

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Sam Bradley and Greg Brophy

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 23, 2020

SUBJECT: Proposed initiative measure 2019-2020 #300, concerning Local Government Authority Pertaining to Oil and Natural 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 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 constitution appears to be to authorize local governments to assume within their respective boundaries all or part of the state's authority over oil and natural gas development.

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. What will be the effective date of the proposed initiative?
3. 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.
4. Subsection (1) of the proposed initiative refers to article 60 of title 34, Colorado Revised Statutes, or "any successor statutes." If the general assembly were to repeal article 60 of title 34:
 - a. And replace it with a variety of statutes in various articles and titles, what factors would govern the determination of which of these statutes are "successor statutes"?
 - b. And not replace it with "any successor [statute]," what authority would local governments have over oil and natural gas development?
5. If a local government assumes all of the state's authority over oil and natural gas development:
 - a. Is the authority of the state oil and gas conservation commission completely eliminated within the local government's boundaries?
 - b. Or would both the state and local government jointly regulate oil and natural gas development? If so, would the most stringent requirements apply

regardless of whether they were imposed by the state or local government, or would a local government's less stringent requirements apply?

- c. Would the proponents consider clarifying their intent in this regard?
6. If a local government assumes only some of the state's authority over oil and natural gas development:
 - a. Is the authority of the state oil and gas conservation commission completely eliminated with regard to the matters assumed by the local government within its boundaries?
 - b. Or would both the state and local government jointly regulate oil and natural gas development? If so, would the most stringent requirements apply regardless of whether they were imposed by the state or local government, or would a local government's less stringent requirements apply?
 - c. Would the proponents consider clarifying their intent in this regard?
7. Subsection (2) of the proposed initiative specifies that the proposed initiative does not "[prohibit] local governments from entering into intergovernmental agreements for regional oversight of oil and natural gas development within their boundaries."
 - a. Is there something elsewhere in the proposed initiative that the proponents think might be construed to prohibit local governments' intergovernmental agreements regarding oil and natural gas development? If so, what?
 - b. If not, what is the proponents' intent in including this provision?
8. Subsection (3) of the proposed initiative defines "local government" as "including any home rule city or town, and home rule city and county." Use of the word "including" indicates a nonexhaustive list of items.
 - a. What other types of local governments do you intend the definition to apply? Counties? Special districts? School districts?
 - b. Who decides whether an entity qualifies as a local government under this proposed initiative?
 - c. To remove potential ambiguity in the definition, the proponents might consider listing each type of entity that they wish to qualify as a "local government" within the definition and preceding the list with the word "means" instead of "shall including".
9. Subsection (4) of the proposed initiative specifies that the proposed initiative does not "[convey] the right for a local government to enact a moratorium."

- a. Is there something elsewhere in the proposed initiative that the proponents think might be construed to give local governments the right to enact a moratorium? If so, what? Does article 60 of title 34, Colorado Revised Statutes, give the state oil and gas conservation commission the right to enact a moratorium?
- b. If not, what is the proponents' intent in including this provision?

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. With regard to the amending clause and article and section headings:
 - a. The amending clause should be rephrased, with bold formatting added to the phrase "Section 1." and the word "add";
 - b. The proposed initiative should include a new article heading for the new article;
 - c. The proposed initiative should add a new section number and a headnote to the new proposed constitutional language. Headnotes briefly describe the content of the section.

For example:

ARTICLE XXX Local Control of Oil and Gas Activities

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

Section 1. [Insert the headnote here]. (1) ANY LOCAL . . .

2. New substantive language added by the proposed initiative should be shown in small capital font. For example:

(1) ANY LOCAL GOVERNMENT . . .
3. The proposed initiative should use an uppercase letter only for proper nouns and at the beginning of a sentence. The following words and phrase should not be capitalized: title, article, and local government.

4. When referencing "this article," the number of the article should be included, e.g., "this article XXX."
5. The reference to "Title 34 Article 60," should be written as "article 60 of title 34."
6. Subsection (3) of the proposed initiative:
 - a. Includes a confusing phrase, "shall including." You could rephrase this as "includes."
 - b. Includes an unnecessary comma after the word "town"; and
 - c. Should end in a period.