2nd Draft

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

Proposition ? proposes amending the <u>Colorado statutes</u> 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 the state or a local government to require a setback distance greater than 2,500 feet. If two or more local governments with overlapping boundaries establish different setbacks, Proposition ? requires that the greater distance be used.

The measure does not apply to federal land, which includes national forests and parks and represents about 36 percent of the land in Colorado.

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. The measure defines vulnerable areas as playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, flowing or dry streams, creeks, and any other area designated by the state or a local government as vulnerable.

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 setback requirement may be waived in certain instances by the COGCC, land owner, 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 the Denver-Julesburg Basin, primarily in Weld County and other nearby counties. 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. Improvements to industry technologies, such as hydraulic fracturing, or "fracking," and horizontal drilling, 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 chemical additives, 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 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 until the wells are depleted.

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, state severance tax collections from oil and natural gas producers 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. In 2017, Colorado oil and natural gas producers paid an estimated $496.7 million in property taxes to local governments, school districts, and special districts.

> *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:*
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> *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 increase 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 occupied buildings, thereby reducing nuisance impacts and potential exposure to air pollutants. Proposition ? also establishes a required setback for water sources and recreation areas.

2) Over the past several years, Colorado's northern Front Range has seen both substantial urban development and increased oil and natural gas activity. 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 new oil and natural gas activity on most non-federal land in the state. About XX percent of Colorado's non-federal land would be excluded from development with the required 2,500-foot setback. Oil and natural gas development is important to Colorado's economy, generating an estimated $10.9 billion 2017. Proposition ? will reduce the economic benefits the oil and natural gas industry provides for the state and may result in the loss of jobs, lower payments to mineral owners, and reduced tax revenue that is used for local schools, and other governmental services and programs.

2) Proposition ? is unnecessary because the existing COGCC setback requirements provide a balanced approach to protecting 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

State government revenue and spending. Proposition ? is expected to decrease the amount of severance tax, royalty payments, and lease revenue that state government collects in the future. Because the measure does not impact existing oil and natural gas development, no immediate impact on state revenue is anticipated; however, because the measure reduces the surface land available for the development of new oil and natural gas operations, future state revenue from these sources will be reduced. Proposition ? may also reduce future income taxes to the state to the degree that oil and natural gas production is decreased. Since the economic conditions and geographic limitations affecting oil and natural gas production are uncertain, the specific reductions in state revenue cannot be estimated.

Department of Natural Resources. Severance tax revenue received by the state funds both operating expenses of the department and specific programs, including water supply project grants, low-income energy assistance, control of invasive species, and a variety of other programs. Funding for these programs will be reduced.

Local government revenue and spending. Proposition ? is also anticipated to reduce future property tax revenue collected by local governments. Limitations on new drilling will reduce local property tax collections, since producing well sites have higher assessed value than inactive nonproducing areas. The change in local revenue and expenditures also cannot be estimated. Local governments receive a share of the state's severance taxes to offset the impacts of oil and natural gas development. This revenue will be reduced.