

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Greg Kishiyama and Keith Venable  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 26, 2020  
**SUBJECT:** Proposed initiative measure 2019-2020 #284, concerning Prohibit Restrictions on the Utilization of Natural Gas

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.

### Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to prohibit governmental inhibition of consumer choice through restrictions on the installation of natural gas utilization.

## 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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
  - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).
4. The proposed initiative covers natural gas, but not oil. May the state and local governments inhibit consumer choice regarding oil, and if so, why?
5. The proposed initiative purports to prohibit state statutes from inhibiting consumer choice. But the proposed initiative amends the Colorado Revised Statutes, and therefore does not prohibit either the general assembly or a future initiative from amending the statutes to inhibit consumer choice. Have the proponents considered amending the state constitution, which, if successful, would actually prohibit state statutes from inhibiting consumer choice?
6. 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 they consider changing "regulation" to "rule"?
7. What types of entities are covered by the phrase "local government"? Do the proponents wish to define the term and, if so, how?

8. What does the "installation of natural gas utilization" mean? The installation of equipment that can use natural gas? The installation of wells, pipelines, and associated equipment that extracts natural gas from the ground, processes it, and delivers it for distribution to consumers? Something else? What does the phrase "install natural gas" mean? The proponents have included a list of examples, but the list is explicitly not exhaustive. Would the proponents consider clarifying their intent?
9. Pipeline corporations and gas corporations are public utilities regulated by the public utilities commission as to the corporations' rates, charges, and tariffs pursuant to sections 40-1-103 (1)(a)(I) and 40-3-102, Colorado Revised Statutes. Do you intend this initiative to limit the public utilities commission's ability to regulate those corporations' rates, charges, and tariffs?
10. A number of state statutes and rules and local government regulations related to broad topics, such as regulations requiring construction permits, taxation, or labor, could indirectly limit a consumer's ability to use or install natural gas for reasons other than safety. Do you intend that this initiative prohibit those general regulations?

## 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. Before the amending clause, number each section, part, etc., that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.) that is preceded by a left tab. For example:

**SECTION 1.** In Colorado Revised Statutes, **add** 34-60-132 as follows:

2. The heading ("**No restrictions on natural gas**") should end with a period. The language of a statute ("NO STATE STATUTE, . . .") should follow on the same line as the heading.
3. The word "includes," by its very definition, means that the list that follows is not exclusive. There is Colorado case law to that effect. So the phrase "but is not limited to," is a redundancy when it follows the word "includes." The courts try to give meaning to every word, so statutes should not include redundant terms. Please consider removing that phrase.

4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty." Please consider changing the last sentence as follows: "This section modifies, limits, and supersedes any conflicting state statute or rule."