

STATE OF COLORADO

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MEMORANDUM

April 2, 2014

TO: Randy Pye and Amy J. Williams

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #122, concerning Local Regulation of 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 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 together with proposed initiative 2013-2014 #123. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2013-2014 #123, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purpose

The major purpose of the proposed amendment to the Colorado constitution appears to be to prohibit local governments from adopting oil and gas laws that are more restrictive than or conflict with state law.

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 proposed initiative should include the following elements arranged in the following order: an enacting clause, an amending clause indicating what change is being made to the Colorado constitution with the instruction word (in this case, the word "add") in bold-faced type, an article number and article heading, and the text of the initiative. For example:

Be It Enacted by the People of the State of Colorado:

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

ARTICLE XXX

[Article Heading]

Section 1. Declaration. THE PEOPLE OF THE STATE ...

2. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. Headnotes should follow the section number, be in bold-faced type, and be in lowercase letters. A headnote should be added to each new section in the proposed initiative. See the example in technical comment 3.
3. Constitutional provisions are usually divided into component parts using the following hierarchy: Sections [denoted by words and numbers "**Section 1.**", "**Section 2.**" etc.]; subsections, [denoted by numbers "(1)", "(2)", etc.]; followed by paragraphs, [denoted by lowercase letters, "(a)"], followed by subparagraphs, [denoted by Roman numerals "(I)"], followed by sub-subparagraphs, [denoted by capital letters "(A)"]. Consider breaking up the text of the proposed initiative into separate sections, subsections, paragraphs, etc. for ease of reading and clarity of meaning as follows:

Section 1. Declaration. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) RESPONSIBLE OIL AND GAS DEVELOPMENT ... ENERGY INDEPENDENCE;

(b) REGULATION OF OIL AND GAS ... CONCERN; AND

(c) CITIES, TOWNS, AND COUNTIES ... CONSTITUTIONAL RIGHTS.

Section 2. Local government laws – no more restrictive.

CITIES, TOWNS, AND COUNTIES SHALL NOT ... GENERAL ASSEMBLY.

4. It is standard drafting practice to use a comma after the second-to-last item in a series of at least three items (often known as an Oxford comma or serial comma). In the fourth and eighth lines of the proposed initiative, the series "cities, towns, and counties" should have a comma after "towns."
5. It is standard drafting practice when referencing local jurisdictions such as cities, towns, and counties to also list "cities and counties" to include the two jurisdictions in Colorado (Denver and Broomfield) that are both a city and a county.

Substantive Comments and Questions

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

1. The Colorado constitution requires each proposed initiative to contain only one subject. What is the single subject of the proposed initiative?
2. The technical comments suggested splitting the proposed initiative into two sections, one containing a legislative declaration and the other containing the operative prohibition on local governments' authority. Is this how the proponents view the proposed initiative?
3. Is it possible that a rule adopted by the Colorado oil and gas conservation commission, by authorizing a particular location of an oil and gas facility, would injuriously affect a local government's ability to provide for the orderly use of land or protect the environment?
 - a. If so, why does the proposed initiative apparent preempt the local law?
 - b. If not, why not?
4. What constitutional rights does the first sentence of the proposed initiative refer to?