

STATE OF COLORADO

Colorado General Assembly

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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 #310, Concerning Liability for Oil and Gas 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 #310 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #311, #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 #311, #312, and #313, except as necessary to fully understand proposed initiative 2025-2026 #310. 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 Constitution appears to be to apply joint and several liability to current and previous oil and gas operators, owners, or producers for any damages resulting from oil and gas operations, including but not limited to personal injury, property damage, and environmental harm.

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. You may consider adding definitions for “oil and gas operator,” “owner,” “producer,” and “joint and several liability” since these terms are not defined in the Colorado Constitution.
3. Because “including” is interpreted to mean “including but not limited to,” please consider removing the phrase “but not limited to” from the proposed initiative.
4. Article I, Section 10, Clause 1 of the U.S. Constitution states, in relevant part, “No State shall...pass any...ex post facto Law, or Law impairing the Obligation of Contracts.” The United States Supreme Court has held that the Ex Post Facto Clause also applies to state constitutional amendments. *Cummings v. Missouri*, 71 U.S. 277, 307-308 (1866). The Court has enumerated four ways in which a state may violate the Ex Post Facto Clause’s prohibition, one of which is increasing the punishment for a crime after it was committed.
 - a. It is possible that the proposed initiative could be found to violate Article I, Section 10, Clause 1 of the U.S. Constitution since the proposed initiative seeks to hold *previous* oil and gas operators, owners, and producers liable for damages resulting from *any* oil and gas operations, thereby potentially increasing the punishment for previous oil and gas operators, owners, and producers.

- b. Further, it is possible that the proposed initiative could be found to violate Article I, Section 10, Clause 1 of the U.S. Constitution since the proposed initiative may impair existing contracts concerning liability and indemnity between previous and existing oil and gas operators, owners, and producers.
5. The language of the proposed initiative imposes joint and several liability on operators, owners, or producers for “any damages resulting from oil and gas operations.” Without further clarification, this language could be interpreted to include oil and gas operations that operators, owners, or producers never participated in or profited from at any point. Is that the proponents’ intent or is the proponents’ intent to only impose joint and several liability on current and previous operators, owners, and producers of the oil and gas operations that resulted in the damages? If the latter, the proponents may consider clarifying this in the language of the proposed initiative.

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:

In the amending clause of the proposed initiative, please delete the comma after “article II” so that the amending clause reads:

SECTION 1. In the constitution of the state of Colorado, **amend** section 11 of article II as follows: