

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Paul Culnan and Patricia Nelson

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** April 18, 2023

**SUBJECT:** Proposed initiative measure 2023-2024 #44, concerning discontinuing the issuance of new oil and gas permits

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 proposed initiative 2023-2024 #44 was submitted with proposed initiative 2023-2024 #45. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memorandum for proposed initiative 2023-2024 #45, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the review and comment memorandum for proposed initiative 2023-2024 #45 may also be relevant, **and those comments and questions are hereby incorporated by reference in this memorandum.**

## **Purposes**

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

1. To phase out and discontinue the issuance of new oil and gas operation permits by the Colorado oil and gas conservation commission (COGCC) by December 31, 2030;
2. To require the COGCC to promulgate rules for the phase-out and discontinuance of the issuance of such permits; and
3. To require the office of future work in the department of labor and employment to create a program to explore transition strategies for oil and gas workers who will transition to other employment as a result of the state's reduced reliance on fossil fuel extraction.

## **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 would require the COGCC to cease issuing operation permits to oil and gas operators as of December 31, 2030. The proposed initiative does not, however, include any timetable within which permits issued prior to December 31, 2030, would remain effective and after which such permits would expire. Do the proponents intend to prescribe such a timetable or require the COGCC to prescribe such a timetable by rule?
3. Would an operator of an existing permitted oil and gas well be able to file an application for approval of proposed changes to the permit on and after December 31, 2030? The proponents might consider clarifying in the proposed measure whether this would be allowed.
4. Local governments have permitting authority regarding the location and siting of new oil and gas facilities pursuant to section 29-20-104 (1)(h)(II), Colorado Revised Statutes. Should this authority be repealed on December 31, 2030, as well?

5. Other sections of article 60 of title 34, Colorado Revised Statutes, presume the oil and gas conservation commission's authority to issue new drilling permits, such as section 34-60-106 (2)(a), Colorado Revised Statutes, authorizing the commission to regulate "the drilling ... of wells ..." and section 34-60-116, Colorado Revised Statutes, authorizing the commission to establish drilling units. Should this authority be repealed on December 31, 2030, as well?
6. Pursuant to section 39-29-105, Colorado Revised Statutes, the state imposes a tax on the oil and gas severed from the earth in the state. That tax contributes to the severance tax trust fund created in section 39-29-109, Colorado Revised Statutes, and further described in section 39-29-109.3, Colorado Revised Statutes, and the severance tax revenues are used throughout the state for a number of matters, including water conservation, oil and gas well plugging and abandonment projects, parks and wildlife programs, wildfire mitigation, and species conservation. Severance tax revenues are also used to provide money to help local governments impacted by existing oil and gas development mitigate those impacts. The prohibition against issuing new oil and gas drilling permits on or after December 31, 2030, would presumably reduce the amount of oil and gas severed from the earth, thus reducing the tax contributions to the severance tax trust fund. Have the proponents considered how these various programs would be funded, given the reduction in severance tax revenues that would likely result from the discontinuance of new oil and gas drilling permits?
7. Section 4 of the proposed initiative requires the office of future work to create a program to explore transition strategies for oil and gas workers. The provision raises the following comments and questions:
  - a. It appears that the "program" will "explore" and "identify" transition strategies and funding, but it is not clear whether the program will actually provide any services or funding. Accordingly, it appears that the measure could simply direct the office of future work to engage in these activities without creating a program.
  - b. The proposed initiative states that the purpose of the program is to "identify strategies *and funding*" [emphasis added], and the program is also required to "explore . . . sources of *funding*" [emphasis added] to assist workers and communities. Is the new program intended to merely "identify" funding sources for workers and communities to access on their

own? Or is the program intended to *provide* funding to assist workers and communities? If the latter is the case, will the new program require annual appropriations from the general assembly to perform its work? If yes, do the proponents have an estimate of how much money would be required annually?

