

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Russell Mendell and Suzanne Cabral
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 14, 2018
SUBJECT: Proposed initiative measure 2017-2018 #163, concerning the Setback Requirement for 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.

Purposes

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

1. To declare that proximity to oil and gas development can have detrimental impacts on public health, safety, welfare, and the environment.

2. To require a minimum distance of 2,500 feet between an occupied structure or vulnerable area and any new oil and gas development not on federal land.

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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.
3. Do you intend that "occupied structure," as defined in subsection (2)(a) of the proposed initiative, would include a mobile home, which appears to be a "structure intended for human occupancy"?
 - a. If so, would an oil and gas development that is under construction be in violation of the distance requirement if a mobile home was moved to a location within 2,500 feet of the location of the oil and gas development construction site?
 - b. If not, you might consider adding language excluding a mobile home from the definition.

4. The definition of "oil and gas development" in subsection (2)(b) is very similar to the definition of "oil and gas operations" in section 34-60-103 (6.5), Colorado Revised Statutes. You might want to consider using the existing definition, modified as necessary for purposes of the proposed initiative.
5. Does the phrase "public and community drinking water sources," as used in subsection (2)(c), include:
 - a. All of the components necessary to distribute drinking water to the public or to a community? If so, you might consider instead using the phrase "water distribution systems" and adding a definition of that term. "Water distribution system" is defined in statute in section 25-9-102 (6), Colorado Revised Statutes, to mean "any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer."
 - b. Water treatment facilities? If so, you might consider listing "potable water treatment facilities" separately in the definition and then adding a definition of that term. "Potable water treatment facilities" is defined in statute in section 39-29-110 (1)(b)(II)(C), Colorado Revised Statutes, to mean "a system or facility of a political subdivision for treating water to be supplied to the public for domestic use, and 'potable water treatment facilities' includes water treatment plants, treated water storage facilities, water mains, water distribution lines, pumps, and appurtenances."
6. Current law allows the Colorado Oil and Gas Conservation Commission to grant an oil and gas operator's request for an exception from existing distance requirements if the operator obtains a waiver or consent signed by an affected landowner. Do you intend that an operator may obtain such exception from the 2,500-foot distance requirement as well? If not, you might want to add language in statute prohibiting the commission from granting requests for such exceptions.
7. You might consider changing the language in section (3) of the proposed initiative from "... at least two thousand five hundred feet from *an* occupied structure or vulnerable area ..." to "at least two thousand five hundred feet from *the nearest* occupied structure or vulnerable area ..." to make it more clear that no oil and gas development may come within 2,500 feet of any occupied structure or vulnerable area.

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. To avoid ambiguity, use a serial comma (Oxford comma) at the end of a series. For example, in subsection (2)(b) of the proposed initiative, a comma should be inserted after the second use of the word "production."
2. In subsection (1)(c) of the proposed initiative, consider adding the word "by" after "buffer zone" to make clear that the requirement stated comes from people and not the buffer zone.
3. Add the term "effective date" to the headnote to reflect subsection (4) of the proposed initiative.