SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: March 6, 2018 4:38 PM
In the Matter of The Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #97 ("Setback Requirement for Oil and Gas Development") **Petitioner:** Neil Ray, v. **Respondents:** Anne Lee Foster and Suzanne Spiegel, and **Title Board:** Suzanne Staiert, Glen Roper, and Jason Gelender	▲ COURT USE ONLY ▲
Attorneys for Petitioner Neil Ray Jason R. Dunn, #33011 David B. Meschke, #47728 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Tel: 303.223.1100; Fax: 303.223.1111 jdunn@bhfs.com; dmeschke@bhfs.com	Case No.: 18SA31

PETITIONER'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 8,293 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Jason R. Dunn

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Petitioner Neil Ray, registered elector of the State of Colorado, through his undersigned counsel, submits his Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiative 2017-2018 #97 (unofficially captioned "Setback Requirement for Oil and Gas Development").

ISSUES PRESENTED FOR REVIEW BY PETITIONER

1. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105(4).

2. Whether the measure's abstract fails to comply with the requirements of C.R.S. § 1-40-105.5(3), and is otherwise misleading and prejudicial.

3. Whether the Title Board has jurisdiction on rehearing to return the fiscal impact statement and the abstract to Legislative Council when the abstract fails to meet legal requirements.

4. Whether Legislative Council's failure to post on its website data that was submitted by the proponents, as required by C.R.S. § 1-

40-105.5(6), divested the Title Board of jurisdiction to consider the measure.

5. Whether the Title Board erroneously relied on proponent testimony in considering the abstract when that testimony related to economic data submitted by the proponents to Legislative Council but was not posted on Legislative Council's website, as required by C.R.S. § 1-40-105.5(6), nor available to the Title Board or the Petitioner at the hearing.

6. Whether the title is misleading in a number of respects.

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal from the Title Board's decision to deny Petitioner's Motion for Rehearing and set title for Proposed Initiative 2017-2018 #97.

Proposed Initiative #97 seeks to increase the statewide minimum distance requirement for new oil and gas production to 2,500 feet[1] from "occupied structures" and "vulnerable areas." Proponents, Anne Lee

[1] *See* Initiative § 1(3).

Foster and Suzanne Spiegel, filed an original draft of the measure on December 21, 2017. *See* Pet. for Review, at 7. A required review and comment hearing, pursuant to section 1-40-105(1), was held on January 4, 2018. Following the hearing, the Proponents filed an amended draft and a final draft of the Initiative with the Title Board on January 5, 2018. *See id.* at 8–9.

Before the Title Board hearing and on January 12, 2018, Chris Brown, the Director of Policy and Research for the Common Sense Policy Roundtable, an independent non-profit organization, submitted to Legislative Council, as part of that entity's fiscal impact analysis required by Section 1-40-105.5, two studies on the impact of setback changes. First, Mr. Brown submitted an economic assessment of a 2,500-foot oil and gas setback conducted in June 2016 by the University of Colorado's Leeds School of Business (the "CU Study"). *See* Petition for Review, Submission Emails, at 24; CU Study, at 26–56. Second, he submitted the Colorado Oil & Gas Conservation Commission's findings from May 27, 2016 (the "State Findings") that served as the basis for the CU Study's economic assessment. *See* Petition for Review, State

Findings, at 57–74. Rather than take this information into consideration (information Legislative Council was aware of, had been public and widely reported on for over two years, and included one report by a sister state agency) Legislative Council responded to Mr. Brown's submittal by stating that (a) it had already prepared the fiscal impact statement and abstract and (b) would not include any of the submitted information, despite the fact that the statement was not due to the Title Board for another five days.[2] C.R.S. § 1-40-105.5(2)(a) (noting that "shall provide the designated representatives of the proponents and the secretary of state with the impact statement no later than the time of the title board meeting at which the proposed initiated measure is to be considered"). Legislative Council then posted its fiscal impact statement and abstract later online that afternoon, even though it had five more days to do so. Ex. 1, Original Fiscal Impact Statement and Abstract.

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[2] *See* Audio of the February 7, 2018 Rehearing, at 1:39:02–1:39:54, 1:53:40–1:54:28, 1:59:15–2:00:45. The audio of Title Board's February 7, 2018 rehearing can be found at https://www.sos.state.co.us/pubs/info_center/audioArchives.html.

The Title Board considered the Initiative on January 17, 2018, and determined that it possessed jurisdiction to set title. Respondent Neil Ray subsequently filed a Motion for Rehearing (the "Motion") pursuant to section 1-40-107(1)(a) on January 24, 2018. Pet. for Review, Mot. for Rehearing, 12–23. In the Motion, Ray argued that:

1. the measure violates the single-subject requirement;
2. the measure's abstract provides voters with no meaningful information, fails to comply with the requirements set forth in Section 1-40-105.5, and will mislead voters; and
3. the measure's title is misleading in a number of respects.

At the Rehearing on February 7, 2018, the Title Board spent over three hours deliberating on Ray's arguments and the Proponents' counterarguments, and hearing testimony from Chris Brown, Legislative Council staff member Natalie Mullis, and the Proponents. This included the Title Board spending its lunch period in an executive session to receive legal advice on its ability to remand a measure to Legislative Council on the grounds that the measure failed to meet the

requirements of Section 1-40-105.5(3) regarding the fiscal impact statement and abstract.

After these lengthy discussions, the Title Board granted the Motion only to the extent that the Board made small changes to the measure's title and abstract. *See* Pet. for Review, at 11, 81. In denying the Motion as to all other respects, the Title Board determined that the measure possessed only a single subject[3] and, in a 2-1 vote, decided against adding in language to the abstract proposed by Respondent Ray that was derived from the CU Study.[4] The Title Board also determined that it did not have the authority to return the abstract to Legislative Council for redrafting because the Board interpreted the statutes governing the initiative process to limit the Board's actions to modifying the abstract based on what is presented at the rehearing.[5]

Respondent Ray subsequently filed a petition for review in this Court on February 14, 2018. Pet. for Review, at 1–5.

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[3] Audio of the February 7, 2018 Rehearing, at 1:32:50–1:33:49.

[4] Audio of the February 7, 2018 Rehearing - Continued, at 57:22–57:45.

