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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: April 15, 2025

Subject: Proposed initiative measure 2025-2026 #68, concerning state bonding for refinery purchase

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.

An earlier version of this proposed initiative, proposed initiative 2025-2026 #55, was submitted by the same designated representatives, was the subject of a memorandum dated April 1, 2025 and was discussed at a public meeting on April 3, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, 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 #68

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. Require the executive director of the Department of Natural Resources to issue revenue anticipation notes by a certain date, in a maximum amount of \$100 million with a maximum repayment cost of \$150 million, and for a maximum repayment term of no more than twenty years;
4. Exclude the proceeds from the revenue anticipation notes from state fiscal year spending limits, to use the proceeds to pay just compensation of no more than \$90 million for the eminent domain purchase of the refinery in Commerce City (refinery), and to transfer remaining proceeds to the department of natural resources and the department of personnel and administration for specified purposes;
5. Without raising taxes or fees and by a certain date, require the Department of Natural Resources to identify and appropriate in each fiscal year sufficient money for the repayment cost of the revenue anticipation notes until the notes are paid in full;
6. Without raising taxes or fees, require the department of natural resources to use its remaining proceeds from the revenue anticipation notes to manage all personnel, improvements, contracts, and use of the profits in connection with the refinery, which management will be audited by the Department of Revenue;

7. Without raising taxes or fees, require the department of personnel and administration to use its remaining proceeds from the revenue anticipation notes to manage the transition of all refinery employees to the state;
8. Require the Department of Natural Resources to manage the refinery and its profits with audits by the department of revenue; and
9. Require the Department of Natural Resources to use the profits from the refinery to pay for, in the following order, refinery operations, refinery repairs and improvements, compensation to certain residents who live near the refinery, a solar energy farm, and phasing out the refinery after twenty years and replacing it with a public park.

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 each of the proposed initiatives?
2. The proposed initiative is placed in a new part 16 of article 4 of title 43 of the C.R.S. Title 43 of the Colorado Revised Statutes concerns “Transportation” and part 4 concerns “Financing”. Because part 4 is located in title 43, the “financing” addressed in those provisions of the Colorado Revised Statutes is regarding the financing of transportation projects. Consider relocating the proposed initiative to a title of the Colorado Revised Statutes that addresses natural resources.
3. With respect to section 43-4-1603, C.R.S., of the proposed initiative, because section 24-36-121, C.R.S., generally requires the state treasurer to manage issuance of state financial obligations that are to be repaid from state revenue and that could affect the state’s credit rating, should the state treasurer manage the issuance of revenue anticipation notes, which issuance will create a state financial borrowing that could affect the state’s credit rating? If not, consider adding language exempting the issuance of the revenue anticipation notes from section 24-36-121, C.R.S.

4. The following comments and questions relate to section 43-4-1604, C.R.S., of the proposed initiative:

- a. This section states that “The proceeds of such additional revenue anticipation notes shall be excluded from state fiscal year spending...” What do the proponents mean by “such additional revenue anticipation notes”. What are they in addition to?
- b. Which state agency will manage the proceeds of the revenue anticipation notes? Will it be the state treasurer, the executive director of the Department of Natural Resources, or someone else?
- c. Where will the proceeds from the revenue anticipation notes be placed? Will the state need to create a fund into which the proceeds are placed? If so, in which department will this fund be located?
- d. The measure references the "last purchase price of \$45 million." This appears to refer to Suncor's 2005 purchase of a refinery from Valero Energy. Earlier, Suncor purchased a refinery (and 66 gas stations) from Conoco for \$150 million in 2003. These refineries are adjacent and make up the current Suncor operation in Commerce City. Is your intent that the state acquire only the refinery that Suncor acquired in 2005 for \$45 million?
- e. In eminent domain cases, the price is often determined by an appraiser. The measure limits the purchase price to \$90 million. What happens if the appraised value of the property exceeds \$90 million? Would the state still be required to complete the purchase, and, if so, would it have to come up with additional money from other sources to do so?
- f. The proposed initiative specifies that the “executive branch” shall transfer any remaining proceeds....” Generally, the state treasurer transfers state money from one place to another in state government. Will the state treasurer be responsible for making this transfer to the Department of Natural Resources and the Department of Personnel and Administration?
- g. Of the remaining amount of the proceeds, what percentage is transferred to the Department of Natural Resources and what percentage is transferred to the Department of Personnel and Administration for salaries of employees working on the transition and other projects?

