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MEMORANDUM

To: Sidra Aghababian and Jessica Arhontoulis

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 27, 2026

Subject: Proposed Initiative Measure 2025-2026 #311, Concerning Liability for Oil and Gas and Waste Injection Operations

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

This proposed initiative 2025-2026 #311 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #310, #312, and #313. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #310, #312, and #313, except as necessary to fully understand proposed initiative 2025-2026 #311. Comments and questions

addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to require oil and gas operators and waste injectors that generate or inject waste resulting in damage to an underground source of drinking water to be held jointly and severally liable for costs associated with remediation of the drinking water; any economic, environmental, or health-related harm caused by the damage; and penalties imposed under applicable state or federal law.

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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, you should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

3. The definitions in section 34-60-103, C.R.S., apply to all of article 60 of title 34, C.R.S., and thus would apply to section 34-60-135.5 of the proposed initiative.
 - a. In subsections (2)(e) and (4)(a) of the proposed initiative, consider whether “operator,” as defined in section 34-60-103 (31), C.R.S., should be used instead of “oil and gas operator.” If not, should “operators” in subsection (2)(g)(II) of the proposed initiative be “oil and gas operators” to be consistent with the rest of the language of the proposed initiative?
 - b. “Waste,” also defined for article 60 of title 34, C.R.S., is almost always used as a noncount noun throughout the article, meaning the word is written as

“waste” and not “wastes.” In section 34-60-135.5 of the proposed initiative, subsections (2)(c) and (2)(g) use “wastes,” while subsections (3)(b) and (4)(a) introductory portion use “waste.” Consider using “waste” and using the word consistently throughout the proposed initiative.

4. The following comments address section 24-60-135.5 (4)(a) of the proposed initiative:

- a. You may consider adding language clarifying what constitutes “damage to an underground source of drinking water” or language specifying that the energy and carbon management commission may determine what constitutes damage. Sections 34-60-105 and 34-60-106, C.R.S., set forth the responsibilities and powers of the energy and carbon management commission, and section 34-60-106 (9)(a)(I), C.R.S., states that the commission, “as to class II and class VI injection wells classified in 40 CFR 144.6, may perform all acts for the purposes of protecting underground sources of drinking water in accordance with state programs authorized by the federal ‘Safe Drinking Water Act’, 42 U.S.C. sec. 300f et seq., and regulations under those sections, as amended...”
- b. The proposed initiative states that an oil and gas operator or waste injector is jointly and severally liable for any penalties imposed under applicable state or federal law. Is the intent for an oil and gas operator or waste injector that damages an underground source of drinking water to be subject to the existing penalties set forth in section 34-60-121, C.R.S., and the penalty schedule set forth in rules adopted by the energy and carbon management commission? If so, you may consider clarifying that the act of generating or injecting waste in a manner that results in damage to an underground source of drinking water is a violation of state law. Specifically, the following language can be added:

“An operator or waste injector shall not generate or inject waste in a manner that results in damage to an underground source of drinking water.”

Alternatively, the proposed amendment could be rephrased to state “Any oil and gas operator or waste injector that violates this article 60 shall be held jointly and severally liable...”

- c. The proposed initiative states that an oil and gas operator or waste injector is “jointly and severally liable for all costs associated with...[a]ny penalties imposed under applicable state or federal law.” Federal law may have its own laws related to the apportionment of liability for violation of a federal law. Pursuant to Article VI, Clause 2 of the U.S. Constitution, federal law supersedes conflicting state law. To address this potential constitutional concern, proponents may consider revising this language to state “...*Except as otherwise provided in federal law*, any penalties imposed under applicable state or federal law.”
5. Article II, section 11 of the Colorado Constitution states that “No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.”
 - a. Do the proponents intend for the standard of liability in the proposed initiative to only apply to oil and gas operators and waste injectors for damages that occur on or after the effective date of the proposed initiative? If so, the proponents should consider adding an applicability clause to the proposed initiative that states that the proposed initiative only applies to conduct that occurs on or after the effective date of proposed section 34-60-135.5. An example of an applicability clause is below:

SECTION 2. Applicability. This measure applies to conduct occurring on or after the effective date of this measure.
 - b. If the intent is for joint and several liability to apply to oil and gas operators and waste injectors for damages for conduct that occurred before the effective date of the proposed initiative, this raises constitutional concerns. The Colorado Supreme Court has held that a law violates article II, section 11 if it creates a new obligation or imposes a new duty. It is possible that the proposed initiative could be found to violate article II, section 11 since it potentially creates a new obligation or imposes a new duty on oil and gas operators and waste injectors. In addition, in *Aurora Public Schools v. A.S.*, 2023 CO 39, the Colorado Supreme Court held that there is no public policy exception to article II, section 11.