[5] *Id.* at 1:33–2:03.

SUMMARY OF THE ARGUMENT

The Title Board should not have approved Proposed Initiative #97. It violates the single-subject and clear title requirements, and its abstract fails to comply with the statutory requirements in Section 1-40-105.5(3), C.R.S., by not providing any estimates despite available information. Moreover, irregularities at the measure's rehearing raise a number of novel issues, including whether the Title Board has jurisdiction to return a measure's abstract to Legislative Council and what should happen when a proponent's submission of information that Legislative Council relied upon in drafting the fiscal impact statement and abstract was not publicly posted or provided in advance of or during the rehearing.

More specifically, the measure violates the single-subject requirement because it contains additional subjects beyond the measure's central feature—a 2,500-foot setback on new oil and gas production. *See* Initiative, § 1(3) (setback). These additional subjects alter the long-standing relationship between the state and local governments by permitting a state or local government to pass larger

setbacks and by providing that the greater setback in a geographic area trumps any others adopted by overlapping jursidictions. *See id.* at § 1(4). As a result, the measure strips away both the ability of home-rule municipalities to govern themselves and the state's preemption power over oil and gas production, including fracking.

Despite these important features (and additional subjects), the measure's title fails to even mention that the greater setback in a geographic area governs. *See* Pet. for Review, at 81. The title also fails to state that the setback applies not just to new oil and gas development but also to the re-entry of existing wells, as well as specify the alleged "vulnerable areas" that cause the greatest amount of land to be off-limits to oil and gas production and that the measure eliminates a landowners' ability to waive a setback. *Id.* Therefore, the measure lacks clear title.

Perhaps most importantly, the measure's abstract is utterly absent of fiscal estimates required in statute. Pet. for Review, at 11. The abstract contains these omissions despite the availability and submission of the CU Study and State Findings and additional

information that provide the basis for a plethora of estimates. Such omissions, which explain that the measure would significantly deplete new oil and gas production and reduce jobs and GDP, would cause the abstract to mislead voters. The Title Board, however, decided that it lacked the power to return the abstract to Legislative Council to provide these estimates, leaving it up to this Court to enforce section 1-40-105.5 and ensure that voters have sufficient fiscal information to make an informed decision on whether to sign a petition and place Initiative #97 on the ballot.

Therefore, for all the reasons foreshadowed above and explained below, the actions of the Title Board in denying the Motion must be reversed.

STANDARD OF REVIEW

The Court has the authority to review not only a Title Board's single-subject and clear-title findings but also a measure's abstract. *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 19. When reviewing a challenge to a Title Board's decision on single subject, clear title, and abstract, this Court

"employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 20. Although the right of initiative is to be liberally construed, "[i]t merits emphasis that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider." *In re Title, Ballot Title, and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

Three of the issues raised on appeal have never been addressed by this Court. They are: (1) whether the Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements and, relatedly, whether the Title Board could have held-over the hearing until its next meeting while asking Legislative Council to reconsider its analysis; (2) whether Legislative Council's failure to post on its website proponents' submitted data divested the Title Board of jurisdiction to consider the

measure; and (3) whether the Title Board erroneously relied on proponent testimony in assessing the abstract when that testimony related to economic data submitted by the proponents to Legislative Council but was not posted on Legislative Council's website, as required by C.R.S. § 1-40-105.5(6), nor available to the Title Board or the Petitioner at the hearing.

ARGUMENT

I. PROPOSED INITIATIVE #97 CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

Although the Proponents contend that the single subject of their measure is a statewide minimum distance requirement for new oil and gas production, the measure contains multiple additional subjects. These impermissible separate subjects include (a) a fundamental change to the constitutional home rule relationship of article XX of the Colorado Constitution and (b) a change to state preemption law in contravention to recent decisions of this Court that held that because fracking and oil and gas development are matters of mixed state and

local concern, local government efforts limiting or banning development are preempted by state law.

A. The Single-Subject Requirement Protects Against Two Specific Dangers.

Article V, § 1(5.5), of the Colorado Constitution requires that "[n]o measure shall be proposed by petition containing more than one subject . . . ." "If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." Colo. Const., art. V, § 1(5.5); *see also* § 1-40-106.5 (statutory single-subject requirement).

The single-subject requirement guards against two "dangers" associated with omnibus measures. First, "combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—could lead to the enactment of measures that would fail on their own merits." *In Re Title, Ballot Title, Submission Clause for 2011-2012 #3*, 274 P.3d 562, 566 (Colo. 2012) (internal citations omitted). Second, the requirement is designed to prevent

"voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002).

B. Initiative #97 Contains Multiple Subjects Separate from the Measure's Setback Requirement.

The measure, which is captioned "Setback Requirement for Oil and Gas Development," includes a 2,500-foot setback from "occupied structures"[6] and "vulnerable areas."[7] Initiative, § 1(3). This is the subject most likely to garner voter attention because it is the only provision affirmatively creating a new, firm legal requirement. The purpose behind this setback is clear: to curtail almost all new, and much of existing, oil and gas development in the state.

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[6] The measure defines "occupied structures" as "any building or structure that requires a certificate of occupancy or building or structure intended for human occupancy, including homes, schools, and hospitals." Initiative § 1(2)(a).

[7] The measure defines "vulnerable areas" as "playgrounds, permanent sports fields, amphitheaters, public parks, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks, and any additional vulnerable areas designed by the state or a local government." Initiative § 1(2)(c).

The measure, however, does more than merely create a setback—it fundamentally changes the long-standing relationship between the state and local governments. First, section 34-60-131(4) of the measure permits local governments to require larger setbacks from "occupied structures" and "vulnerable areas" than the 2,500-foot statewide setback. Second, section 34-60-131(2)(c) would allow local governments to designate additional "vulnerable areas." Section 34-60-131(4) then specifies that "[i]n the event that two or more local governments with jurisdiction over the same geographic area establish different buffer zone distances, the larger buffer zone governs." Thus, local governments are given the unilateral authority to dramatically expand the geographic reach of the state's new setback law.

