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Colorado General Assembly

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MEMORANDUM

TO: Keith Venable and Eduardo Balderas Martinez

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 4, 2022

SUBJECT: Proposed initiative measure 2021-2022 #133, concerning consumer choice in energy

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 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 intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with another initiative addressing the same topic, proposed initiative 2021-2022 #132. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memorandum for proposed initiative 2021-2022 #132, except as necessary to fully understand the issues raised by this proposed initiative 2021-2022 #133. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

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

1. To declare that energy consumption is a matter of statewide concern;
2. To declare that the intent of the proposed initiative is to protect consumer choice in energy; and
3. To require the state and local governments to allow consumer choice in energy.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

Substantive comments and questions 3, 4, 5, 6, and 7 from the review and comment memorandum for proposed initiative 2021-2022 #132 apply to initiative 2021-2022 #133 and, as such, are not repeated here. However, the following new substantive comments and questions have arisen:

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. What will be the effective date of the proposed initiative?
3. In the definition of "energy", the proposed initiative covers natural gas, but not oil. The two energy sources are subject to similar regulations. May the state or a local government restrict consumer choice regarding oil?
4. Other energy sources that are not listed in the definition of "energy" may be used for heating, such as geothermal and biomass energy sources. May the state or a local government restrict consumer choice regarding geothermal or biomass energy sources?
5. As drafted in the definition of "energy", it appears that the requirement to meet interconnection standards applies only to wind electric generation. Do you intend the interconnection standards requirement to apply to solar as well?
6. In the definition of "energy", the proposed initiative references ". . . solar as defined in section 38-32.5-100.3". However, "solar" is not defined in section 38-32.5-100.3, Colorado Revised Statutes. The terms "solar easement" and "solar energy device" are defined in that section. Do the proponents mean "solar

energy device"? If so, the proponents may want to change "solar" to "solar energy device" in the proposed initiative.

7. In the definition of "energy", the proposed initiative refers to "the interconnection standards established in rules promulgated by the public utility [sic] commission pursuant to section 40-2-124". Section 40-2-124 requires and describes a wide variety of rules, and the word "interconnection" appears in many subsections of this provision. The proponents may consider adding language to identify more specifically the rules they intend to cross-reference. For example, if the proponents intend to refer specifically to the rules described in subsection (7)(b)(IV) of section 40-2-124, then the language of the proposed initiative should refer to the "rules promulgated . . . pursuant to section 40-2-124 (7)(b)(IV)."
8. The definition of "local government" in the proposed initiative lists a county or a municipality. Do you intend the definition to apply to home rule municipalities? If so, the proponents might consider referencing a "statutory or home rule" county or municipality in the definition.
9. What kinds of state or local government conduct constitutes "favoring or discriminating against an energy source"?
 - a. A number of state statutes and rules and local government regulations related to broad topics, such as regulations related to permitting, taxation, safety, or labor, could be viewed as authorizing a local government to favor or discriminate against a specific energy source by virtue of relating to a specific energy source. Do you intend that the proposed initiative would prohibit those general regulations?
 - b. Other state statutes and rules and local government regulations provide incentives such as tax credits or rebates for use of certain energy sources. Do you intend that the proposed initiative would prohibit those incentives?

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 meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

Technical comments 1 to 4 from the review and comment memorandum for proposed initiative 2021-2022 #132 apply to initiative 2021-2022 #133 and, as such, are not repeated here. However, the following new technical comments have arisen:

1. In subsections (1) and (2), the proponents may want to put the headings "Declaration" and "Definitions" in bold-faced type.
2. To conform to statutory lettering format, paragraphs (A), (B), (C), and (D) in subsection (2) should be lower case (a), (b), (c), and (d), respectively.
3. The first letter of the first word of subsections (2)(a), (2)(c), and (2)(d) should be capitalized.
4. In subsection (2)(a), the word "of" seems to be missing from the phrase "type energy".
5. It is not necessary to include "C.R.S." after each statutory section number in subsection (2)(b).
6. In subsection (2)(b), change "public **utility** commission" to "public **utilities** commission" for the correct name of the commission.