## Technical Comments

The following comments address additional 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. Section 1 of the proposed initiative is a "Declaration of purpose". In drafting legislative declarations of this sort, it is standard drafting practice to use subsections and paragraphs to improve the clarity and readability of the declaration language. For example, the proponents may consider redrafting the "Declaration of purpose" as follows:

**SECTION 1. Declaration of purpose. (1)** The People of the state of Colorado find and declare that:

- (a) Protecting Colorado's land, air, and water depends upon an expeditious transition from polluting fossil fuel energy sources to clean energy sources;
  - (b) Oil and gas operations in our state contribute significantly to water shortages and degradation, ozone pollution, and greenhouse gas emissions, which lead to increased drought, wildfires, and dangerous air quality, which results in significant harm to public health and safety, agriculture, winter sports, and other sectors of our economy; and
  - (c) Ending the expansion of oil and gas operations in an orderly and planned manner through a gradual phase out of new permits by 2030 and prioritizing permit reductions in disproportionately impacted communities will reduce greenhouse gas emissions and other pollution, protect lands and water, and enhance economic growth in the state as part of an ongoing transition to clean renewable energy.
2. In the last sentence of the declaration of purpose, the comma after "2030" is not necessary, unless another comma is added after "communities" to offset the

phrase "and prioritizing permit reductions in disproportionately impacted communities,".

3. It is standard drafting practice to omit reference to "C.R.S." when adding a statutory cross-reference in a statutory provision, so the proponents may consider striking the "C.R.S." that follows the cross-reference to section 24-4-109 (2)(b)(II) in section 2 of the proposed initiative.
4. Section 3 of the proposed initiative amends subsection (2.5)(b) of section 34-60-106, Colorado Revised Statutes, and adds subsections (1)(f)(IV) and (22) to this section. The proposed language erroneously omits the introductory portion of subsection 34-60-106 (1) (i.e., "The commission shall also require:"). Also, it is standard drafting practice to include only language that is being amended, added, or repealed. Therefore, the proponents may consider redrafting the Section 3 without including the superfluous text, as follows:

**SECTION 3.** In Colorado Revised Statutes, 34-60-106, **amend** (2.5)(b); and **add** (1)(f)(IV) and (22) as follows:

**34-60-106. Additional powers of commission - rules - definitions - repeal.**

(1) The commission also shall require:

(f) (VI) THIS SUBSECTION (1)(f) IS REPEALED, EFFECTIVE DECEMBER 31, 2030.

(2.5) (b) The nonproduction of oil and gas resulting from a conditional approval or denial authorized by this subsection (2.5), AND THE PHASING OUT AND DISCONTINUATION OF NEW OIL AND GAS PERMITS, AS REQUIRED BY SUBSECTION (22) OF THIS SECTION, ~~does~~ DO not constitute waste.

(22) [ . . . ].

5. In Section 3 of the proposed initiative, the new subsection (22) includes the word "gasses". Although "gasses" is an acceptable plural form of "gas", the plural form "gases" is much more commonly used. Also, it appears that there are only two instances of "gasses" in the entire Colorado Revised Statutes, while there are nearly 100 instances of "gases". Therefore, the proponents may consider using "gases".
6. In section 3 of the proposed initiative, in new subsection (22), there appears to be a word missing – maybe "and" – between "gasses" and "other" in the phrase "lower greenhouse gasses other pollutants".
7. Section 3 of the proposed initiative creates a new subsection (22) in section 34-60-106, Colorado Revised Statutes, which fits into current law because the current section 34-60-106 concludes with subsection (21). However, this existing subsection (21) is a dedicated definitions subsection, and it is standard drafting practice to place a dedicated definition subsection as the first or last subsection

in a statutory section. Therefore, the proponents may consider placing their new language as subsection (20.5) rather than as subsection (22).

8. The proposed initiative includes, in several provisions, a series or list of items. In some of the series, the proposed initiative includes the Oxford comma (e.g., in the declaration of purpose, the Oxford comma is included in the series "water shortages and degradation, ozone pollution, and greenhouse gas emissions"), but in other series, the Oxford comma is omitted (e.g., in section 3 of the proposed initiative, in new subsection (22), the Oxford comma is omitted in the series "protect land, air and water." Consider consistent comma usage throughout.
9. In section 4 of the proposed initiative, in the last sentence, the comma after "funding" should be deleted since the following clause is not an independent clause.