Not only are these two features of the measure additional subjects to the setback, but they are the foundation of two more profound subjects that are coiled up in the folds of the measure. First, because the measure gives counties the power to set larger setbacks or designate new "vulnerable areas," and those greater restrictions govern even if they conflict with a home rule city's lesser restrictions, the measure

overrides home rule municipalities' ability to govern themselves free from state and county restrictions. For example, a county could decide that it wants a setback that has the effect of prohibiting new oil and gas development within the entire county or could designate a new "vulnerable area" that has the same effect, and the home rule cities within the county have no ability override those restrictions.

This outcome is antithetical to the General Assembly's consistent recognition of the propriety of local land-use ordinances that relate to oil and gas development. *See, e.g.*, Ch. 317, sec. 1, 1994 Colo. Sess. Laws 1978 ("[N]othing in this act shall be construed to affect the existing land use authority of local governmental entities."); Dep't of Nat. Res. Reg. 201, 2 Colo. Code Regs. 404-1 (2015) ("Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, so long as such local regulation is not in operational conflict with the Act or regulations promulgated thereunder."). Such a significant change to a home rule municipality's ability to govern itself may be unprecedented in the history of Colorado, and, more relevant

here, is a separate and distinct subject that bears no necessary and proper connection to the measure's stated purpose of codifying and increasing the existing setback regulation.

Second, the measure changes the current preemption law as articulated in two recent Colorado Supreme Court decisions—*City of Fort Collins v. Colo. Oil and Gas Ass'n*, 2016 CO 28, and *City of Longmont v. Colo. Oil and Gas Ass'n*, 2016 CO 29—which held that a ban or moratorium on fracking within a city's limits is a matter of mixed state and local concern and is therefore preempted by state law because it impedes the effectuation of the state's interest in the efficient and responsible development of oil and gas resources. This measure would remove state preemption and oversight of such development and place it in local hands. There would no longer be a statewide program of regulation, and if the state wanted to allow limited oil and gas development in such a way that disagreed with a particular county's or city's setback over 2,500 feet, the state would be powerless to do so. A county or city would have de facto unilateral authority to effectively ban oil and gas development within its limits even if the state disagreed.

C. Both Dangers of Omnibus Measures are Present with Initiative #97.

These additional subjects implicate the very "dangers" the single-subject requirement are designed to prevent. First, they are coiled up in the folds of the measure. A voter who supports the measure because he or she likes the increased setback may be surprised to learn that the measure additionally removes control away from home rule municipalities or overturns state preemption of local oil and gas laws because the other subjects are buried in the measure, are not explicitly stated, or both. Second, the measure could garner support from different and competing factions and thus cause the measure to pass even though its multiple subjects might not have been able to pass on their own. There is no reason to presume that voters who may support the 2,500-foot setback would additionally vote for a scheme where local setbacks are not preempted. In fact, it is plausible to think that (i) a proponent of a 2,500-foot setback might vote for the measure even though that person would prefer a uniform state policy or (ii) an opponent of a 2,500-foot setback would vote for the measure because the person wants local, rather than state, control over oil and gas

production. In other words, the measure could gain support from the anti-fracking groups in Lafayette that want local control over fracking, anti-local control groups in Denver that want a uniform statewide setback of 2,500 feet, and pro-oil and gas groups on the eastern plains that do not mind a 2,500-foot setback that has less effect in rural, dry areas but favor local control. Such a measure, which can pass only by combining subjects that appeal to different factions, violates the single-subject requirement. *See In re 2011-2012 #3*, 274 P.3d at 566.

Finally, *In the Matter of the Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155 (Colo. 2014) ("Initiative #90"), which will likely be cited by the measure's proponents, is distinguishable. Unlike Initiative #97, Initiative #90 did not contain a setback. Rather, Initiative #90 involved only local government control over oil and gas development, including fracking. In that context, this Court rejected single-subject challenges arguing that the measure fundamentally changed the constitutional home-rule provisions and preemption because such features are necessarily and properly connected to the central purpose of the measure—local government

control of oil and gas development. *Id.* at 161. Here, in contrast, Initiative #97's statewide setback can be achieved regardless of whether there is local control of oil and gas development. Initiative #97's provisions on local government control therefore are not necessary or proper in light of the measure's central feature. Instead, by combining a setback with Initiative #90's local control provisions, the measure contains multiple subjects.

II. INITIATIVE #97's FISCAL IMPACT STATEMENT AND ABSTRACT FAIL TO COMPLY WITH THE REQUIREMENTS OF SECTION 1-40-105.5 BY PROVIDING VOTERS WITH NO MEANINGFUL INFORMATION AND ARE MISLEADING AND PREJUDICIAL.

When the General Assembly passed House Bill 15-1057, the intent was to provide voters with fiscal impact information earlier in the initiative process so that voters have the same fiscal information available during that process that legislators have in the Bluebook for

legislative bills.[8] The General Assembly thus wanted a robust fiscal impact statement and a meaningful abstract to be included on the petition form itself. Indeed, legislators passed an amendment to the bill providing that the full abstract, rather than a two-sentence summary of the abstract as originally proposed, be included on every page of the petition.[9]

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[8] At House Bill 15-1057's March 25, 2015 hearing in the House Committee on Veteran Affairs, Representatives Court and Delgrosso, the primary sponsors of the bill, unequivocally clarified what was to be included in an initial fiscal impact statement. Hearing on H.R. 1057 Before the H. Comm. on Veterans Affairs, 1st Regular Sess., 70th Gen. Assembly (Colo. Mar. 25, 2015) (statements of Representatives Court and Delgrosso). Representative Court explained that the bill's purpose was to put an initiative's fiscal impact, the information that goes in the Blue Book, out earlier before signatures were collected. *Id.* at 50:58–52:20. This was "a matter of transparency and public information." *Id.* at 51:44.

[9] Representative Delgrosso, in response to a question posed at that hearing as to whether the amendment would require the two-sentence summary or the full abstract on the petition's first page, explained that the first page of the petition would still include the full abstract to provide voters with more information on the measure's fiscal impacts. *Id.* at 58:40–59:35. The representative's response to another question, this time from a person testifying in opposition to the bill, confirmed that the abstract was meant to address both state and local economic impacts, just like fiscal notes. *Id.* at 1:36:53–1:37:33.

