

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. §1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2019-
2020 #297

Petitioner: JANETTE SUSAN ROSE

v.

Respondents: GREG KISHIYAMA AND
KEITH VENABLE

and

Title Board: THERESA CONLEY; DAVID
POWELL; and JASON GELENDER

▲ COURT USE ONLY ▲

Attorneys for Petitioner
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Case No.:

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2019-2020 #297**

Pursuant to Colo. Rev. Stat. § 1-40-107(2), registered Colorado elector Janette Susan Rose (“Petitioner”) respectfully petitions this Court to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2019-2020 #297.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #297

The Title Board conducted its initial public hearing and set the title for Initiative #297 on April 1, 2020. Petitioner filed his timely motion for rehearing on April 8, 2020. The Title Board considered the motion at its April 15, 2020 hearing and, aside from making small edits to the title, denied the motion for rehearing in full.

B. Jurisdiction

Petitioner now timely seeks review by this Court of the Ballot Title Setting Board’s action pursuant to Colo. Rev. Stat. § 1-40-107(2). Petitioner also attaches to her Petition for Review certified copies of the final Proposed Initiative, the Title and Submission Clause, Fiscal Impact Statement, and the Motions for Rehearing and ruling thereon.

GROUNDS FOR APPEAL

The Title for #297 set by the Title Board violates the legal requirements imposed on the Board to comply with the single subject requirement in Colo. Const. art. V, § 1(5.5), and the clear title requirement in Colo. Rev. Stat. § 1-40-106(3)(b). The following is an advisory list of issues to be addressed in Petitioner's brief:

1. The measure does not define what "restrictions" means, and that term covers a whole range of different subjects in the Initiative, such as at least the following six subjects: (1) requirements for the inspection of natural gas appliances, (2) constraints on downstream consumer use of patented or trademarked products using natural gas; (3) compliance with antitrust laws applicable to products using natural gas; (4) collection of state or local taxes on certain materials or products; (5) obligations to meet energy efficiency requirements in building codes; and (6) compliance with state greenhouse gas emission targets.

2. The measure purports to ban laws that "inhibit consumer choice through restrictions on the installation of natural gas utilization in homes and businesses...." Additionally, the measure inhibits the choices of others, such as builders, and apartment building owners, and state and local governments, to name

just a few, whose options will be constrained by the restrictions contained in the measure.

3. If the Title Board had jurisdiction to set a title for Initiative #284, the title it set is legally flawed because the title fails to inform voters of certain central elements of Initiative #284:

(a) the measure prohibits state statutes, regulations and local governments from adopting restrictions on the installation of natural gas use in homes and businesses for cooking, hot water systems, generators, and heating systems, and also adds a catch-all provision to capture any other statute, regulation or local government that otherwise limits a consumer's ability to use or install natural gas;

(b) the measure prohibits state statutes, regulations and local governments from adopting restrictions on natural gas installation and use but specifies that it only modifies, limits and supersedes conflicting state statute or regulation and not local government laws;

(c) the title and the measure use the word "restrictions" but do not alert the voter what the measure restricts in the context natural gas installation and use; and

(d) the title makes no mention of the measure's applicability to home rule jurisdictions.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, the Court determine that the Title Board lacked jurisdiction to set titles for the Proposed Initiative and order the Title Board to return this measure to the Proponents, in light of the initiative's failure to comply with the single subject requirement in the Colorado Constitution. In the alternative, Petitioner asks the Court to direct the Title Board to correct the title to address the deficiencies outlined in the Petitioner's Petition and briefs.

Respectfully submitted this 22nd day of April 2020.

TIERNEY LAWRENCE LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April 2020 a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #297** was filed and served via the Colorado Courts E-Filing System to the following:

