consider changing this language to “An award fee contract is” and removing the parentheses around the remaining language.
2. 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.**”
3. Please increase the size of the font used in section 40-44-104 of the proposed initiative for “Colorado Energy Carbon Management Commission” (ECMC), and other government entities. Just Compensation ... be” to match the size of the font in the remainder of the section.
4. Notwithstanding the general grammatical rule that proper names should be capitalized, in statutory language it is not necessary to capitalize the names of government departments, agencies, or offices, such as the department of natural resources or the office of the state auditor, so please consider removing the current capitalization, except when a word begins a sentence, when referencing such departments or agencies.