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MEMORANDUM

TO: John Brackney and Guillermo DeHerrera
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2018
SUBJECT: Proposed initiative measure 2017-2018 #179, concerning 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 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.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #178, 180, and 181. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #178, 180, and 181, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To declare that:
 - a. The conduct of oil and natural gas development may impact public health, safety, and welfare and the environment;
 - b. Local governments have jurisdiction to protect public health, safety, and welfare and the environment; and
 - c. State and local governments should not unreasonably restrict a property owner's access to the owner's surface or mineral property;
2. To ensure that local governments have the authority to regulate certain surface aspects of oil and natural gas development that do not conflict with state law or regulations;
3. To specify that state and local government regulations cannot unreasonably restrict a property owner from accessing the owner's surface or mineral interests, be arbitrary or capricious, or otherwise impose conditions on access or development that are not technically feasible or economically practicable; and
4. To declare that the proposed initiative supersedes conflicting state or local laws.

Substantive Comments and Questions

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

1. In subsection 1(b) of initiative #178, there was a provision that local governments could collect fees for inspection, monitoring, and impacts to infrastructure. Why is there not a fee provision in this subsection 1(b)? How would having or not having fees affect this initiative?
2. Subsection 2(b) of initiative #178 specifies local governments' authority to set fees. Why was that subsection removed from this version?

Technical Comments

Please see the memo for 2017-2018 #178. There are no additional technical comments.