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s/Martha M. Tierney

In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

DATE FILED: April 22, 2020 7:15 PM



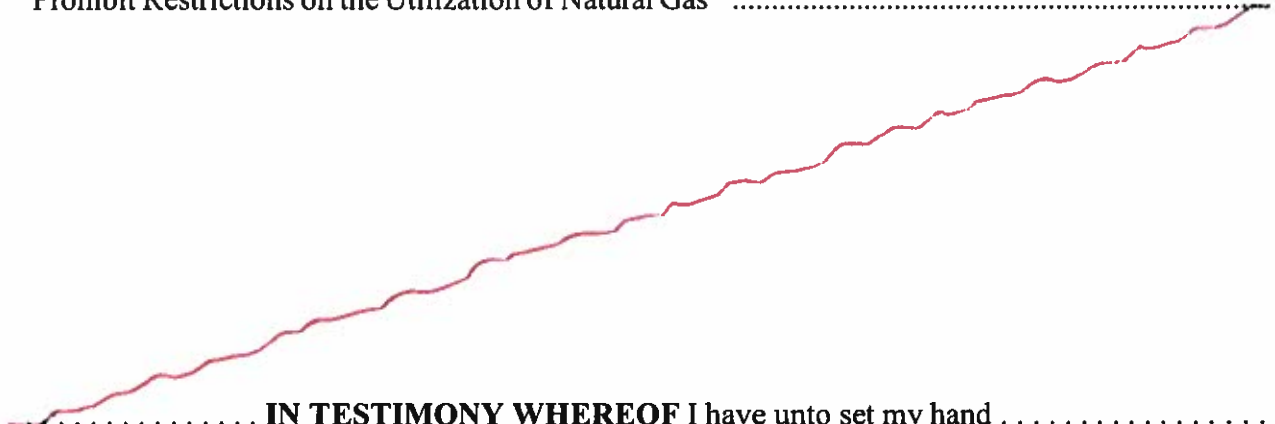
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #297 'Prohibit Restrictions on the Utilization of Natural Gas'".....



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 16th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



RECEIVED

By Steven Ward at 2:42 pm, Mar 20, 2020

Initiative #297, Prohibit Restrictions on the Utilization of Natural Gas, Final

Be it enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, article XVIII, add section 17 as follows:

NO STATE STATUTE, REGULATION, MUNICIPALITY, COUNTY OR LOCAL GOVERNMENT SHALL INHIBIT CONSUMER CHOICE THROUGH RESTRICTIONS ON THE INSTALLATION OF NATURAL GAS UTILIZATION IN HOMES AND BUSINESSES FOR-COOKING, HOT WATER SYSTEMS, GENERATORS AND HEATING SYSTEMS IN NEW CONSTRUCTION OR RENOVATION OR OTHERWISE LIMIT A CONSUMER'S ABILITY TO USE OR INSTALL NATURAL GAS, EXCEPT AS REQUIRED FOR SAFETY PURPOSES. THIS SECTION SHALL MODIFY, LIMIT AND SUPERSEDE ANY CONFLICTING STATE STATUTE OR REGULATION.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #297¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes?

Hearing April 1, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 11:29 a.m.

¹ Unofficially captioned “**Prohibit Restrictions on the Utilization of Natural Gas**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2019-2020 #297**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #297

On behalf of Janette Susan Rose, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2019-2020 #297 (“Initiative #297”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 1, 2020 HEARING

On April 1, 2020, the Title Board set the following ballot title and submission clause for Initiative #297:

Shall there be an amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes?

II. GROUND FOR REHEARING

A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Single Subject Requirement.

Pursuant to Colo. Const. art. V, §1(5.5),

no measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title 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.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016). Second – and as pertinent here – the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “If an initiative

advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Initiative #297 contains numerous separate subjects in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. While the initiative is purportedly limited to “restricting the installation and use of natural gas,” in effect it also does the following:

The measure does not define what “restrictions” means, and that term covers a whole range of different subjects in the Initiative, such as, just by way of example at least the following six subjects: (1) requirements for the inspection of natural gas appliances, (2) constraints on downstream consumer use of patented or trademarked products using natural gas; (3) compliance with antitrust laws applicable to products using natural gas; (4) collection of state or local taxes on certain materials or products; (5) obligations to meet energy efficiency requirements in building codes; and (6) compliance with state greenhouse gas emission targets.

Additionally, while the initiative purports to ban laws that “inhibit consumer choice through restrictions on the installation of natural gas utilization in homes and businesses...” it will primarily drive the choices of others, such as builders, and apartment building owners, and state and local governments, to name just a few, who may be incentivized to use natural gas instead of more energy efficient energy sources. That will inhibit consumer choice for most consumers who buy or lease a home or business with the heating system and appliances already installed.

