

# 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 #175, 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, 174, 176, and 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, 174, 176, and 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. With respect to the provision that homeowners may waive the distance requirement for their principal residence:
  - a. Under current law, the oil and gas conservation commission (commission) has established distance requirements in rule and has established a process in rule to allow property owners to waive the distance requirements. Do you intend that the commission would establish a similar process in rule to allow homeowners to waive the distance requirements set forth in this measure? If so, you should specify that the commission shall adopt rules establishing the waiver process. If not, you should specify the process that governs waivers in the measure itself, providing details such as how a waiver must be conveyed, whether a waiver can be later rescinded, and whether there are any notice requirements to the homeowner that must precede obtaining the homeowner's waiver.
  - b. How would the waiver provision work in a multi-family dwelling? Do all homeowners in the building need to agree to waive the requirement? Does it only need to be a majority of the homeowners? You should consider specifying in the measure how waivers would work for residential dwellings other than single-family dwellings or authorizing the commission to determine that by rule.
  - c. If a nonresidential occupied structure such as a school or hospital or a vulnerable area is near the property of a homeowner who wants to waive the requirement, is that homeowner foreclosed from waiving the requirement because of the location of the nonresidential occupied structure or vulnerable area? If so, you might consider clarifying that the

waiver applies only to a homeowner whose principal residence is located in an area that would not be subject to the requirement but for the location of residential homes.

- d. If all of the owners of an irrigation canal, which canal runs through their residential properties and only their residential properties, want to waive the requirement, would they be allowed to do so?

## **Technical Comments**

The following comment addresses technical issues raised by the form of the proposed initiative. This comment will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about this comment at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. You should considering adding "waiver" to the headnote.