

# STATE OF COLORADO

## 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 #132, 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 #133. 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 #133, except as necessary to fully understand the issues raised by this proposed initiative 2021-2022 #132. 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 allow consumer choice in energy; and
3. To prohibit the state or a political subdivision of the state from inhibiting consumer choice in energy.

## **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. What will be the effective date of the proposed initiative?
3. The proposed initiative is adding a new section 29-2-116 to the Colorado Revised Statutes, which is located in article 2 of title 29 of the statutes. The subject matter of title 29 is local government, and the subject matter of article 2 of title 29 is county and municipal sales or use tax. Since the proposed initiative concerns both state and local government and does not concern county or municipal sales or use taxes, would the proponents consider adding the new section to a different location of the statutes, such as in title 40 concerning public utilities?
4. Subsection (1) of the proposed initiative begins with the heading "Legislative Declaration." Since subsection (1) does not declare the intent of the legislature in enacting the proposed initiative, but instead declares the intent of the voters, would the proponents consider either deleting the heading or changing it to "Declaration" or something similar? Also, if the proponents prefer to keep the heading, would the proponents consider putting the heading in bold-faced type and in regular type, not small caps, to conform to standard drafting practice?
5. What is the intent of the language in the declaration stating that "energy consumption is a matter of statewide concern"?

- a. There are a number of state statutes that authorize local governments to engage in actions related to energy that 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. These state statutes include statutes that authorize local governments to issue land-use permits; to grant easements, leases, and rights-of-way for energy production, generation, transmission, and distribution systems; and to issue franchises and licenses to authorize a person to construct, operate, and maintain electric, gas, solar, or other energy generation, transmission, and distribution systems. Do you intend the "statewide concern" language in the declaration to preempt local governments' authority with respect to making such land-use, easement, leasing, right-of-way, franchise, and license determinations?
  - b. Article XXV of the Colorado constitution acknowledges "the power of municipalities to exercise reasonable police and licensing powers [including] the power to grant franchises" with respect to the regulation of the facilities, service, and rates of public utilities. Does the declaration that "energy consumption is a matter of statewide concern" conflict with this constitutional provision? If not, how should the language be reconciled with the constitutional authority granted to municipally owned utilities, including the authority to determine which types of energy to provide within their service territories?
6. In the definition of "inhibit consumer choice", the proposed initiative references "an ordinance, regulation, or code".
- a. Do you also want to include a county resolution in this list? A state statute?
  - b. What do the proponents mean by "code"? A constitutional provision or a state statute?
  - c. Is the word "code" intended to refer to building codes, fire codes, and the like? Building and fire codes may have restrictions on the use of a specific energy source based on safety concerns regarding the use of the energy source. Do you intend the proposed initiative to preempt such safety restrictions set forth in building and fire codes?
  - d. The relevant part of the "State Administrative Procedure Act", section 24-4-102 (15), Colorado Revised Statutes, defines "rule" to include "regulation". If the proponents intend to restrict state agency rules,

would the proponents consider changing the reference from "regulation" to "rule"?

- e. Does the reference to "adopting" in the definition mean that existing ordinances, regulations, or codes that have already been adopted would not be affected by the proposed initiative?
  - f. Should "cooling" be added to the list of relevant uses for the energy source?
7. The word "customer" is used in one instance in the proposed initiative, but the word "consumer" is used throughout the proposed initiative. Is a "customer" different than a "consumer"? If they refer to the same person, would the proponents consider changing "customer" to "consumer"?

## 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.

1. If a statutory section contains a declaration or defines a term or terms, it is standard drafting practice to include "definition" (or "definitions" if there is more than one term being defined) and "declaration" in the headnote of the statutory section. See the example in number 3 below.
2. It is not necessary to capitalize "**Choice**" in the headnote of the proposed initiative.
3. It is standard drafting practice to show the C.R.S. section number and headnote on a separate line from the amending clause and to show the statutory text being added immediately following the headnote, as follows:

**SECTION 1.** In Colorado Revised Statutes, **add** 29-2-116 as follows:

**29-2-116. Energy choice – declaration - definition.** (1) **Declaration.** THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT . . .

4. Subsection (2) of the proposed initiative refers to "this state", but "the state" is referred to elsewhere in the initiative. The proponents may want to use the phrase consistently in the initiative.

5. It is standard drafting practice to use the following language for defining terms:  
"As used in this section, unless the context otherwise requires, "inhibit  
consumer choice" means adopting an ordinance, regulation . . . " .