Each of these purposes is couched in a measure that at first read would appear to be expanding consumer choice about natural gas use – when in fact very much the opposite is true. This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively misled by the language of the measure. *See, e.g., Johnson, supra; In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *Id.* While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #297 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiatives' true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and

fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

The Title for Initiative #297 does not apprise voters that (1) the measure lists cooking, hot water system, generators and heating systems as among the types of natural gas use to be restricted; (2) the measure also adds a catch-all provision to capture any other statute, regulation or local government that otherwise limits a consumer's ability to use or install natural gas; (3) the measure prohibits state statutes, regulations and local governments from restrictions on natural gas use but specifies that it only modifies, limits and supersedes conflicting state statute or regulation and not local government laws; and (4) the title makes no mention of the measure's applicability to home rule jurisdictions.

Here, the title for Initiative #297 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b); *see also In re Proposed Initiative on "Obscenity,"* 877 P.2d at 850-51. As a result, the title for Initiative #297 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Janette Susan Rose requests a rehearing of the Title Board for Initiative 2019-2020 #297, because the initiative contains multiple subjects, the title is unclear and misleading to voters, and it fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 7th day of April 2020.

TIERNEY LAWRENCE LLC

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ATTORNEYS FOR OBJECTOR
JANETTE SUSAN ROSE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of April, 2020, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #297** was filed and served via email or U.S. mail, postage prepaid, to the following:

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Attorneys for Proponents

/s/ Martha M. Tierney

RECEIVED

By Steven Ward at 2:58 pm, Apr 08, 2020

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #297

MOTION FOR REHEARING

On behalf of proponents Greg Kishiyama and Ned Southwick, the undersigned counsel hereby submits this Motion for Rehearing pursuant to C.R.S. 1-40-107 (1)(a)(I). As grounds therefore proponents state the following:

A. BACKGROUND

Initiative #297 is an amendment to the Colorado Constitution. The measure is limited in scope and the intent of the proposed law is clearly stated to prohibit the inhibition of consumer choice through restrictions or other limitations on natural gas installation for cooking, hot water systems, generator and heating systems. The measure, in full, states:

NO STATE STATUTE, REGULATION, MUNICIPALITY, COUNTY OR LOCAL GOVERNMENT SHALL INHIBIT CONSUMER CHOICE THROUGH RESTRICTIONS ON THE INSTALLATION OF NATURAL GAS UTILIZATION IN HOMES AND BUSINESSES FOR COOKING, HOT WATER SYSTEMS, GENERATORS AND HEATING SYSTEMS IN NEW CONSTRUCTION OR RENOVATION OR OTHERWISE LIMIT A CONSUMER'S ABILITY TO USE OR INSTALL NATURAL GAS, EXCEPT AS REQUIRED FOR SAFETY PURPOSES. THIS SECTION SHALL MODIFY, LIMIT AND SUPERSEDE ANY CONFLICTING STATE STATUTE OR REGULATION.

On April 1, 2020 the Title Board met and fixed the following title:

An amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes.

B. THE TITLE DOES NOT FAIRLY EXPRESS THE TRUE MEANING AND INTENT OF THE AMENDMENT

1. The Title Board erred in omitting the measure's limiting language.

The scope of the measure is limited to installation of natural gas for cooking, hot water systems, generators and heating systems. The amendment must be read and its language interpreted in its context. *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 62, 1998, 961 P.2d 1077.*

The board declined to interpret the measure's language as limiting instead relying on rules of statutory construction related to nonexclusive lists. Statutes containing the word

“including” before listing examples are properly interpreted as nonexclusive. Because the General Assembly typically uses “include” as a word of extension or enlargement, listing examples in a statutory definition does not restrict the term's meaning. *S. Ute Indian Tribe v. King Consol. Ditch Co.*, 250 P.3d 1226, 1233 n. 4 (Colo.2011); *see also Lyman v. Town of Bow Mar*, 188 Colo. 216, 222, 533 P.2d 1129, 1133 (1975) (stating that the word “ ‘include’ ” in a statute ordinarily signifies extension or enlargement, and it is not synonymous with the word “ ‘mean’ ”).

This is not the case in this measure. Here, “cooking, hot water systems, generators and heating systems” is preceded by “for”, not “including”. The intent, as stated at review and comment and before the Title Board, is to limit the operation of the statute to these particular uses. The list is exhaustive as reflected in the text of the measure. Further, the limitation is central to the measure and must be included in the title.