Notwithstanding this clear intent behind the abstract requirement, the entirety of Legislative Council's analysis in the abstract of the fiscal and economic impacts of Initiative #97, a measure with profound effects on oil and gas production in Colorado, is as follows:

> **State and Local Government Revenue and Expenditures.** The measure is expected to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.
>
> **Economic Impacts.** This measure constrains well location and thus potentially reduces future oil and gas development in the state, particularly in heavily populated counties. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.

Ex. 1, at 4.

Despite the fact that Mr. Brown submitted to Legislative Council

the CU Study and the State Findings[10] (information that Legislative Council acknowledged it already possessed[11]), Legislative Council's draft made no mention of their contents, including the CU Study's important findings that a 2,500 setback, which would eliminate access to over 90 percent of land susceptible for oil and gas development, cause a reduction from baseline employment that would average 104,000 jobs following the next 15 years covered by the study, Colorado GDP to reduce by an average of $14.5 billion in each of the 15 years covered by the study, and Coloradans to lose an annual average total of $8.3 billion in real income. *See* Pet. for Review, at 54 (Table 2). Rather, the abstract included vague references to health outcomes based on information that the Proponents supposedly submitted that was not

[10] Mr. Brown submitted the information to Legislative Council five business days before the title board meeting, which technically was not within Legislative Council's stated policy that such information should be submitted seven days before the hearing if Legislative Council is to consider it. However, (a) such deadline is not in statute or regulation, and is thus only a stated preference, and (b) the reports have been widely publicized and publicly available for two years, as Legislative Council acknowledged at the time of submittal by Mr. Brown.

[11] Audio of the February 7, 2018 Rehearing, at 1:53:40–1:54:28; 2:00:15–2:00:29.

published on Legislative Council's website and not disclosed until Initiative #97's Rehearing.

Petitioner Ray challenged the abstract on rehearing and included in his Motion proposed language that included the important fiscal information in the CU Study:

> According to the Colorado Oil and Gas Conservation Commission's May 27, 2016 assessment on the impact of a 2,500-foot setback measure, the measure would result in a 90.2% reduction in currently accessible drilling locations. Based on this assessment, the University of Colorado's Leeds School of Business performed an economic study of a 2,500-foot setback proposal in June 2016. The study estimated that because oil wells typically record the greatest volume of production in its first year and decrease at a slower rate with each successive year, new production would deplete total production at a rate of 42 percent in the first year, 24 percent in the second year, 18 percent in the third year, and 6.9 percent per year by year 15. The study also estimated that natural gas well production would deplete at a rate of 17 percent in the first year, 12 percent in the second year, 10 percent in the third year, and 8.2 percent per year by year 15. The study then concluded that, assuming the measure became effective in 2017, the compounding economic consequence of a 90.2% reduction would result in a lower real GDP by an annual average of $7.1 billion and 54,000 fewer jobs in the first five years after the measure passes, and a lower GDP by an annual average of $14.5 billion and 104,000 fewer jobs between 2017 and 2031. This would result in an average annual reduction in total employment of 2.8% from 2017-2031, and a 3.4% average annual reduction in state GDP for the same period.

Pet. for Review, at 19.

At the rehearing, the Title Board members expressed concern that "the abstract doesn't provide any numbers at all" and that they were "troubled by the lack of numbers . . . in the statement and abstract," but professed that they did not know what to do in response even though the abstract appeared to not provide fiscal information that would help voters evaluate the measure.[12] After going into an executive session, they determined that the Title Board did not have the power to send the abstract back to Legislative Council for editing and could only modify the abstract based on information that is presented at the rehearing.[13] The Title Board then heard testimony from Mr. Brown and Natalie Mullis of Legislative Council on the CU Study and State Findings, and Proponent Spiegel on the undisclosed material she submitted regarding health impacts that Legislative Council did not place online. Ms. Mullis indicated that Legislative Council was familiar with the CU Study and

[12] Audio of the February 7, 2018 Rehearing, at 1:49:40–1:50:25, 2:01:56–2:05:56.

[13] Audio of the February 7, 2018 Rehearing – Continued, at 1:33–2:03.

State Findings but did not include the CU Study in the abstract because it was based on the assumption that reducing available land for oil and gas production will reduce actual production.[14]

In a 2-1 vote, the Title Board decided not to modify the abstract to include the proposed language from the CU Study but did choose to keep the language in the abstract about potential health benefits based on Proponent Spiegel's testimony.[15] Therefore, the Title Board made only minor changes so that the abstract, still without any fiscal estimates, now reads:

> **State and Local Government Revenue and Expenditures.** The measure is highly likely to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.
>
> **Economic Impacts.** This measure constrains well location throughout the state except on federal lands and is likely to reduce future oil and gas development in the state. The current 500 foot setback prohibits oil and gas development on about 18 acres surrounding a given point. The measure increases the setback to a minimum of 2,500 feet or about

[14] Audio of the February 7, 2018 Rehearing, at 1:59:15–2:07:22.

[15] Audio of the February 7, 2018 Rehearing – Continued, at 54:19–57:45.

> 450 surrounding acres. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.

Pet. for Review, at 11.[16]

The Title Board's modifications were insufficient. The abstract still fails to comply with the requirements set forth in Section 1-40-105.5 because it provides voters with no meaningful information on the measure's fiscal impact and is misleading and prejudicial.

A. The abstract is legally inadequate because it does not contain an estimate and fails to comply with the requirements of Section 1-40-105.5(3).

Section 1-40-107(1)(a)(II)(A) permits an objector, such as Petitioner Ray, to challenge an estimate in the abstract if his or her motion contains documentation that supports a different estimate. Here, the abstract's estimates are incorrect because instead of providing

[16] *See also* Ex. 2, Redline Comparing Original Abstract with Amended Abstract.

an estimate with a number, the abstract merely states that severance tax, royalty payments, and lease revenue that state and local governments will collect in the future "is highly likely to decrease." *See* Pet. for Review, at 11. This is not an estimate.

