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Colorado General Assembly

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MEMORANDUM

To: Michael Edwin Kelly and Maria Suzanne Noble

From: Legislative Council Staff and Office of Legislative Legal Services

Date: May 22, 2025

Subject: Proposed initiative measure 2025-2026 #89, 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.

Earlier versions of this proposed initiative, proposed initiatives 2025-2026 #55 and 2025-2026 #68, submitted by the same designated representatives, were the subject of memoranda dated April 1, 2025, and April 15, 2025, and were discussed at public meetings on April 3 and April 17. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memoranda or at the 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 #89

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 by July 1, 2027, in a maximum amount of \$400 million with a maximum repayment cost of \$600 million, and for a maximum repayment term of no more than twenty years;
4. Require the State Treasurer to manage the proceeds from the revenue anticipation notes, to exclude such proceeds from state fiscal year spending limits, to 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), to designate a portion of the proceeds for legal fees in connection with the purchase of the refineries, to transfer the remaining proceeds to the Department of Natural Resources (DNR) and the Department of Personnel and Administration (DPA) for specified purposes, and to require the State Treasurer to create funds into which the proceeds will be transferred;
5. Require the State Treasurer to create funds in the DNR for the income and expenses of the refineries and a new solar energy farm;
6. Without raising taxes or fees, require the DNR to identify, on or before July 1, 2027, and on or before July 1 each year thereafter until the revenue anticipation notes are paid in full, expenses for the repayment costs of the notes;
7. Without raising taxes or fees, require the DNR to manage all personnel, improvements, contracts, and use of the income and expenses in connection with the refineries and a new solar energy farm, which management will be audited by the Office of the State Auditor;

8. Without raising taxes or fees, require the DPA to manage the transition of all refinery employees to the state and a new solar energy farm;
9. Require that refinery employees will automatically become employees of the DNR and that if any refinery employees decline to become employees of the DNR that corresponding job openings will be created;
10. Require that payroll costs for refinery employees who become state employees will come out of their payroll checks just as when they were refinery employees, that such employees will have the same rights under the state personnel system and 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 remain in their current labor union, if applicable;
11. Specify that the income and expenses of the refineries and the new solar energy farm are exempt from the limitation of state fiscal year revenue and spending specified in section 20 of article X of the state constitution (TABOR), to require the State Treasurer to transfer such income to the DNR, and to require the DNR to manage the income subject to audits by the Office of the State Auditor; and
12. Allow the DNR to use the income from the refinery and a new solar energy farm to pay for, in the following preferred order, refinery operations, refinery repairs and improvements, compensation to certain residents who live near the refineries and satisfy certain conditions, a solar energy farm, and phasing out the refineries after twenty years and replacing them with a 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 following comments and questions relate to section 40-44-103, C.R.S., of the proposed initiative:
 - a. The proposed initiative authorizes, rather than requires, the State Treasurer to issue revenue anticipation notes. Is it your intent that the State Treasurer will have the discretion to determine whether to issue the notes or is the issuance required? If the issuance is intended to be required, consider modifying the proposed initiative to make it clear that the State Treasurer is required to issue the notes.
 - b. The proposed initiative refers to the issuance of revenue anticipation notes by July 1, 2027, regardless of related litigation. If the eminent domain purchase of the refineries is delayed or blocked, how should the state repay the notes?
3. The following comments and questions relate to section 40-44-104, C.R.S., of the proposed initiative:
 - a. The proposed initiative requires the State Treasurer to “manage” the proceeds of the revenue anticipation notes. What does it mean to manage the proceeds? Does the State Treasurer have any responsibilities other than to distribute the proceeds as directed in the proposed initiative?
 - b. This section of the proposed initiative states that the proceeds of the revenue anticipation notes shall be “excluded from state fiscal year spending limits.” The legislative declaration in section 40-44-102 of the proposed initiative states that the “borrowed money and the interest” will be excluded from the state’s spending limit and that the state’s revenue limit will be raised by the same amount as the notes. Is your intent in these two sections the same? If so, consider aligning the language to avoid confusion.

- c. Is it your intent to both exempt the revenue from the revenue anticipation notes from the state's TABOR revenue limit and also raise the state's revenue limit by the amount of the notes? If your intent is only to exempt such revenue from the state's revenue limit, then it is unnecessary to also raise the limit by a corresponding amount, as raising the limit would allow the state to retain and spend additional revenue from sources other than the revenue anticipation notes. Please consider clarifying your intent in both this section and the legislative declaration.
 - d. The proposed initiative specifies that "proceeds shall be used as just compensation for the eminent domain purchase of the two Commerce City refineries...". Which state official or state agency is responsible for initiating and carrying out this action? Consider modifying the proposed initiative to make this clear.
 - e. The proposed initiative restricts the use of revenue generated for uses including purchasing the refineries and legal fees. What happens if costs for a restricted use end up higher than the limit in the proposed initiative? Does the state need to identify another source of money to pay the costs above the limit?
 - f. The proposed initiative directs the State Treasurer to create funds in the DNR and the DPA. Generally, cash funds are created in the state treasury rather than in a department, and specify the department or agency that may expend money from the fund.
 - g. Is it your intent that all of the proceeds from the revenue anticipation notes be deposited into cash funds that the State Treasurer creates? If not, where else would the proceeds be deposited?
4. The following comments and questions relate to section 40-44-105, C.R.S., of the proposed initiative:
- a. The proposed initiative requires the State Treasurer to create funds for the "income and expenses" of the refineries and the future solar energy farm. Is it your intent that the income from the refineries and the solar farm will be deposited in the fund and that the expenses of the refineries and solar farm will be paid from the same fund? If not, how will the income from the refineries and the solar farm be used and how will the associated expenses be paid?

