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MEMORANDUM

TO: Anne Lee Foster and Suzanne Spiegel

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 17, 2020

SUBJECT: Proposed initiative measure 2019-2020 #173, concerning a Setback Requirement for 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 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #174 to 177. The comments and questions raised in this memorandum will not include comments and questions addressed in the memoranda for proposed initiatives 2019-2020 #174 to 177. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #97, was the subject of a memorandum dated January 2, 2018, which was discussed at a public meeting on January 4, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and 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 proximity to oil and gas development can have detrimental impacts on public health, safety, and welfare, and the environment.
2. To require a minimum distance of 2,500 feet between an occupied structure or vulnerable area and any new oil and gas development not on federal land.

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. 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.

3. Subsection (1)(c) of the legislative declaration begins "To preserve public health, safety, welfare, and the environment" Section 34-60-106 (2.5), C.R.S., was added in S.B. 19-181 in 2019 and requires the oil and gas conservation commission (commission) to regulate oil and gas operations "in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources ...". Do you want to add "wildlife resources" to the list of things to preserve in subsection (1)(c)?
4. Subsection (2)(c) defines "vulnerable areas" to include "any additional vulnerable areas designated by the state or a local government." This language would allow two or more governmental entities with jurisdiction over the same geographic area to designate additional "vulnerable areas"; however, the two or more entities could define or describe the same additional vulnerable area in conflicting ways. For example, the state could designate "community gardens with at least three separate garden plots" as a vulnerable area, but a local government could designate "community gardens with at least two separate garden plots" as a vulnerable area. You should consider adding language to explain how any such conflicts should be reconciled, similar in purpose to the language in the last sentence of subsection (4).
5. In the last sentence of subsection (4), you should consider removing the word "local" from the sentence so that the sentence would also apply if the state and a local government establish different buffer zone distances.
6. In subsection (6), you should add "of this section" after "effective date" to clarify what effective date is being referenced.
7. Pursuant to section 34-60-105 (1)(a), C.R.S., the commission has broad authority to promulgate rules to enforce and carry out article 60 of title 34, C.R.S. As this measure would be added to article 60 of title 34, that general rule-making authority would apply to this measure. You might consider adding language in this measure that specifies the commission's rule-making authority regarding this measure. For example, the measure could specifically authorize the commission to designate additional occupied structures or vulnerable areas by rule or to determine how the area of an occupied structure or vulnerable area is determined, such as whether parking lots are included.

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. In 2019, section 34-60-131, C.R.S., was added to the statutes. To create a new statutory section, you should renumber the section of statute being added in this measure section 34-60-132.
2. In subsection (1)(a), you should consider adding the word "and" before "welfare" to clarify that "public" modifies "health," "safety," and "welfare." If you do this, you should also remove the comma after "welfare" because "public" does not modify the word "environment."
3. It is standard drafting practice to use a serial comma when a series of three or more items is listed. In subsection (1)(c), you should consider adding a comma after "schools" to align with that practice.
4. It is standard drafting practice to list definitions in alphabetical order; you should consider reordering the definitions in subsections (2)(a), (2)(b), (2)(c), and (2)(d) so that the definition of "local government" is the first definition and is subsection (2)(a).
5. In the last sentence of subsection (4), you refer to both "buffer zone distances" and "buffer zone" without the word "distance" added. For consistency, you should consider either removing the word "distances" from the first mention of "buffer zone" or adding "distance" after the second mention of "buffer zone" in that sentence.
6. Our drafting convention is to write the effective date in nonstatutory language, similar to what you've done in proposed initiatives 2019-2020 #174-178.