1st Draft

Initiative #97
Increased Setback Requirement for Oil and Natural Gas Development

Proposition ? proposes amending the Colorado statutes to:

- require that new oil and natural gas development be located at least 2,500 feet from occupied structures, water sources, and other vulnerable areas.

Summary and Analysis

Proposition ? requires that any new oil and natural gas development be located at least 2,500 feet from occupied structures and vulnerable areas. This type of requirement is commonly known as a setback. Entering a previously plugged or abandoned oil or natural gas well is held to this same setback requirement. The measure also allows local governments to require a setback distance greater than 2,500 feet. If two or more local governments with overlapping boundaries establish different setback requirements, Proposition ? requires that the greater distance be used.

The measure does not apply to existing development or on federal land. Federal land in Colorado includes national forests, national parks, and other land owned by the federal government. About 36 percent of the land in Colorado is federal land.

Definitions. Proposition ? defines oil and natural gas development to include the exploration for, and the drilling, production, and processing of oil or natural gas. Oil and natural gas development also includes hydraulic fracturing, flowlines between oil and natural gas facilities, and the treatment of associated waste. Occupied structures include most buildings where people live or work. Vulnerable areas include playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, perennial or intermittent streams, creeks, and any other vulnerable area designated by the state or a local government.

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 the state. 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 hazardous waste related to industrial activities, including oil and natural gas operations.

Existing setback requirements. Current 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 area includes about 72 acres. Proposition ? 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. Proposition ? 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. Recent development of these resources has been concentrated in Weld, Garfield, La Plata, Rio Blanco, and Las Animas Counties, as well as portions of surrounding counties. Most of the state's oil production occurs in Weld County. Oil and natural gas resources are owned or leased by many different private companies, governments, financial institutions, nonprofits, and private individuals. Oil production in Colorado doubled between 2013 and 2017. Natural gas production in Colorado has been stable over the past ten years. In 2016, Colorado ranked seventh among the states in domestic oil production and fifth in natural gas production. In 2017, there were about 54,000 producing wells in Colorado, a 48 percent increase since 2007.

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 small amounts of chemicals, into underground rock layers where oil or natural gas is located. The pressure of the water creates small fractures in the rock. The sand keeps the fractures open, 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. With current extraction technologies, oil and natural gas wells have the greatest volume of production in their first year of operation and decrease in production each successive year.

State and local 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. Oil and natural gas tax collections fluctuate annually. From budget years 2012-13 to 2016-17, severance tax collections ranged from $4.0 million to $264.7 million per year. Under current law, Colorado severance tax revenue is split between state programs and local governments. The state also collects some revenue from royalty and lease payments. Oil and natural gas producers also pay income taxes, sales taxes, and local property taxes.

For information on those issue committees that support or oppose the measures on the ballot at the November 6, 2018, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) Oil and natural gas operations may adversely impact public health, safety, and the environment. Some people living near these 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. Such development may also negatively impact nearby residents, businesses, and other properties through increased noise, traffic, dust, light, and odors. Proposition ? requires that new oil and natural gas development be located farther away from homes, schools, businesses, and other buildings, thereby reducing nuisance impacts and potential exposure to air pollutants. Proposition ? also expands protections for environmental and recreation areas.

2) Proposition ? provides property owners with greater certainty about the location of new oil and natural gas development in their communities. Keeping oil and natural gas development farther away from occupied structures reduces resident exposure to industrial activity and the potential hazards related to such activity. It may also improve the quality of life for nearby residents. Some people are reluctant to purchase or rent a home or visit a business or recreation area located near oil or natural gas development.

Arguments Against

1) Proposition ? prohibits any new oil and natural gas activity in most areas of the state that are not owned by the federal government. About XX percent of Colorado's non-federal land would be excluded from development with the required 2,500-foot setback. The oil and natural gas extraction industry is an important part of Colorado’s economy. In 2016, the industry accounted for $7.4 billion of the state’s gross domestic product. Proposition ? will reduce the economic benefits the oil and natural gas industry provides for the state, including jobs, payments to mineral owners, and lower energy prices, and will also reduce tax revenue that is used for local projects and services.

2) Proposition ? is unnecessary because the existing COGCC setback requirements help protect public health, safety, and the environment. The state’s existing setback requirements were developed through a collaborative rule-making process and guided by technical expertise. When adopting its setback rules, the COGCC considered the concerns of mineral owners, residents, schools, businesses, and others. Under current law, the COGCC has the authority to modify setback requirements in the future, if necessary.

Estimate of Fiscal Impact

(Please note: A summary of the fiscal impact will be included in this space in the second draft of the analysis. A final fiscal impact statement will be prepared and placed on the General Assembly's website when the final blue book is sent to voters.)