

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 #178, concerning Oil and Gas Operator Financial Assurance

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.

Purpose

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to specify a minimum amount of financial assurance for oil and gas wells.

Substantive Comments and Questions

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

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.
3. Should the statute specify a minimal financial assurance for oil and gas facilities that are not an oil or gas well?
4. Should the minimum financial assurance be modified over time to account for inflation? If so, how?

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. Each statutory section being amended is preceded by a separate amending clause explaining how the law is being changed. For example, the amending clause of the proposed initiative should read:

SECTION 1. In Colorado Revised Statutes, 34-60-106, **amend** (13) as follows:

However, because the proposed initiative amends only the introductory portion to subsection (13) and does not amend subsections (13)(a) to (13)(f), the proposed initiative need not include subsections (13)(a) to (13)(f). If you choose to not include any of these subsections, you should use the following amending clause:

SECTION 1. In Colorado Revised Statutes, 34-60-106, **amend** (13) introductory portion as follows:

2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. The headnote of the statutory section being amended should be added to section 1 of the proposed initiative and be in bold-faced type, as follows:

34-60-106. Additional powers of commission - rules - definition - repeal.
(13) The commission shall require . . .

3. Use an uppercase letter only to indicate capitalization where appropriate. The word "commission" should not be capitalized in the introductory portion to subsection (13) and the word "article" should not be capitalized in subsections (13)(a), (13)(b), and (13)(e).
4. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, to mean that "a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, means that "a person or thing is required to meet a condition for a consequence to apply. 'Must' does not mean that a person has a duty." In the introductory portion to subsection (13), instead of writing that "A minimum financial assurance shall be two hundred seventy thousand dollars per well.", you should consider writing "The minimum financial assurance is two hundred seventy thousand dollars per well." or "The minimum financial assurance must not be less than two hundred seventy thousand dollars per well."