Similarly, the abstract states that "[t]o the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators." *See id.* But the setback will reduce development—the state has already studied that and the University of Colorado's Leeds School of Business used that information as the basis for its estimates, including how many jobs would be lost (a compounding average annual reduction in total employment of 2.8 percent from 2017-2031). *See* Pet. for Review, at 52–53. The CU Study noted that because oil "[w]ells typically record the greatest volume of production in year 1 and decrease at a slower rate with each successive year," the measure would result in a depletion of new oil well production at a rate of 42 percent in year 1, 24 percent in year 2, 18 percent in year 3, and 6.9 percent per year by year 15. *See id.*

at 40. Similarly, the CU Study projected that natural gas well production would deplete at a rate of 17 percent in year 1, 12 percent in year 2, 10 percent in year 3, and 8.2 percent per year by year 15. *Id.* at 43. Legislative Council could have used these estimates (which admittedly are two years old but could have been cited with qualifiers if that was deemed necessary) or updated them, but it did neither. Similarly, Legislative Council also could have queried the major oil and gas producing counties as to the reduction of ad valorem taxes collected on the sale of oil and gas. Each of those counties publishes a budget on an annual basis with projections and an explanation of increases or shortfalls in production.

Therefore, at the very least, the Title Board should have modified the abstract and included the estimates in the CU Study. For example, the CU Study states that, assuming a 90.2 percent reduction in new production beginning in 2017, in the first five years GDP would lower by an average of $7.1 billion and 54,000 jobs would be lost, and GDP would lower by an average of $14.5 billion and over 140,700 jobs would be lost between 2017 and 2031. *Id.* at 30. This is an average annual

reduction in total employment of 2.8 percent from 2017-2031, and an average annual reduction in state GDP of 3.4 percent for the same period. *Id.* at 53.

In other words, estimates of the measure's economic effects are readily available to include in the abstract, but Legislative Council chose not to include them or provide its own estimates, and the Title Board decided to approve the abstract without estimates.

As a result, the measure's abstract fails to comply with the statutory requirements that an abstract must include estimates. *See* Estimate, Webster's Third New International Dictionary (1993) ("[A] judgment made from usually mathematical calculation especially from incomplete data"). Specifically, Section 1-40-105.5(3) requires that the abstract include estimates of: (1) "the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted"; and (2) "the amount of any state and local government recurring expenditures or fiscal liabilities if the measure is enacted." The section also requires that the abstract include "[a] statement of the measure's economic benefits for all Coloradans."

Not only could Legislative Council or the Title Board have provided the estimates in the CU Study, but Legislative Council could have calculated other estimates, or ranges of estimates,[17] for the measure's impact, including its impact on severance taxes, royalty payments, and lease revenue that state and local governments will collect in the future.[18] The data required to make these calculations is available in the CU Study, the State Findings, and other sources. All Legislative Council needed to do was find and utilize available data to

[17] Audio of the February 7, 2018 Rehearing, at 1:44:52–1:45:29 (testimony of Mr. Brown explaining that providing ranges of estimates, which the CU Study included, is very important and appropriate considering the inherent volatility of the oil and gas industry).

[18] *Id.* at 1:40:00–1:42:54.

create its estimates, whether that data originates from the CU Study or elsewhere.[19]

In addition, the abstract's statement of the measure's economic benefits is inadequate because, at minimum, it should have included the job loss figures in the CU Study, which demonstrate that a 2,500-foot setback would significantly reduce job creation to the detriment of Coloradans, or provided even more current figures.

Therefore, the Title Board's decision to approve the measure's abstract with only minor revisions was in error. This is simply not a case where it was difficult or impossible to provide quantitative estimates. *See In the Matter of the Title, Ballot Title and Submission Clause for 2017–2018 #4*, 2017 CO 57, ¶¶ 23–24 (affirming the Title Board's approval of an abstract where "legislative council testified that

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[19] For example, studies concerning La Plata County, California, and New Mexico explicitly quantify state and local fiscal impacts associated with changes in oil and gas production. The studies can be found via these links: http://c.ymcdn.com/sites/nmtri.site-ym.com/resource/resmgr/Studies_and_Reports/2014_NMTRI_Oil_and_Gas_Study.pdf; https://www.fortlewis.edu/portals/157/docs/eis/EIS-oilgas.pdf; https://laedc.org/wp-content/uploads/2012/04/EconomicImpactofOilFieldInvestmentDelays_REV.pdf.

it is simply not possible to provide quantitative estimates" and thus "it is standard practice for the council to provide indeterminate qualitative impact statements"). Instead, this appeal provides this Court with its first opportunity to clarify that where quantitative estimates are not only possible but also readily available, the Title Board's failure to provide them is clear error and its decision to approve the abstract must be overturned.[20]

B. The abstract is misleading and prejudicial.

Because the measure's abstract does not include actual estimates and instead provides vague generalities, it fails to express the magnitude in GDP decline and job loss if the setbacks went in place. Stating that there may be "less" employment or that revenue "is highly likely to decrease" mitigates the measure's actual effect. *See* Pet. for Review, at 11. Voters would be left with nothing meaningful before deciding whether to sign a petition. As a result, the abstract is incomplete and misleading.

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[20] If the measure is not deemed invalid under the single-subject requirement, this Court should remand the fiscal impact statement and abstract to have Legislative Council Staff rewrite them, and for the Title board to consider those revisions anew.

The abstract also is prejudicial because, without citing any support, it states that "[i]ncreasing the setback distance, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs." *See id.* This statement is based on information provided by the Proponents that Legislative Council failed to post publicly. Moreover, it is nothing more than the equivalent of stating that to the extent increasing oil and gas production increases Coloradans' income, it may reduce medical costs because Coloradans will use their increased income to buy health insurance and eat healthier food, and increased tax revenues will be invested in public health initiatives. In other words, while the measure vaguely references some of the measure's potential negative impacts, despite available concrete data, it provides a broad sweeping statement about improvement to health outcomes without citing any source.

Therefore, because the abstract is misleading and prejudicial under Section 1-40-107(1)(a)(II)(B), the Title Board's decision to approve it must be overturned.

III. THE TITLE BOARD HAS JURISDICTION ON REHEARING TO RETURN THE FISCAL IMPACT STATEMENT AND ABSTRACT TO LEGISLATIVE COUNCIL WHEN THE THEY FAIL TO MEET LEGAL REQUIREMENTS.

The Title Board decided at the Rehearing that it did not have the authority to send the measure's fiscal impact statement and abstract back to Legislative Council and instead can only modify the abstract based on information presented at the rehearing.[21] This determination is wrong: it severely limits the ability to challenge an abstract and could result in the Title Board approving a legally inadequate fiscal impact statement and abstract.