- h. The proposed measure states that the proceeds are transferred “for salaries of employees working this transition” and other projects. Do you mean current state employees who are helping to facilitate the purchase of the refinery, refinery employees who will become state employees pursuant to section 43-4-1607, C.R.S., of the proposed initiative, or both?
 - i. Are the “remaining proceeds” the amount that is left after the purchase of the refinery and after the resolution of any potential lawsuit in connection with that purchase? If not, what does “remaining proceeds” mean?
 5. The following comments and questions are related to section 43-4-1605, C.R.S., of the proposed initiative:

 - a. If there is a lawsuit in connection with the state’s purchase of the refinery, will there be any problem with complying with the requirement that money be appropriated by July 1, 2027?
 - b. The proposed initiative specifies that “the Department of Natural Resources shall identify and appropriate” money sufficient to repay the notes. The Colorado General Assembly is the branch of Colorado state government that has the power of appropriation. The General Assembly can appropriate money to the executive branch and the executive branch has the authority to administer the appropriation, but the executive branch cannot appropriate state money. Is it your intent that the General Assembly will appropriate money to the Department of Natural Resources to repay the costs of the revenue anticipation notes?
 - c. What do the proponents mean by “the Department... shall identify” the money for the repayment costs? Will there be a source of revenue dedicated to the repayment of the notes? If so, why does money for the repayment need to be identified?
 - d. What is the proponents’ intent in including the language specifying that appropriations be made in accordance with the rulings issued by the Colorado Supreme Court? Do you have a specific case in mind or do you mean that the appropriations must be in accordance with current law?
 6. The following comments and questions are related to section 43-4-1606, C.R.S., of the proposed initiative:

- a. This section requires the Department of Natural Resources to use the “remaining proceeds” for specified purposes. Section 43-4-1604, C.R.S., of the proposed initiative also states that “remaining proceeds” shall be transferred to the Department of Natural Resources and the Department of Personnel and Administration for specified purposes. Are these the same “remaining proceeds”? If not, what are the different sources of the “remaining proceeds”? If so, what portion of the “remaining proceeds” is used for the different requirements of these sections?
 - b. The proposed measure states that the Department of Natural Resources is required to use the remaining proceeds to manage personnel, improvements, contracts, and use of profits “to be audited by the Department of Revenue”. Is the Department of Revenue required to audit all of these functions or only the use of the profits?
 - c. Regardless of the answer to (b) above, why is the Department of Revenue required to audit the Department of Natural Resources? Do you see any potential issues with one executive branch agency auditing another executive branch agency? Does the Department of Revenue have the staff and expertise to take on this type of audit function? Why isn’t the audit requirement the responsibility of the Office of the State Auditor, which is in the legislative branch of state government?
7. The following comments and questions are related to section 43-4-1607, C.R.S., of the proposed initiative:
 - a. Like section 43-4-1606, C.R.S., of the proposed initiative, this section references “remaining proceeds”. In connection with the questions in question 7. above, consider clarifying whether all sections of the proposed initiative that mention “remaining proceeds” are referring to the same proceeds, how the remaining proceeds are from the same or different sources, and how the remaining proceeds should be distributed for the various purposes for which they are required to be used.
 - b. How will the Department of Personnel and Administration transition all Colorado refinery employees to be state employees? Will existing refinery employees have to reapply for their jobs or is the transition automatic? What happens if a refinery employee does not want to be a state employee?

- c. Will the current refinery employees become employees of the Department of Natural Resources?
- d. How many people are currently employed by the refinery and what is the total annual payroll for such employees?
- e. Do you anticipate any additional total payroll costs that will be associated with the refinery employees when they become state employees? For example, for payments to the Public Employees' Retirement Association, health insurance, and other benefits?
- f. As executive branch employees will the refinery employees have rights under the state personnel system?
- g. Are any of the refinery employees unionized employees? If so, will the refinery employees remain members of their existing unions when they become state employees or will they gain rights under the state employee union, Colorado Workers for Innovative and New Solutions (WINS)?

