2nd Draft

Initiative #88
2,000-foot Oil and Gas Setback Requirement

Amendment ? proposes amending the <u>Colorado Constitution</u> to:

- ♦ require that all new oil and gas wells be located at least 2,000 feet from an occupied structure; and
- ♦ allow the owner of an occupied structure to waive the setback requirement.

Summary and Analysis

Setback requirements for oil and gas wells. Current state regulations, adopted in 2013, require that oil and gas wells and production facilities not be located closer than:

- 500 feet from a home or other occupied building;
- 350 feet from a playground or other outdoor activity area; and
- 1,000 feet from high occupancy buildings such as schools, health care institutions, correctional facilities, and child care centers, as well as neighborhoods with at least 22 buildings.

This distance requirement, or setback, may be waived by the surface or building owner.

Amendment ? requires that all new oil and gas wells be located at least 2,000 feet, or almost 0.4 miles, in any direction from any existing occupied structure, unless the owner of the occupied structure waives the setback requirement.

State regulation of oil and gas. The Colorado Oil and Gas Conservation Commission (commission) establishes and enforces regulations on oil and gas development in Colorado. The commission is charged with promoting oil and gas development while protecting public health and preventing negative environmental impacts. The commission is also responsible for protecting surface land owners from unreasonable damage caused by oil and gas development and ensuring that surface owners are consulted about the location of drill pads and roads.

Mineral ownership in Colorado. In Colorado, surface land and the underlying oil and gas resource may be owned by different parties. When this occurs, surface owners are legally required to provide mineral owners with reasonable access to their resources. Under existing regulations, the commission consults with surface owners regarding their concerns prior to issuing drilling permits.

Improved oil and gas extraction technologies. Oil and gas operators currently use hydraulic fracturing to increase production on roughly 90 percent of wells drilled in Colorado. Hydraulic fracturing, or "fracking," involves injecting a mixture of water, chemicals, and sand into geologic formations containing oil or natural gas. This process fractures the formation and enhances the flow of oil or natural gas into the well. Although hydraulic fracturing has been used in Colorado since the 1940s, the technology has improved and become more prevalent as an efficient means to access oil and gas in deep rock formations. Wells are also drilled horizontally to improve their efficiency.

Oil and gas production in Colorado. Colorado's oil and gas industry generated about $8.9 billion in oil and gas production value in 2012. According to the U.S. Bureau of Labor Statistics, the industry accounted for about 27,600 direct jobs including drilling, extraction, and product transportation. This represents about 1.2 percent of total jobs in the state and about 2.5 percent of total wages and salaries.

Improved oil and gas extraction technologies have led to substantial production increases in Colorado. Oil production more than doubled between 2008 and 2013, with much of the new production occurring near populated areas in northeastern Colorado.

Local concerns about oil and gas production. The increasing use of hydraulic fracturing has raised concerns in some communities about potential contamination of ground water, risks to local air quality, increased noise, and vehicle traffic. While discharges and emissions are regulated by the state and federal governments, uncertainty remains about the health impacts of these operations.

> *For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*
>
> http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) Expanding the setback requirement for new oil and gas wells helps respond to health and safety concerns associated with rapidly growing production. Oil and gas wells release pollutants into the environment, and the measure helps keep this pollution away from homes, schools, and hospitals while still allowing oil and gas development to occur.

2) Expanding the setback requirement for new oil and gas wells helps protect property values. Production facilities can be an eyesore, and drilling increases traffic and noise. By keeping oil and gas drilling away from occupied structures, the

measure helps protect property owners. It also empowers property owners to negotiate mitigation measures like sound barriers before allowing wells within the setback area.

Arguments Against

1) Oil and gas development is important to Colorado's economy. By increasing the setback from occupied structures, this measure will make it more difficult and expensive to access the state's mineral resources, leading to decreased oil and gas production. This will diminish the benefits the oil and gas industry provides, including jobs, royalty payments, and tax revenue. Further, by placing the setback in the constitution, the measure limits the state's ability to respond to changing conditions and technology and undermines the state's collaborative rulemaking process.

2) This measure may impair the property rights of mineral owners. Amendment ? increases the setback area for any new well from about 18 to 288 acres. It does not require that mineral owners be compensated if the setback requirement makes it more costly or impossible to develop their resources. This may lead to court challenges from mineral owners, who expect to be able to make use of their property.

Estimate of Fiscal Impact

This analysis assumes that the measure will not impact oil and gas wells that are currently producing, or the revenue derived from these existing wells. Based on the potential amount of surface area affected by increased setbacks, the measure is expected to reduce the number of new oil and gas wells drilled in Colorado. However, it is not possible to quantify the decrease because it depends on:

- the location of potential well sites relative to occupied structures; and
- the extent to which structure owners agree to waive setback requirements.

Revenue. Under current law, oil and gas activities contribute a sizable amount of revenue to state and local governments. This measure is expected to result in a reduction in oil and gas drilling that will cause either slower growth in state tax revenue attributable to oil and gas production or a decline. Similarly, the measure will also result in either slower growth in local tax revenue from oil and gas production or a decline.

Expenditures. Workload and expenditures will increase for the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources for approximately one budget year after the measure takes effect, as the COGCC will need to amend its oil and gas drilling rules to conform with the measure.