- b. While the first sentence of this section addresses the “income and expenses” of the refineries and the future solar energy farm, the rest of the section addresses the repayment of the revenue anticipation notes. Is there a connection between these two provisions?
 - c. This section and others reference a future solar energy farm but the proposed initiative does not address the creation of the solar energy farm until section 40-44-108 (4). Consider adding language to create context for the solar energy farm, such as “the solar energy farm that will be created pursuant to section 40-44-108.”
 - d. This section directs the DNR to “identify expenses” for the repayment cost of the revenue anticipation notes. Is it your intent that the DNR identify the cost to repay the notes and then repay them? If not, what does it mean to “identify expenses.”
 - e. Regardless of the answer to question (d) above, is the DNR responsible for repaying the notes? If so, what is the source of revenue for the payments?
5. The following comments and questions relate to section 40-44-106, C.R.S., of the proposed initiative:
- a. The proposed initiative states that the DNR is responsible for managing, among other things, “the use of income and expenses” to be audited by the State Auditor. Does this refer to the “income and expenses” of the refineries and the future solar energy farm?
 - b. What does it mean to manage the “use of...expenses”? Do you mean that the DNR is required to manage the use of income from the refineries and the future solar energy farm and is also required to manage the payment of expenses in connection with the refineries and the future solar energy farm?
6. The following comments and questions relate to section 40-44-107, C.R.S., of the proposed initiative:
- a. The proposed initiative states that the DPA is required to manage the transition of “all Colorado refinery employees to the state and from the refineries to the new solar energy farm.” Is it your intent that when the solar energy farm is operational, employees will be transferred from the refineries to the solar energy farm? If so, will the DNR be permitted to hire

new employees to work at the solar energy farm or must all solar energy farm employees be former refinery employees?

- b. The proposed initiative discusses “Colorado employees” and “non-Colorado employees.” Will only refinery employees who reside in Colorado become state employees? What will happen to employees who are “non-Colorado” employees of the refinery?
- c. The proposed initiative states that if refinery employees do not want to become state employees or solar energy farm employees, that “corresponding job openings will be created.” What is a corresponding job? Where would these jobs be created if not somewhere in state government?
- d. The proposed initiative states that “[a]dditional payroll costs such as healthcare and retirement costs will come out of payroll checks just like the previous employer.” Does this refer to the substance of the benefits or the logistics of how benefits are paid? For example, is it your intent that when a refinery employee becomes a state employee they will retain the health insurance that they had from their former employer? Or do you mean that although the employee’s health insurance carrier may change when they become a state employee, depending on the plans offered to state employees, the cost for the health insurance will be deducted from the employee's paycheck?
- e. The proposed initiative specifies that refinery employees that enter state employment are eligible for state pension benefits. State employees are members of the Public Employees’ Retirement Association (PERA) and make monthly contributions to PERA in lieu of social security. Is it your intent that these employees will start earning state pension benefits like any other new employee once the state acquires the refineries, and that their pension benefits are based on their employment status and years of service with the state rather than their employment status and years of service with the refinery? Will PERA membership be required or optional for these employees?
- f. The proposed initiative states that “[s]tate refinery employees can transition to the solar energy farm without loss of pension time earned.” This section of the proposed initiative also discusses what happens if a

refinery employee declines the transition “to the state or to the solar energy farm”. However, if the solar energy farm is owned and operated by the DNR, won’t the employees of the solar energy farm also be state employees?

- g. The proposed initiative states that refinery employees who become state employees will be able to vote to become represented by Colorado WINS or stay in their current union, if applicable. Is it your intent that all refinery employees would have to vote to either be represented by Colorado WINS or remain in their current unions? Could different groups of employees with different job classifications make different decisions in this regard?
7. The following comments and questions relate to section 40-44-108, C.R.S., of the proposed initiative:
- a. It appears that the measure exempts revenue generated by refineries and solar farm operations from the state's revenue limit under TABOR, without changing the existing revenue limit. Is this your intent? As mentioned above in question (3)(c), exempting the revenue generated by the refineries from the state’s revenue limit under TABOR and also raising the state’s revenue limit by an amount that corresponds to such revenue would allow the state to retain and spend additional revenue other than revenue generated by the refineries.
 - b. Regarding the use of revenue generated by the refineries and solar energy farm, the proposed initiative states that the DNR has “the discretion” to use the revenue for several specified purposes. What does it mean to have the discretion to use the revenue? Is the DNR required to use the revenue for the purposes specified in the proposed initiative, or could the DNR choose not to spend the money?
 - c. Subsections (4) and (5) of this section specify that the DNR needs to begin planning for the solar energy farm and the transition of the refineries to a park in “the third year.” What is the third year? Do you mean the third year after the state purchases the refineries?

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. It is standard drafting practice to spell out “United States” rather than abbreviate it as U.S.
2. It is standard drafting practice not to use (i), (ii), (iii), etc., in a comma series. Please consider deleting these from section 40-44-102 (1)(g), C.R.S., of the proposed initiative.
3. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 40-44-108."
4. It is standard drafting practice when referencing a specific part of statute to first specify the part, then the article, then the title. For example, “Part 125.5 of article 2 of title 40.”
5. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes.
6. 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