Section 1-40-107 provides that any registered elector may challenge a measure's abstract at a rehearing when: (a) an estimate is incorrect; (b) the abstract is misleading or prejudicial; or (c) the abstract fails to comply with the requirements set forth in statute. Petitioner Ray did just that. Then at the rehearing, the Title Board hears the objector's challenge and has the option of modifying the abstract based on information presented. C.R.S. § 1-40-107(1)(b). The statute, however, does not limit the Title Board's power to modifying the

[21] Audio of the February 7, 2018 Rehearing – Continued, at 1:33–2:03.

abstract. In fact, such a limitation is illogical where one of the grounds to challenge an abstract is where it does not meet Section 1-40-105.5(3)'s statutory requirements.

Here, while Mr. Brown testified at the rehearing that the estimates in the CU Study showed "very significant economic ramifications,"[22] which the Title Board could have used to modify the abstract, Mr. Brown also provided confirmation that actual fiscal numbers, aside from the CU Study, are available and determinable if only Legislative Council should choose to do the analysis.[23] For example, if Legislative Council decided that it could not use the CU Study because it was finalized two years ago and was based on an initiative with slightly different features, Legislative Council could nevertheless have provided its own analysis based on more current information or utilized already accomplished severance tax studies to provide further information. If Legislative Council nevertheless chooses

[22] Audio of the February 7, 2018 Rehearing, at 1:40:00–1:42:54.

[23] *Id.* at 1:42:00–1:42:38 (mentioning, for example, severance tax information).

not to do so, as was the case here, Title Board's only option to ensure that the abstract complies with section 1-40-105.5(3) is to return the measure to Legislative Council. Title Board's determination that its actions are limited to modifying the abstract based on testimony at the rehearing forecloses that option and results in a statutorily-deficient abstract that can only be remedied on appeal by this Court.[24]

Moreover, it is not too difficult to imagine scenarios where registered electors challenge legally-deficient abstracts on rehearing but either do not have the resources to present testimony or do not have available testimony due to time constraints associated with fast-moving initiatives. In these situations, the Title Board would not have the benefit of testimony to modify the abstract, and the Title Board admitted that it does not have the technical expertise to modify the abstract in many cases.[25] If the Title Board's position is correct, however, it must approve the abstract even if it fails to comply with the statutes because it has no testimony upon which to modify the abstract.

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[24] Title Board's position also could result in a modified abstract that does not reflect the contents of the Fiscal Impact Statement.

[25] *Id.* at 1:49:46–1:49:55.

Therefore, the only reasonable interpretation of the initiative statutes is that the Title Board possesses the authority to return the abstract to Legislative Council. Otherwise, the public may not benefit from a robust abstract at the initiative level in which to properly assess a measure's fiscal impacts.

IV. LEGISLATIVE COUNCIL'S FAILURE TO POST ON ITS WEBSITE PROPONENT'S SUBMITTED DATA DIVESTED THE TITLE BOARD OF JURISDICTION.

Section 1-40-105.5(6) is clear: "[a]t the same time the director posts the initial fiscal impact statement on the legislative council website, he or she shall also post on the website all fiscal impact estimates received" from the proponents or other interested persons. Here, Legislative Council posted the CU Study Mr. Brown submitted but not the health impact studies the Proponents submitted that Legislative Council relied upon in drafting the last sentence of the abstract.[26] Such an error is jurisdictional and thus divests the Title Board of the ability to consider the measure.

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[26] *See* http://leg.colorado.gov/content/setback-requirement-oil-and-gas-development (posting the CU Study but not the data submitted by the Proponents).

The importance of Section 1-40-105.5(6) cannot be understated. Because Legislative Council must consider all submitted estimates and the bases thereon when preparing the fiscal impact statement and abstract, *see* C.R.S. § 1-40-105.5(2)(b), these estimates must be publicly available so that interested persons can scrutinize them. But a transparent process did not occur for Initiative #97. Rather, because the Proponents' submitted information was not posted online, Petitioner Ray had no other option than to assume that the last sentence in the abstract was based on information Legislative Council found internally and attack it based on lack of support.

Petitioner Ray, and other interested persons had one means to challenge the measure's abstract—at the rehearing. Because the Proponents' information was not posted (and was not provided at the rehearing), Petitioner Ray and any other interested person had no

opportunity to analyze and challenge this information.[27] Fundamental fairness dictates that this oversight divested the Title Board of jurisdiction. Indeed, Petitioner Ray still has not seen the information submitted by the Proponents, and as of the date of this filing, it has not been posted on Legislative Council's website.

V. THE TITLE BOARD ERRONEOUSLY RELIED ON PROPONENT TESTIMONY IN CONSIDERING THE ABSTRACT.

Petitioner Ray does not challenge whether the Title Board can hear testimony at a rehearing related to the abstract. This Court has already stated that the Title Board may do so. *See In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶22 (specifying that "[t]he Title Board, unlike this court, holds public rehearings at which it may hear testimony, take evidence, and inquire

[27] Legislative Council testified at the rehearing that the Proponents' information was not posted because it did not resemble a "fiscal impact statement" in section 1-40-105.5(2)(b). Audio of the February 7, 2018 Rehearing - Continued, at 53:00–53:50. This argument lacks merit. Legislative Council utilized this information to draft the last sentence under the "Economic Impact" paragraph of the abstract, so it clearly at least related to the fiscal impact statement. Moreover, Legislative Council failed to post the State Findings with the CU Study, which was also an error that removes jurisdiction from the Title Board.

into information presented by various sources"). Rather, for the reasons stated in Section IV *supra*, the Title Board cannot rely on the Proponents' testimony. The testimony concerned information that was not posted on Legislative Council's website, was not available to the Title Board, was not provided to Petitioner Ray at the rehearing, and is still not available today. There was no avenue for Petitioner Ray to question the information's authenticity or for the Title Board to know if the information was valid. Therefore, Proponent Spiegel's testimony should not be considered "information presented at the rehearing" pursuant to Section 1-40-107(1)(b) because the data upon which it was based was not posted before the rehearing.

