

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

June 20, 2007

TO: Richard Hamilton and Phil Doe

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #34, concerning repeal of the Colorado water resources and power development authority

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 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.

An earlier version of this initiative was the subject of a memorandum dated April 20, 2007. Proposals 2007-2008 #18 and #30 were discussed at hearings on April 23, 2007, and June 6, 2007. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To eliminate the duties of the Colorado water resources and power development authority ("authority") that are duplicative of duties of other state agencies;
2. To repeal the authority;
3. To repeal the board of directors of the authority;
4. To terminate activities of the authority by July 1, 2009, upon certification by the state auditor that the authority has no outstanding debts or obligations; and
5. To transfer the authority's powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds by a **type 3** transfer to another governmental department.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. To conform with standard drafting format, would the proponents consider:
 - a. Not formatting the enacting clause in small capitals? The presence of small capitals indicates new statutory language; the enacting clause will not be part of the statutes.
 - b. Deleting the phrase "The statutes of the state of Colorado are amended to read:"? The amending clause that follows "**SECTION 1.**" suffices.
 - c. Rephrasing the amending clause to be specific about what is being amended? For example, "37-95-104, Colorado Revised Statutes, is amended to read:".
 - d. Showing the period at the end of subsection (1) in strike type?
 - e. Indenting all subsections, paragraphs, subparagraphs, and sub-subparagraphs other than subsection (1)?
 - f. Deleting the phrase "WATER RESOURCES AND POWER DEVELOPMENT" from subsections (7) (a), (7) (b), and (7) (c)? In article 95 of title 37, C.R.S., "authority" is defined to mean the Colorado water resources and power development authority.

- g. In subsection (7) (a):
 - i. Rearranging the words in small capitals and strike type to comply with the rules that all current law must be shown in the amendment and stricken material should be shown before new, capitalized material? For example, after "~~may be~~", insert the word "~~dissolved~~", which is current law but which has been deleted from the draft. In addition, the words "~~general assembly on condition that~~" should be moved ahead in the text to follow "by an act passed by the". Also, if possible, new language should be written in small capitals (AS SHOWN HERE) rather than all capitals (AS SHOWN HERE).
 - ii. Deleting the hyphen in "COLORADO-PURSUANT"?
 - iii. Deleting the period that is shown in strike type at the end of the paragraph after the word "~~that~~" since it is not current law?
- h. In subsection (7) (c):
 - i. Citing "Section 24-1-105 (3) and (4), C.R.S." rather than "Colorado Revised Statutes 24-1-105 (3) and 24-1-105 (4)"?
 - ii. Showing the word "TYPE 3" in bold-faced type?
 - iii. Using a comma after the second-to-last item in a series? For example, in the series "POWERS, DUTIES, FUNCTIONS, RECORDS, PERSONNEL, PROPERTY AND UNEXPENDED BALANCES . . .", insert a comma after "PROPERTY".

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed measures to have a single subject. What is the single subject of the proposed initiative?
2. What is the distinction between the authority being "deauthorized", "dissolved", and "terminated" pursuant to subsection (7) (a) and the authority's "activities and services" being "terminated" pursuant to subsection (7) (b)?
 - a. If there is no distinction, would the proponents consider deleting the redundant language?
 - b. How do these actions differ from "repealing" the authority?
 - c. Does the authority continue to exist after it is deauthorized, dissolved, and terminated?

3. When are the authority's activities and services terminated pursuant to subsection (7) (b)? Is it the later to occur of July 1, 2009, and the certification by the auditor? What happens if the authority continues to have debts or obligations outstanding after July 1, 2009?
4. Does the proposal specify the governmental entities to which "elements" of the authority are transferred as referenced in subsection (7) (c)? Do the proponents wish to specifically designate such entities? If not, how are such entities to be identified?
5. What happens to the existing provisions of article 95 of title 37, C.R.S., that are not directly amended by the proposal? Note that almost every other section in article 95 of title 37, C.R.S., continues to refer to the authority. For example, both the water pollution control revolving fund and the drinking water revolving fund are administered by the authority.