3rd Draft

Initiative #78
Increased Setback for Oil and Natural Gas Development

Amendment ? proposes amending the Colorado Constitution to:

♦ require that all new oil and natural gas facilities be located at least 2,500 feet from any occupied structure, specified waterways, or other areas of special concern.

Summary and Analysis

Amendment ? requires that any new oil and natural gas development be located at least 2,500 feet from occupied structures and areas of special concern. It does not apply to existing oil and natural gas development and operations. The measure allows either the state or a local government to require a setback distance greater than 2,500 feet.

The measure defines oil and natural gas development to include the exploration for, and the drilling, producing, and processing of oil or natural gas, including hydraulic fracturing, as well as the treatment and disposal of associated waste products. Occupied structures include homes, schools, hospitals, or any structure intended for human occupancy. Areas of special concern include public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space. Under Amendment ?, reentry of a well that was previously plugged or abandoned is held to the same requirement as a new oil and natural gas development facility. If two or more towns, cities, or counties with overlapping boundaries establish different distance requirements, Amendment ? requires that the greater distance requirement be used in overlapping areas.

State regulation of oil and natural gas. The Colorado Oil and Gas Conservation Commission (COGCC) in the Colorado Department of Natural Resources establishes and enforces regulations on oil and natural gas operations in Colorado. The COGCC is charged with fostering the responsible development, production, and use of oil and natural gas resources in a manner that protects public health, safety, welfare, and the environment. The COGCC consults with the Colorado Department of Public Health and Environment (CDPHE) to consider the health and safety of the public when regulating oil and natural gas operations. The CDPHE regulates air pollution, the discharge of water to surface water bodies, and the disposal of other hazardous waste related to industrial activities, including oil and natural gas operations.

Setback requirements for oil and natural gas facilities. The required distance from an oil and natural gas facility and a home or other structure is commonly known as a setback requirement. COGCC regulations, approved in 2013, prohibit oil and natural gas wells and production facilities from being located closer than:

- 500 feet from a home or other occupied building; and
- 1,000 feet from high-occupancy buildings such as schools, health care institutions, correctional facilities, and child care centers, as well as neighborhoods with at least 22 buildings.

The surrounding area encompassed by the current 500-foot setback includes about 18 acres, and the 1,000-foot setback includes about 72 acres. Amendment ? increases the setback to a minimum of 2,500 feet, or about 450 surrounding acres.

The current COGCC setback requirement may be waived in certain instances by the land or building owner. Amendment ? does not include a waiver provision.

Oil and natural gas resources in Colorado. Geologic formations containing oil and natural gas are found in many areas of Colorado, with some formations underlying multiple local communities. Most of the recent development of these resources has been concentrated in five counties, including Weld County — where most of the state's oil production is occurring — and Garfield, La Plata, Rio Blanco, and Las Animas counties, as well as portions of surrounding counties. Oil and natural gas resources are owned or leased by many different private companies, governments, financial institutions, nonprofits, and private individuals.

Oil and natural gas extraction technologies. Technological developments, such as horizontal drilling and hydraulic fracturing, or "fracking," have led to substantial oil and natural gas production increases in Colorado and nationally, as well as an increase in the number of wells and related facilities. Hydraulic fracturing is used for most new wells and involves pumping a mixture of mostly water and sand, and smaller amounts of chemicals, into underground rock layers where oil or natural gas is trapped. The pressure of the water creates small fractures in the rock. The sand holds open the fractures, allowing the oil or natural gas to escape and flow up the well. Hydraulic fracturing enables access to oil and natural gas formations that were previously inaccessible. Horizontal drilling enables oil and natural gas operators to drill multiple wells from a single location to improve their efficiency and minimize surface disturbances.

Oil and natural gas production in Colorado. Oil production in Colorado more than doubled between 2008 and 2013, and doubled again between 2013 and 2015. In 2014, Colorado ranked seventh among the states in domestic oil production and sixth in natural gas production. In 2015, there were over 53,000 active wells in Colorado, a 90 percent increase over the number of active wells in 2005.