- c. It is possible that the proposed initiative could be found to impair existing contracts concerning liability and indemnity between past and current oil and gas operators and waste injectors. The proponents could address this constitutional concern by including an applicability clause in the proposed initiative that states “This measure applies to contracts entered into on or after the effective date of this measure.”

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 designated representatives 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 follows:

- 1. Standard practice and language for a short title for a section is as follows:

The short title of this section is the “Protect our Underground Sources of Drinking Water Act”.

- 2. The following comments apply to section 34-60-135.5 (2) of the proposed initiative:

- a. An introductory portion is a sentence fragment that leads into a list to form a complete sentence. A provision should end with a semicolon if it follows an introductory portion and is not a complete sentence. Please note that subsections (2)(a) to (2)(f) of the proposed initiative should end in a semicolon.

Additionally, because subsection (2)(f) is the second-to-last provision in the list, it should end in “and,” as shown below:

(f) JOINT AND SEVERAL LIABILITY IS NECESSARY TO ENSURE THAT ALL PARTIES CONTRIBUTING TO SUCH DAMAGE ARE HELD ACCOUNTABLE, PARTICULARLY WHERE MULTIPLE ACTORS ARE INVOLVED IN CAUSING HARM;
AND

- b. In subsection (2)(c):

- i. The comma after “injection” is grammatically incorrect and should be removed.
- ii. The phrase “that is a source” should be changed to “that are a source” (or, consider, “that are sources”) because the phrase is referring to “aquifers.”

Should you make the suggested changes, subsection (2)(c) will read:

(c) DISPOSAL OF OIL AND GAS WASTES BY UNDERGROUND INJECTION CAN CAUSE CONTAMINATION OF UNDERGROUND AQUIFERS, INCLUDING THE DENVER BASIN AQUIFER, THAT ARE A SOURCE OF CLEAN DRINKING WATER AND AGRICULTURAL WATER;

- c. In subsection (2)(g), to reference the short title, please add quotation marks around the name of the short title, “Protect our Underground Sources of Drinking Water Act.” However, it is standard drafting practice to not reference the short title within the provision where it is created, but instead to reference, in this case, “this section.”

(g) THE PURPOSE OF THIS SECTION IS TO ENSURE....

- 3. The following comments apply to section 34-60-135.5 (3) of the proposed initiative:

- a. In subsection (3)(a):

- i. The first letter of the first word of a sentence should be capitalized. Please capitalize the “u” in “UNDERGROUND SOURCE OF DRINKING WATER.”
- ii. The standard language for referring to a definition in another source should be phrased as:

(a) “UNDERGROUND SOURCE OF DRINKING WATER” HAS THE MEANING SET FORTH IN 40 CFR 144.3.

- b. In subsection (3)(b):

- i. Section 2-4-401 (8), C.R.S., defines the word “person” as any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity. Because “person or

entity” is redundant, as an entity is a person, consider phrasing subsection (3)(b) as:

(b) “WASTE INJECTOR” MEANS ANY PERSON THAT OPERATES....

- ii. The “c” in “CLASS II INJECTION WELL” should not be capitalized. See section 34-60-106 (9)(a)(I), C.R.S., for an example of the phrase “class II injection well” in statute.

4. The following comments apply to section 34-60-135.5 (4) of the proposed initiative:

- a. The organizational structure of the Colorado Revised Statutes requires some reorganization of subsection (4), as there is a paragraph (a) but no paragraph (b). Instead, subsection (4) should be shown as follows:

(4) Joint and several liability for damage to an underground source of drinking water. ANY OIL AND GAS OPERATOR OR WASTE INJECTOR THAT GENERATES OR INJECTS WASTE RESULTING IN DAMAGE TO AN UNDERGROUND SOURCE OF DRINKING WATER SHALL BE HELD JOINTLY AND SEVERALLY LIABLE FOR ALL COSTS ASSOCIATED WITH:

(a) REMEDIATION OF THE...;

(b) COMPENSATION FOR...; AND

(c) ANY PENALTIES IMPOSED....

- b. Only the first letter of the first word of the headnote should be capitalized, as shown above.