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Colorado General Assembly

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MEMORANDUM

To: Shawn Bennet and Gennae Bennet

From: Legislative Council Staff and Office of Legislative Legal Services

Date: January 16, 2026

Subject: Proposed Initiative Measure 2025-2026 #198, Concerning State Financial and Performance Data Transparency

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

Purposes for Proposed Initiative 2025-2026 #198

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

1. To require executive-branch state agencies to report certain financial and program performance information to the state controller; and
2. To create the Colorado clarity portal, which is a centralized, publicly accessible online platform for the financial and program performance information that is reported by state agencies.

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. Article V, section 1 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase must be added to the beginning of the proposed initiative.
3. Under article V, section 1 (2) of the Colorado Constitution, proposed initiatives amend either the Colorado Constitution or state law (i.e., the Colorado Revised Statutes).
 - a. The beginning of the proposed initiative states that it is a "statutory initiative." Do you intend the proposed initiative to amend the Colorado Revised Statutes?
 - b. Additionally, in accordance with section 1-40-102 (4), C.R.S., and for publication purposes, an amending clause should be used to show where in the Colorado Revised Statutes a proposed initiative's provisions should be placed. Where will the text of the proposed initiative be placed? (Please

indicate through an amending clause where the proposed initiative will be placed. For an example of an amending clause that indicates where the proposed text will be placed, please see the Technical Comments.)

4. Article V, section 1 (5) of the Colorado Constitution and section 1-40-102 (4), C.R.S., require a proponent to submit for review and comment the full text of the initiative being proposed, which, if passed, becomes the actual language of the constitution or statute.

You have submitted an idea, rather than the actual language that would be amended in the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed statutory change. When amending your proposal to include the actual text of your proposed statutory change, please keep in mind the typical structure of statutory sections. (For a description of the typical statutory structure, please see the Technical Comments.)

5. Standard drafting practice is to use the word "fund" to refer to an account into which money or revenue is placed. Therefore, the word "fund" or "funds" is not typically used to refer to the money or revenue itself. Would you consider changing the words "fund" and "funds" to "money" or "revenue"?
6. Section 4 of the proposed initiative, titled "Establishment of the Colorado Clarity Portal," states that "The Clarity Portal shall serve as a central repository for standardized financial and performance data reported by state agencies."
 - a. Do you intend that the Clarity Portal house only the information required to be reported by state agencies pursuant to Section 5 of the proposed initiative? If so, consider clarifying that in Section 4 of the proposed initiative.
 - b. Alternatively, do you intend the Clarity Portal to house information that is required to be reported by state agencies beyond that required by Section 5 of the proposed initiative? If so, consider clarifying which additional information is required to be maintained on the Clarity Portal.
 - c. Do you intend the Clarity Portal to be searchable? If so, consider adding that requirement.
7. How, if at all, does the proposed initiative interact with the online database and web-based system that is operated by the chief information officer of the office of information technology and the state controller, as described in article 72.4 of

title 24? That system provides a searchable database of state agency revenue and expenditures that is updated every 5 business days.

8. Is the state controller or each individual state agency responsible for maintaining the information on the Clarity Portal? Section 4 of the proposed initiative states that the state controller, in collaboration with the office of information technology, is responsible for establishing and maintaining the Clarity Portal. Section 5 of the proposed initiative, however, states that each state agency that submits the required information is required to maintain the information on the Clarity Portal. Consider clarifying each entity's duties with respect to maintaining the information on the Clarity Portal.
9. The following comments and questions relate to Section 5 of the proposed initiative, titled "Required Disclosures."
 - a. How frequently must a state agency submit or update the required information?
 - b. Consider adding definitions for terms used in Section 5 to ensure that the information submitted by a state agency is the information intended by the proposed initiative. For example:
 - i. What is meant by "actual expenditures"?
 - ii. What is covered by a "program"? How does this differ from a "major program," for which a plain-language description is required?
 - iii. What is meant by "fund source"?
 - iv. What is covered by "transfers of public funds between agencies or programs"? Are these transfers between specific funds, transfers between line items of appropriations, or something else?
 - v. What are the "annual performance outcomes" that need to be reported on? What are the "stated objectives" to which these outcomes are compared? Who determines these outcomes and objectives?
10. Section 6 of the proposed initiative, titled "Data Standards and Format," states that the state controller may adopt rules establishing "uniform data standards," reporting schedules," and "formatting requirements."