Tax revenue from oil and natural gas. Companies that extract mineral resources, including oil and natural gas, coal, and metallic minerals, pay severance taxes to the state. Over the last five years, severance tax collections have ranged from $130 million to $272 million annually, with 95 percent of collections coming from oil and natural gas operations. While oil and natural gas tax collections fluctuate annually with changing energy prices, the state collected $X million in oil and natural gas severance taxes in budget year 2015-16. Under current law, Colorado severance tax revenue is split between state programs and local governments. Oil and natural gas producers also pay local property taxes. In 2015, Colorado oil and natural gas producers paid an estimated $360 million in property taxes to local governments.

> *For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*
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> *http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html*

Arguments For

1) Oil and natural gas development and operations can negatively impact nearby residents, businesses, and other properties through increased noise, traffic, dust, light pollution, and odors, and may also impact public health, safety, and the environment. Some people living near oil and gas operations have reported negative health effects to the CDPHE, including irritation of the eyes, nose, throat, lungs or skin, or other symptoms such as headaches, dizziness, nausea, and vomiting. Amendment ? keeps oil and natural gas impacts further away from homes, schools, businesses, and other buildings, thereby reducing the threat of exposure to air pollutants. The measure also expands protections for certain water resources and recreation areas.

2) Keeping oil and natural gas activity away from occupied structures enables property owners to more fully enjoy their property. Production facilities can be a nuisance. Some individuals are reluctant to purchase or rent a home or visit a business located near oil or natural gas development. Amendment ? provides private property owners greater certainty about new oil and gas development in their communities.

Arguments Against

1) Amendment ? prohibits any new oil and natural gas activity in most surface areas of the state. According to the COGCC, 90 percent of Colorado's surface land is less than 2,500 feet from an occupied structure or area of special concern, which would make that surface land unavailable for new oil and natural gas development. This measure will diminish the economic benefits the oil and natural gas industry provides for Coloradans, including jobs, payments to mineral owners, and lower energy prices. It may also diminish tax revenue that is used for local projects and services.

2) The state recently adopted setback requirements that were developed through a collaborative rule-making process and guided by technical expertise. When adopting new rules, the COGCC considered the concerns of mineral owners, residents, schools, and businesses. This measure's proposed setback imposes the same 2,500-foot distance requirement for all new oil and natural gas development, regardless of the size of the facility or type of occupied structure. Further,

Amendment ? prohibits new oil and natural gas facilities near existing residential and commercial development, but does not prohibit new residential and commercial development from encroaching on oil and natural gas resources.

Estimate of Fiscal Impact

State government revenue and spending. Amendment ? is expected to decrease the amount of severance tax revenue that state government collects in the future. Because the measure does not impact existing oil and natural gas development, no immediate impact on severance tax revenue is anticipated; however, because the measure reduces the surface land available for the development of new oil and natural gas operations, future severance tax revenue will be reduced. In the state's top five producing oil and natural gas counties (Weld, Garfield, La Plata, Rio Blanco, and Las Animas), and based on geographic information system (GIS) analysis, the majority of surface area in these counties may become unavailable for new oil and gas development facilities or operations. Since the economic conditions likely to trigger increased oil and gas production cannot be predicted, reductions in state severance tax revenue cannot be estimated.

Department of Natural Resources. Severance tax revenue received by the state funds both general operating expenses of state government and specific programs in the Department of Natural Resources, including water supply project grants, low-income energy assistance, control of invasive species, and a variety of other programs.

Local government revenue and spending. Amendment ? is expected to affect the amount of severance tax revenue that state government collects and then shares with those local governments most directly impacted by oil and natural gas development. The measure's impact on local revenue and expenditures will depend on the overall impact on state severance tax revenue as a result of future prohibitions on new development. As such, the change in local revenue and expenditures cannot be estimated.