

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Shawn Martini and Scott Prestidge
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2016
SUBJECT: Proposed initiative measure 2015-2016 #138, concerning the local regulation of oil and gas development.

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.

Purposes

The major purposes of the proposed amendment to the **Colorado constitution** appear to be:

1. To declare that the responsible, balanced development, production, and utilization of oil and gas is a matter of statewide concern; and

2. To prohibit municipalities, counties, and cities and counties from enacting and enforcing local regulations of oil and gas development or operations that are more restrictive than, or in conflict with, regulations and laws adopted by the Colorado oil and gas conservation commission, a state department, or the Colorado general assembly.

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. Do you want to specify the effective date of the proposed initiative?
3. In section 2 of the proposed initiative, where it states, “..OPERATIONS THAT ARE NO MORE RESTRICTIVE THAN OR CONFLICT WITH REGULATIONS..,” do the proponents mean to say, “..OPERATIONS THAT ARE NO MORE RESTRICTIVE THAN NOR CONFLICT WITH REGULATIONS...” The word “or” suggests that municipalities, counties, and cities and counties may enact and enforce local regulations that *do* conflict with regulations adopted by the listed bodies. The word “nor” would indicate the opposite. What is the proponents’ intent?
4. You might consider defining "oil and gas development" and "oil and gas operations". "Oil," "gas," and "oil and gas operations" are all defined in section 34-60-103, Colorado Revised Statutes, and might provide a basis for defining the terms in the constitutional provision.
5. You might consider adding references to "home rule city" and "home rule county" to make it clear that the limitation on local laws regulating oil and gas development or operations would apply to the laws of home rule cities and home rule counties.
6. You might consider adding "resolution" to the list of local enactments regulating oil and gas development or operations.
7. Do you intend that a local government may continue to regulate oil and gas development with regard to land use, city and county planning, zoning, and permitting for development affecting areas and activities of state interest so long as the local government's regulations are neither more restrictive than, nor in conflict with, state laws or regulations?

8. Do you intend to alter or codify the common law developed by Colorado courts that provides that local laws regulating oil and gas operations that operationally conflict with state laws are preempted?

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. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. 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.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each section in the Colorado constitution is broken up into sections with headnotes. Sections and headnotes should be in bold-faced type and in lower case type, with the first word initial-capped as follows:

Section 1. Declaration. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE...

3. It is unnecessary to capitalize "general assembly" and "oil and gas conservation commission" in the proposed initiative.