Not only is the limitation central to the measure, it also assists voters in an overall understanding of the term natural gas. Voters not familiar with the differences between natural gas, propane, gasoline and oil will better understand what natural gas is in the context of its ordinary usage. This problem was highlighted in the review and comment memo question #4, “The proposed initiative covers natural gas, but not oil. May the state and local governments inhibit consumer choice regarding oil, and if so, why?” The proponents affirmed that under the measure the state may regulate oil. The “why” sounds simple—because natural gas is not oil. But these differences may not be understood by voters without further information.

The most efficient way to better advise voters while covering the central features of the measure is to include the limitation and usage language in the ballot title.

2. *The Title Board erred in failing to include language advising voters of the intent of the measure.*

A ballot title must correctly and fairly express the true intent and meaning of the proposed measure. *In re Second Initiated Constitutional Amendment*, 200 Colo. 141, 613 P2d 867 (1980). The current ballot title does not inform voters of the intent of the measure. As stated in the measure itself, the intent is to allow consumer choice. The current title makes no mention of consumer choice and as discussed above does not even list the types of consumer uses covered by the measure.

3. *The Title Board erred in failing to include language related to other limitations on consumer use of natural gas.*

The title only mentions restrictions on natural gas but makes no mention of other limitations. As discussed at the hearing, other limitations could include higher license fees or practices that artificially inflate the cost of natural gas installation. These practices go beyond an ordinary understanding of the term “restriction”. Because this is a central feature of the measure it must be described in the title.

Wherefore the Proponents request that this Motion for Rehearing be granted, and rehearing set pursuant to C.R.S. 1-40-107(1)

Submitted this 8thth day of April 2020.

MAVEN LAW GROUP

/s/ Suzanne Staiert

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Ballot Title Setting Board

Proposed Initiative 2019-2020 #297¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes, including restrictions on the installation and use of natural gas in homes and businesses for cooking, hot water systems, generators, and heating systems.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes, including restrictions on the installation and use of natural gas in homes and businesses for cooking, hot water systems, generators, and heating systems?

Hearing April 1, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 11:29 a.m.

Hearing April 15, 2020:

Motion for Rehearing (proponents) granted only to the extent that the Board made changes to the titles.

Motion for Rehearing (Rose) granted only to the extent that the Board made changes to the titles.

Hearing adjourned 11:00 a.m.

¹ Unofficially captioned “**Prohibit Restrictions on the Utilization of Natural Gas**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative # 297

INITIAL FISCAL IMPACT STATEMENT

Date: March 31, 2020

Fiscal Analyst: Max Nardo (303-866-4776)

LCS TITLE: PROHIBIT RESTRICTIONS ON THE UTILIZATION OF NATURAL GAS

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure establishes in the state constitution that no state law or local government may restrict the installation of natural gas utilization in homes and businesses for cooking, hot water systems, generators, and heating systems in new construction or renovation, or otherwise limit the use or installation of natural gas, except for safety purposes. The measure supersedes any conflicting statute or regulation.

State Revenue and Expenditures

The measure concerns appliances and equipment that can be installed in homes and businesses, and precludes government from prohibiting certain infrastructure in future construction and renovations. This is not anticipated to impact state revenue or expenditures.

Local Government

Local government building codes and ordinances are required to be consistent with the measure. Updating these may entail workload and expenditures for local governments, and fee revenue may be affected for any permitting that is superseded by the measure.

Economic Impact

The measure is not expected to have an immediate impact as no current state laws are expected to be impacted by the measure. This measure may allow for the sale of certain goods or services that would not otherwise be available. These sales would likely come at the cost of other consumer activity.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Initiative # 297

Public Health and Environment
Municipalities

Natural Resources
Counties

Local Affairs

Abstract of Initiative 297: PROHIBIT RESTRICTIONS ON THE UTILIZATION OF NATURAL GAS

The abstract includes estimates of the fiscal impact of the proposed 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.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of March 31, 2020, identifies the following impacts:

State Revenue and Expenditures. The measure concerns appliances and equipment that can be installed in homes and businesses, and precludes government from prohibiting certain infrastructure in future construction and renovations. This is not anticipated to impact state revenue or expenditures.

Local Government. Local government building codes and ordinances are required to be consistent with the measure. Updating these may entail workload and expenditures for local governments, and fee revenue may be affected for any permitting that is superseded by the measure.

Economic Impact. The measure is not expected to have an immediate impact as no current state laws are expected to be impacted by the measure. This measure may allow for the sale of certain goods or services that would not otherwise be available. These sales would likely come at the cost of other consumer activity.