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MEMORANDUM

TO: Diane Schwenke and David Davia
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 1, 2020
SUBJECT: Proposed initiative measure 2019-2020 #308, concerning the Colorado Independent Oil and Gas Board

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 #307 and #309 to #313. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiative 2019-2020 #307 and #309 to #313, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in the other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be as stated in the memorandum for proposed initiative 2019-2020 #307.

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. Section 4 of the proposed initiative creates a new section in statute, section 34-60-104.7, C.R.S. Article 60 of title 34, C.R.S., is specific to the regulation of oil and gas and the oil and gas conservation commission's authority. The rules listed in subsections (10)(g)(VI) and (10)(g)(VII) (misnumbered as (11)(g)(VI) and (11)(g)(VII)) of section 34-60-104.7, C.R.S., concern rules of the air quality control commission. The air quality control commission's authority is codified in article 7 of title 25, C.R.S. As drafted, the proposed initiative states that the Colorado independent oil and gas board (hereafter, "independent board") shall not repeal or amend to make less stringent two of the air quality control commission's rules. The proposed initiative does not otherwise authorize the independent board to repeal or amend the air quality control commission's rules. That authority would remain exclusively with the air quality control commission. To address any confusion created by the language in subsections (10)(g)(VI) and (10)(g)(VII) of section 34-60-104.7, C.R.S., the proponents should consider adding an additional section of the proposed initiative that creates a new section in article 7 of title 25, C.R.S., restating the introductory portion of subsection (10) in that new section, but with reference to the air quality control commission instead of the independent board, and adding subsections (10)(g)(VI) and (10)(g)(VII) to that new section.
3. What is the proponents' intent in not including in this proposed initiative the following provisions that were included in proposed initiative 2019-2020 #307?
 - a. Provisions that would exempt the independent board members and director of the independent board from the state personnel system in section 13 of article XII of the constitution; and

- b. Provisions that authorize that independent board, rather than the executive director of the department of natural resources, to appoint the director of the independent board.

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. The numbering of the subsections in section 4 of the proposed initiative is incorrect, as subsection (10) was skipped. Please correct the numbering. Also, search for any references that may need to be updated due to the renumbering.
2. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The word "shall" is used in the proposed initiative in places to convey future tense instead of indicating that a person has a duty. For example, in section 34-60-104.7 (9), C.R.S., of section 4 of the proposed initiative, it states that "[a] majority of the independent board shall constitute a quorum for the transaction of its business." In that usage of "shall", it does not mean that a person has a duty. Would the proponents consider changing the phrase "shall constitute" to "constitutes" and making similar changes in other parts of the proposed initiative where "shall" has been used to convey future tense?

The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."