- a. Do you want to require the state controller to adopt these rules? If so, consider replacing “may” with “shall.”
 - b. If you do not want to require the state controller to adopt these rules, consider modifying the requirement in Section 5 of the proposed initiative that requires a state agency to submit information on “contracts, grants, and vendor payments exceeding thresholds established by rule.”
 - c. Consider clarifying that the state controller will establish these standards, schedules, and requirements by “fiscal rule,” which is the type of binding rule that the state controller is authorized to adopt pursuant to statute. Additionally, consider amending section 24-30-202, C.R.S., to specifically include the additional standards, schedules, and requirements that must be covered in the fiscal rules.
11. The following questions and comments relate to Section 7 of the proposed initiative, titled “Compliance and Enforcement.”
- a. Section 7 states that the failure to submit any information required by the proposed initiative must be documented in an annual compliance report published on the Clarity Portal. Who is responsible for creating and publishing the annual compliance report? Consider re-wording the sentence from passive to active voice to clarify the actor responsible.
 - b. Section 7 states that “[n]othing in this act shall be construed to create a private right action.” Given that limitation, how will this act be enforced?
12. The following questions and comments relate to Section 8 of the proposed initiative, titled “Limitations.”
- a. Section 8 states that the proposed initiative “shall not be interpreted to require new appropriations.” The proposed initiative requires state agencies to submit specific information and requires the state controller to create a new online platform to house this information, which will likely require additional resources. Have you considered how these additional requirements will be funded?
 - b. Section 8 states that the proposed initiative does not require the disclosure of personally identifiable information, confidential law enforcement data, or information protected under state or federal law. Consider defining or

providing additional clarifying information for these terms, some of which are already defined in the Colorado Revised Statutes.

13. The following questions and comments relate to Section 9 of the proposed initiative, titled “Implementation Timeline.”
 - a. For clarity, consider including specific dates rather than using “after voter approval” or “the effective date.” For instance, if you intend this proposed initiative to appear on the 2026 general election ballot, you could replace “July 1 following voter approval” with “July 1, 2027.”
 - b. Consider clarifying what “initial implementation” requires. Does initial implementation mean the creation of the Clarity Portal by the state controller? Does initial implementation mean identification of a compliance officer in each state agency? Does initial implementation mean submission of the first round of required information by each state agency? Re-wording the sentence from passive to active voice could also help clarify the actors involved in the initial implementation and their duties.
 - c. State fiscal years run from July 1 through June 30. Consider identifying the first state fiscal year that the various reporting requirements in this act will apply to.
14. There is a generally applicable severability provision in section 2-4-404, C.R.S. Given this, consider removing Section 10 of the proposed initiative, titled “Severability.”

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 designated representatives 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 follows:

1. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate clause, referred to as the “amending clause,” that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format. For example, an amending clause that adds a new statutory section to the Colorado Revised Statutes would appear as follows:

In Colorado Revised Statutes, **add** 24-72.4-107 as follows:

2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section and are formatted in bold type. For example:

24-72.4-103. Web-based system - enhancements - procedure for challenging exclusions.

3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. This structure should be followed to ensure consistency in the structure of the statutes. These divisions are lettered and numbered as follows:

(1) Subsection

(a) Paragraph

(l) Subparagraph

(A) Sub-subparagraph

4. The text of the proposed initiative should be written in complete sentences.
5. It is standard drafting practice to use small capital letters to show the language being added to the Colorado Revised Statutes. The headnote should remain in bold lowercase letters.
6. The term “legislative declaration” is used when the information in the declaration sets out the will of the legislature. In this case, the declaration sets out the will of the people, so alternative language or simply the word “declaration” should be used.
7. It is standard drafting practice to not capitalize standalone titles of government officers or names of agencies, such as “state controller.”
8. Section 2-4-401, C.R.S., defines the authority verbs “must” and “shall,” and these definitions apply to all Colorado Revised Statutes enacted by the General Assembly. As defined, “must” means “that a person or thing is required to meet a condition for a consequence to apply” but “does not mean that a person has a duty. The use of the verb “shall,” however, “means that a person has a duty.”

Please consider modifying the uses of “shall” and “must” in the proposed initiative to follow these drafting conventions.

9. It is standard practice to not refer to “this act” but to refer to the statutory location of the text being referenced. For example, instead of stating “All information submitted under this act...,” consider “All information submitted pursuant to section [the number of the C.R.S. section that you are adding through the proposed initiative that includes the required information]...”
10. It is standard drafting practice to end a provision with either a period or a semicolon. A provision should end with a period if it is a complete sentence, includes more than one sentence, or ends a list. A provision should end with a semicolon if it is part of a list. A provision should end with a colon if it is an introductory phrase that begins a list. It is standard drafting practice for the second-to-last item in a numbered or lettered list to end in a conjunction that connects the items, either “; and” or “; or.”