VI. THE TITLE IS MISLEADING IN A NUMBER OF RESPECTS.

A. The title incorrectly implies that the measure applies only to "new oil and gas development."

The title twice states that Initiative #97 applies to "new oil and gas development." Pet. for Review, at 81. These statements are inaccurate. The setback applies not only to new oil and gas development but also to re-entry of existing oil or gas wells and drilling

a new lateral or sidetrack. Therefore, the measure would have a retroactive effect on re-entry of existing wells, which commonly occurs in the industry so operators can deepen a well, drill a new lateral from the existing vertical portion of a well, or engage in well stimulation treatments. The title should have stated that the setback not only applies to new oil and gas development but also retroactively prohibits re-entry of existing wells.

B. The title is misleading because it fails to note that the setback applies to specific "vulnerable areas."

The 2,500-foot setback applies to "occupied structures," "vulnerable areas," and any additionally designated vulnerable area. The title, however, leaves out the "vulnerable areas" as defined in the measure when it states that oil and gas development must "be located at least 2,500 feet from any structure intended for human occupancy and any other area designated by the measure, the state, or a local government." *Id.* Because the measure's "vulnerable areas" include everything from public parks to intermittent streams, it covers a wide-range of areas that have nothing to do with an occupied structure.

"[A]ny other area designated by the measure" is too vague to provide voters with notice of the types of "vulnerable areas." Indeed, as the State Findings indicate in Figure 7 below, a 2,500-foot setback from "vulnerable areas" (colored in orange) actually covers more surface area than the same setback from "occupied structures" (overlapping the orange in cyan), and effectively results in a ban on new oil and gas production in many locations statewide, including the top producing counties:

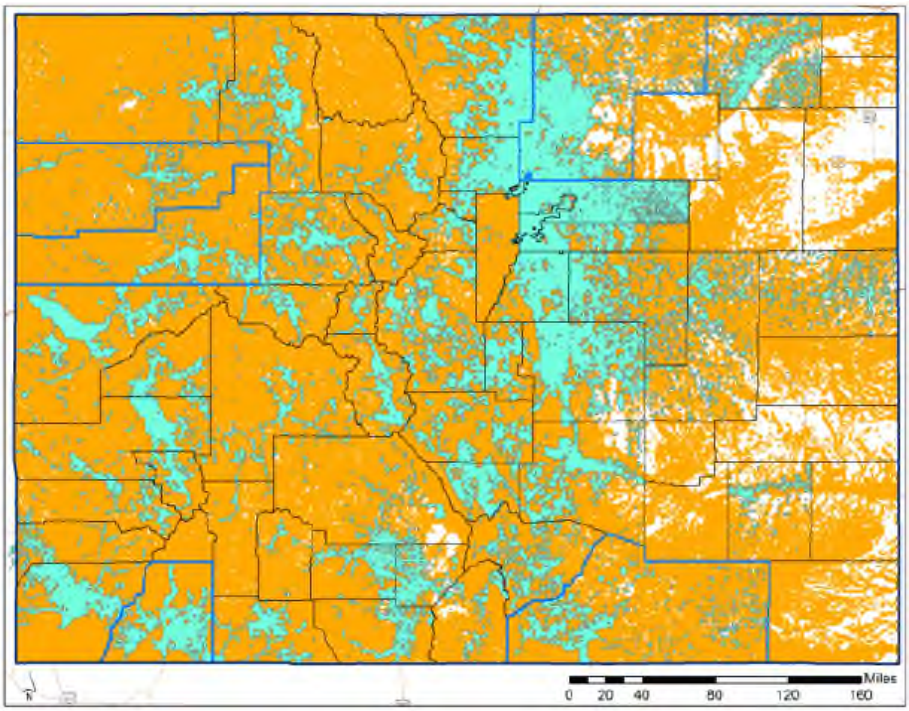

Figure 7 *– 2500' buffer for both occupied structures and areas of special concern. 60 million acres of surface area, roughly 90% of the state, could be affected by proposed mandatory setback. Blue-outlined counties are Colorado's top oil and gas producers.*

Pet. for Review, at 69

Therefore, because the measure should have referenced these other areas in the title, it violates the clear title requirement.

C. The title is misleading because it does not indicate the jurisdiction with the greatest distance requirement governs that geographic area, notwithstanding existing home-rule relationships.

The measure provides that if there are conflicting setback requirements, the greatest distance requirement governs, no matter whether it is the state's, county's, or city's distance requirement or whether a home-rule municipality is involved. *See* Initiative, § 1(4). This important feature of the measure not only constitutes a second subject, it also should have been included in the title. Otherwise, a voter who read the title would only be aware of the statewide setback and not that the measure alters the state preemption law or the home-rule relationship by favoring the greater distance requirement in a geographic area. This omission likewise violates the clear title requirement.

D. The title is misleading because it should reflect that it eliminates a landowners' ability to waive a setback.

Under current regulation adopted by the Colorado Oil and Gas Conservation Commission, an oil and gas operator may request an exception from the smaller setback requirements currently in regulation if an affected landowner signs a waiver or consent form. This rule gives significant property rights to royalty owners. However, Initiative #97, which places the 2,500-foot setback in statute, apparently preempts a landowners' ability to waive. This divesture of private property interests is an important feature of the measure and therefore should be reflected in the title. As currently written without such language, the title violates the clear title requirement.

CONCLUSION

Petitioner Ray respectfully asks this Court to reverse the denial of the substantive parts of his Motion for Rehearing and hold that:

1. the measure violates the single-subject requirement, and thus the measure should return to the Proponents because the Title Board lacked the power to set title;

2. the measure's fiscal impact statement and abstract do not comply with section 1-40-105.5(3), and are misleading and prejudicial, and thus must be returned to Legislative Council for redrafting and reconsideration by the Title Board;

3. the Title Board has jurisdiction on rehearing to return the fiscal impact statement and abstract to Legislative Council when the they fail to meet legal requirements;

4. Legislative Council's failure to post on its website data that was submitted by the proponents, as required by C.R.S. § 1-40-105.5(6), divested the Title Board of jurisdiction to consider the measure;

5. the Title Board erroneously relied on proponent testimony in considering the abstract when that testimony related to economic data submitted by the proponents to Legislative Council but was not posted on Legislative Council's website, as required by C.R.S. § 1-40-105.5(6), nor available to the Title Board or the Petitioner at the hearing; and

6. the title is misleading and thus violates the clear title requirement.

