

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, 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
Email: lcs.ga@state.co.us



Sharon L. Eubanks, 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: Diane Schwenke and David Davia
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 1, 2020
SUBJECT: Proposed initiative measure 2019-2020 #312, concerning Oil and Gas Development Rules

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #307 to 311 and #313. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #307 to 311 and #313, except as necessary to fully understand the issues raised by the proposed initiative. 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.

Purposes

The major purpose of the proposed amendment to the Colorado constitution appears to be to keep various oil and gas conservation commission and air quality control commission rules that regulate oil and gas development from being repealed or amended to be less stringent.

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. The proposed initiative states that the rules "shall not be repealed or amended to make them less stringent". Do the proponents intend that the proposed initiative would prohibit the General Assembly from passing a bill that would require the proposed rules to be repealed or amended in a manner that renders them less stringent?
3. As part of the "State Administrative Procedure Act," part 1 of article 4 of title 24, C.R.S., the General Assembly, through the Office of Legislative Legal Services, reviews all new and amended rules each year for statutory compliance. If the General Assembly determines that a new or amended rule does not comply with the statutes, the General Assembly, through the passage of the annual rule review bill, may require that the specific rule expire.

Thus, if any of the rules listed in the proposed initiative are later amended and the General Assembly determines that the amended rule does not comply with the statutes, the General Assembly would require that the amended rule expire by specifically listing the rule for expiration in the annual rule review bill. Alternatively, if the General Assembly fails to pass the annual rule review bill or the governor vetoes it, then all new and amended rules adopted within the previous year, including any amendments to the rules listed in the proposed initiative, would expire.

When an amended rule expires, it is equivalent to repealing the rule because the previous version of the rule is not automatically reinstated. Rather, the rule ceases to exist until the rule-making agency readopts the rule. If the proponents intend to exempt future amendments to the rules listed in the proposed

initiative from potential expiration under the "State Administrative Procedure Act," the proponents should clarify that intent in the proposed initiative, possibly by exempting the rules from the rule review process and expiration schedule set forth in subsections (8)(c) and (8)(d) of section 24-4-103, C.R.S.

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 section in the Colorado constitution has a section number and a headnote. Headnotes briefly describe the content of the section. Rather than the subheading style used in section 1 of the proposed initiative, please place the section number and headnote on the same line as follows, and please note that only the first word is initial capped:

"Section 17. Oil and gas development rules. (1) ..."

2. In section 2 of the proposed initiative, please show the headnote "Effective date." in boldface type.
3. Although the text of the proposed initiative should be in small capital letters, the proponents should use an uppercase letter to indicate capitalization where appropriate. Only the following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.