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MEMORANDUM

April 2, 2007

TO: Matthew Garrington and Timothy Brown

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #11, concerning authority of local governments to regulate oil and gas activities

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.

Purposes

The major purposes of the proposed amendment appear to be:

1. To authorize county and municipal governments to regulate oil and gas operations within their boundaries to prevent and mitigate adverse impacts to the public health and welfare and adverse environmental impacts on air, water, soil, and wildlife; and
2. To allow such regulation to be more stringent than regulations promulgated under current law, but not less stringent.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Ballot titles are set by the title board once proposed amendments are submitted to the secretary of state's office. Do the proponents intend the ballot title of the proposed amendment to be part of the statute? If not, would the proponents consider deleting the ballot title?
2. To conform to standard drafting practices, would the proponents consider:
 - a. Deleting the language after the enacting clause ("Section 34-60-106.5 as added:") and instead creating a section 1 for the proposed amendment and using an amending clause as follows:

SECTION 1. Article 60 of title 34, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

- b. Putting the headnote in bold-faced type, ending the headnote with a period, and putting the new statutory language in SMALL CAPS? For example:

34-60-106.5. Powers of local governments. COUNTY AND MUNICIPAL GOVERNMENTS HAVE THE AUTHORITY TO REGULATE OIL AND GAS OPERATIONS WITHIN . . .

- c. Referring to "rules promulgated . . ." rather than "regulations promulgated . . ."?

Substantive questions:

1. Section 1 (5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed amendment?
2. Because section 34-60-106.5 is newly enacted, would there be any rules that would be "promulgated under this Section"? Do the proponents intend to incorporate any rules promulgated pursuant to, e.g., "this article", article 60 of title 34, C.R.S.?
3. Do the proponents intend to reverse or modify case law that has construed local governments' authority to regulate oil and gas operations pursuant to the rule of "operational conflict", for example, as expressed in Board of County Comm'rs v. Bowen/Edwards Assoc., Inc., 830 P.2d 1045 (Colo. 1992)?

4. Currently, the Colorado Oil and Gas Conservation Commission (COGCC) is charged with protecting surface landowners from unreasonable damage caused by oil and gas development and ensuring that surface landowners are consulted about the location of drill pads, roads, and other impacts. The COGCC is also authorized to deny a well permit for development that threatens human safety. The proposed initiative raises the following questions with regards to the COGCC:
 - a. How does this measure affect the role of the COGCC to address these issues? Would the proponents consider adding language to clarify the effect of this measure on the COGCC?
 - b. Does this measure change the responsibilities of the COGCC? If so, would the proponents consider identifying these changes?