Respectfully submitted this 6th day of March 2018.

BROWNSTEIN HYATT FARBER SCHRECK LLP

/s/ Jason R. Dunn
Jason R. Dunn
David B. Meschke

Attorneys for Petitioner Neil Ray

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2018, I electronically filed a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF** via the Colorado Courts E-Filing System which will send notification of such filing and service on all listed below:

Matthew Grove, Assistant Attorney General
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
matt.grove@coag.gov

Counsel for the Title Board

Martha Tierney
Tierney Lawrence LLC
2675 Bellaire Street
Denver, CO 80207
mtierney@tierneylawrence.com
Counsel for Respondents

s/ Paulette M. Chesson
Paulette M. Chesson, Paralegal

16572257

Colorado Legislative Council Staff

Initiative # 97

INITIAL FISCAL IMPACT STATEMENT

DATE FILED: March 6, 2018 4:38 PM

Date: January 10, 2018 **Fiscal Analyst:** Josh Abram (303-866-3561)

LCS TITLE: SETBACK REQUIREMENT FOR OIL AND GAS DEVELOPMENT

Fiscal Impact Summary	FY 2020-21	FY 2021-2022
State Revenue	Reduction. See State Revenue Section	
State Expenditures	Reduction. See State Expenditures Section	

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

Summary of Measure

If approved by voters, the measure requires that new oil and natural gas development not on federal land be located at least 2,500 feet from an occupied structure or vulnerable area. A state or local government may require a setback greater than 2,500 feet. If two or more local governments with overlapping jurisdictions establish different setback requirements, the larger setback is applied.

Oil and gas development is defined as the exploration for, and the drilling, production, and processing of gas and liquid hydrocarbons. This includes gas flowlines, and the treatment of waste associated with oil and gas development. Renewed production of an oil or gas well that had previously been plugged or abandoned is considered new development.

Occupied structures means any building intended for human occupancy, including homes, hospitals, and schools.

Vulnerable areas include playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks. The state or a local government may designate additional vulnerable areas, which must then be considered for any setback site calculation.

Background

Setback requirements for oil and natural gas facilities. The required distance from an oil and natural gas facility and a home or other structure is commonly known as a setback requirement. Current state regulations, approved in 2013, prohibit oil and natural gas wells and production facilities from being located closer than:

Exhibit 1

- 500 feet from a home or other occupied building; 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.

Currently, the 500-foot setback prohibits oil and gas development on about 18 acres surrounding a given point, and the 1,000-foot setback prohibits development on about 72 acres. This measure increases the setback to a minimum of 2,500 feet, or about 450 surrounding acres.

State and local revenue from oil and natural gas. Companies that extract mineral resources, including oil and natural gas, coal, and metallic minerals, pay severance taxes to the state. Oil and natural gas producers also pay income taxes, sales taxes, use taxes, and local property taxes.

State Revenue

The measure is expected to decrease state revenue in the future from severance taxes, royalty payments from development on state land, and lease revenue from development on non-federal land. Because the measure does not impact existing development, no immediate impact on state revenue is anticipated; however, because the measure reduces the surface land available for the development of new oil and gas production, future state revenue from these sources will be affected. The measure may also reduce future income, sales, and use taxes to the state to the degree that oil and natural gas production is decreased.

The setbacks are applicable to production on state and private land, and do not affect current wells or new production on federal land. The impact on production will vary regionally depending on the share of overall land privately held, population density, and proximity to vulnerable areas. Production in the Julesberg Basin in northern Colorado will be the most affected. Production in the Piceance Basin in western Colorado and the San Juan Basin in southern Colorado will also be affected, but to a lesser extent. Since the economic conditions and geographic limitations affecting oil and natural gas production are uncertain, the specific reductions in state revenue cannot be estimated.

State Expenditures

Severance tax revenue received by the state funds both general operating expenses of and specific programs in the Department of Natural Resources, including water supply project grants, low-income energy assistance, control of invasive species, and a variety of other programs. Any decrease in severance taxes will reduce the amount of funds available for these uses.

Local Government Impact

The measure will reduce property tax collections at the local level. For FY 2016-17, $469.6

million was collected from property taxes, representing 82.5 percent of all tax revenue from oil and gas development. In heavily populated counties and counties with geographically vulnerable areas, the measure is anticipated to reduce the surface land available for future oil and gas exploration and development, therefore reducing the amount of property taxes collected for local governments. The measure is also expected to decrease the amount of severance tax revenue that state government collects and shares with those local governments most directly impacted by oil and natural gas development. The measure's impact on local revenue and expenditures will depend on the overall impact on state severance tax revenue and the assessed value of oil and natural gas development in each taxing jurisdiction as a result of future prohibitions on new development. As such, the change in local revenue and expenditures cannot be estimated.

Economic Impacts

This measure constrains well location and thus potentially reduces future oil and gas development in the state, particularly in heavily populated counties. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.

Effective Date

The measure takes effect upon official declaration of the governor and applies to oil and gas development permitted on or after that date.

State and Local Government Contacts

Counties Municipalities Natural Resources Public Health and Environment

Initiative # 97

Abstract of Initiative 97: SETBACK REQUIREMENT FOR OIL AND GAS DEVELOPMENT

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of January, 2018, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State and Local Government Revenue and Expenditures. The measure is expected to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.

Economic Impacts. This measure constrains well location and thus potentially reduces future oil and gas development in the state, particularly in heavily populated counties. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.

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State and Local Government Revenue and Expenditures. The measure is ~~expected~~highly likely to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.

Economic Impacts. This measure constrains well location throughout the state except on federal lands and ~~thus potentially reduces~~is likely to reduce future oil and gas development in the state~~, particularly in heavily populated counties~~. The current 500 foot setback prohibits oil and gas development on about 18 acres surrounding a given point. The measure increases the setback to a minimum of 2,500 feet or about 450 surrounding acres. To the extent that the measure reduces development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for operators. Increasing the setback distance may preserve property values for homeowners

Exhibit 2

most affected by the setback and, to the extent less development improves health outcomes for affected residents, may increase productivity and reduce medical costs.