

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Anne Lee Foster and Suzanne Spiegel  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** January 17, 2020  
**SUBJECT:** Proposed initiative measure 2019-2020 #174, concerning a Setback Requirement for Oil and Gas Development

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

The purpose of this statutory requirement of the directors of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #173 and #175 to 177. The comments and questions raised in this memorandum will not include comments and questions addressed in the memoranda for proposed initiatives 2019-2020 #173 and #175 to 177. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

## **Purposes**

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To declare that proximity to oil and gas development can have detrimental impacts on public health, safety, and welfare, and the environment.
2. To require a minimum distance of 2,500 feet between an occupied structure or vulnerable area and any new oil and gas development not on federal land.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. In subsection (2)(c), "vulnerable areas" is defined to include "Superfund sites as designated by the United States Environmental Protection Agency." You might consider defining "superfund" in this section by adding a new subsection (2)(e). One existing definition of "superfund" in statute that you could duplicate or cross-reference is in section 24-75-102 (1)(b)(II), which defines "superfund" as "the federal 'Comprehensive Environmental Response, Compensation, and Liability Act of 1980', 42 U.S.C. sec. 9601 et seq., as amended."
2. Subsection (2)(c) also includes in the definition of "vulnerable areas" a reference to "land that is known to be contaminated with toxic pollutants, hazardous waste or radioactive material."
  - a. Whose knowledge is relevant to that determination? Is an oil and gas developer's subjective knowledge or lack of knowledge about whether the land is contaminated the relevant inquiry? Is it the knowledge of the entity that would issue a permit for the oil and gas development that is relevant?
  - b. You should consider defining the terms "toxic pollutants," "hazardous waste," and "radioactive material" to avoid ambiguity. This is especially true for "toxic pollutants", for which it would be helpful to list which pollutants are toxic.
  - c. You should consider replacing the word "land" with "soil" since use of the word "land" implies the area aboveground, but toxic pollutants, hazardous waste, or radioactive materials would contaminate the ground itself, i.e., the soil.

- d. If an area that was previously contaminated with toxic pollutants, hazardous waste, or radioactive material has since been remediated, do you intend that the area still constitutes a "vulnerable area"? If not, you could modify the phrase to read "land (or "soil" if you change the measure in response to question 2.c. above) that is known to be contaminated with toxic pollutants, hazardous waste, or radioactive material and that has not been remediated" to clarify that intent.
3. Why does this initiative use the word "protect" in subsection (1)(c) while proposed initiative 2019-2020 #173 uses the word "preserve"?
4. Why does this initiative use the word "designated" in subsections (1)(b) and (1)(c) when the term it modifies, "vulnerable areas," is defined? Who designates vulnerable areas?
5. Why does this initiative refer to "safety" zones while proposed initiative 2019-2020 #173 uses the phrase "buffer" zones?

## **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 proponents 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 suggested below.

1. It is standard drafting practice to use a serial comma when a series of three or more items is listed. In subsection (1)(a) you should consider adding a comma after "air" and in subsection (2)(c) you should consider adding commas after "agency" and after "waste" to align with that standard drafting practice.
2. It is standard drafting practice not to capitalize "superfund" when used to modify another word such as "superfund site." You should consider rewriting the reference in subsection (2)(c) as "superfund site" to align with this standard drafting practice.
3. It is standard drafting practice not to capitalize the first letters of governmental agency names except for the words in the agency name that refer to a proper name like "United States" or "Colorado." In subsection (2)(c), you've capitalized the first letter in each word of "United States Environmental Protection Agency". You should consider rewriting this as "United States environmental protection agency" to align with that standard drafting practice.

4. In the last sentence of subsection (4), you refer to both "safety zone distances" and "safety zone" without the word "distance" added. For consistency, you should consider either removing the word "distances" from the first mention of "safety zone" or adding "distance" after the second mention of "safety zone" in that sentence.