8. The following comments and questions are related to section 43-4-1608, C.R.S., of the proposed initiative:

- a. At the public hearing on April 3, 2025, in connection with proposed initiative #55, there was some discussion regarding whether it is the proponents' intent to exempt the revenue realized from the state's ownership and operation of the refinery from the limitation on fiscal year spending specified in section 20 of article X of the state constitution (TABOR). However, the proposed initiative does not specify one way or the other whether the revenue realized from the ownership and operation of the refinery will be exempt from the limitation on state fiscal year spending. Consider clarifying whether this revenue is or is not exempt from the state's limitation on fiscal year spending pursuant to TABOR.
- b. This section specifies that the Department of Revenue will be responsible for auditing the Department of Natural Resources' use of the profits from the refinery. This raises the same questions as raised above regarding one executive branch agency auditing another executive branch agency, whether the Department of Revenue is equipped to take on this audit function, and why the Office of the State Auditor is not the entity responsible for the audits.

- c. The third purpose for which refinery proceeds may be used is for “compensation to approximately 3,500 residents who sign a covenant not to sue the state and live within a three mile radius of the refinery to cover health issues or moving expenses of approximately \$5,000 each”. In connection with this use of the proceeds:
 - i. Does a person have to have lived within a three-mile radius of the refinery for a certain amount of time before becoming eligible for compensation? Is there any potential inequity in compensating a person who just moved into the neighborhood in the same amount as someone who has lived there for decades?
 - ii. Does a person have to intend to move out of the neighborhood or be experiencing certain health issues to be eligible for compensation? If a person does not intend to move and does not have health issues, will they still be compensated?
 - iii. Regardless of whether a person intends to move out of the neighborhood or has health issues, can a recipient of compensation use the money for whatever purpose they see fit?
 - iv. Is the \$5,000 per person, per household, or through some other arrangement?
- d. The fifth purpose for which refinery proceeds may be used is to phase out the refinery after 20 years and replace it with a park. In connection with this use of the proceeds:
 - i. What does it mean to "phase out" the refinery? Does the phase out start in 20 years, must it be completed within 20 years of acquisition, or must it be completed over 20 years regardless of when the phase-out begins?
 - ii. How many years would it take to phase out the refinery and replace it with a park? Has this type of transition occurred anywhere else in the country?
 - iii. What is the estimated cost of the transition?

- iv. When the refinery is closed, what would happen to all of the refinery employees who became state employees when the state purchased the refinery?
- v. Phasing out the refinery in 20 years is the last prioritized use of revenue generated by the refinery. Does this mean that it cannot be accomplished until all the higher priorities have been addressed? What happens in 20 years if, for example, the solar farm is not completed?
- vi. How will the phase-out affect the gasoline market in Colorado?

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 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. To conform to the standard drafting practice for a short title, consider specifying that “The short title of this part 16 is the “Just Compensation for Refinery Purchase Act”.
- 2. 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

This formatting applies to a legislative declaration as well. Accordingly, the paragraph letters in the legislative declaration in section 43-4-1602 (1), C.R.S. of the proposed initiative should be lower-case.

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than 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.
4. 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 that is in the form of a paragraph after a colon; and
 - c. The first letter of proper names.
5. Only the penultimate paragraph in a list should end with “; and”. Consider deleting the “and” at the end of sections 43-4-1602 (1)(a) to (1)(c), C.R.S., and 43-4-1608 (1) to (3) of the proposed initiative.
6. There is an extra space before the semicolon in section 43-4-1602 (1)(b), C.R.S., of the proposed initiative.
7. In section 43-4-1602 (1)(d), C.R.S., of the proposed initiative, subsection ends with “dollars: and”. Consider replacing the colon with a semicolon so that it reads “dollars; and”.
8. Section 43-4-1604, C.R.S., of the proposed initiative refers to “projects listed below”. It is standard drafting practice to specify which subsection, section, part, article, or title of the Colorado Revised Statutes is being referred to. In this case, it appears that you are referring to projects listed in section 43-4-1608, C.R.S., added by the proposed initiative. Consider updating the reference accordingly.