

<b>COLORADO SUPREME COURT</b> 2 East 14th Avenue, Denver, Colorado 80203	
Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
<b>Petitioners:</b> Diane Schwenke and David Davia  v. <b>Respondent:</b> Tim Howard and <b>Title Board:</b> Theresa Conley, David Powell, and Jason Gelender	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Petitioners:</b> Sarah M. Mercer (#39367) BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202 Phone: 303.223.1100 Email: smercer@bhfs.com  Gwendolyn A. Benevento (#34190) MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, Colorado 80202 Phone: 303.218.7150 Email: gbenevento@mavenlawgroup.com	Case No.:
<b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019- 2020 #307 (“Establish the Independent Oil and Gas Board”)</b>	

Diane Schwenke and David Davia (“Petitioners”), designated representatives of the proponents of Proposed Initiative 2019-2020 #307 (the “Proposed Initiative”), through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Ballot Title Setting Board (“Title Board”) with respect to its decision to deny setting of a title for the Proposed Initiative on the grounds that the Proposed Initiative does not contain a single subject.

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative**

Petitioners are the designated representatives of the proponents of the Proposed Initiative. Petitioners submitted their Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to C.R.S. § 1-40-106 on April 3, 2020.

The Title Board held a hearing on April 15, 2020, where it determined that the Proposed Initiative contained a single subject as

required by Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 and set a title. On April 22, 2020, a Motion for Rehearing was filed stating that the Proposed Initiative does not contain a single subject, and that its title was incomplete and misleading in contravention of C.R.S. § 1-40-106(3)(b). Title Board held a rehearing on April 23, 2020, at which time it determined the Proposed Initiative contained more than a single subject and, therefore, denied the setting of a title for lack of jurisdiction and granted the Motion for Rehearing.

## **B. Jurisdiction**

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme Court pursuant to C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of the final petition with the titles and submission clause, the abstract, the determination of whether the petition repeals in whole or in part a constitutional provision, and the motion for rehearing and of the ruling thereon.

## **GROUNDNS FOR REVIEW**

Petitioners believe that the Title Board erred in granting the Motion for Rehearing, and believe that the Proposed Initiative contains a single subject in compliance with Colo. Const. art. V, §1(5.5) and C.R.S. § 1-40-106.5 and that the title set by the Title Board is in compliance with C.R.S. § 1-40-106(3)(b).

## **PRAYER FOR RELIEF**

Petitioners respectfully request that, after consideration of the parties' briefs, this Court reverse the determination of the Title Board with direction to set a ballot title and submission clause.

Dated: April 30, 2020

Respectfully submitted,

*s/Sarah M. Mercer*

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Sarah M. Mercer (#39367)

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

*s/Gwendolyn A. Benevento*

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Gwendolyn A. Benevento (#34190)

MAVEN LAW GROUP, LLP

*Attorneys for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2020, I electronically filed a true and correct copy of this **Petition** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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\_\_\_\_\_  
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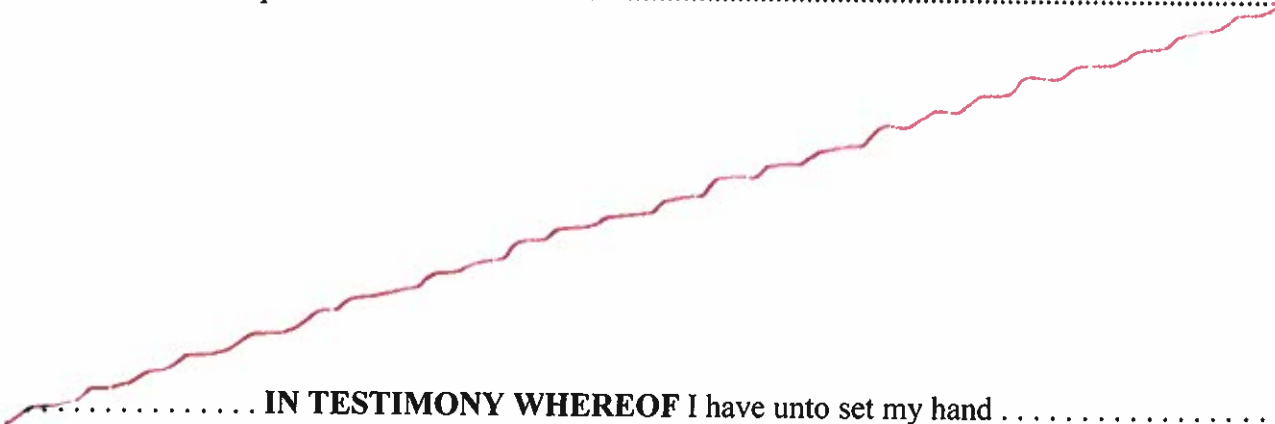


# STATE OF COLORADO

## 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, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #307 'Establish the Independent Oil and Gas Board'".....



..... **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 27<sup>th</sup> day of April, 2020.

*Jena Griswold*

SECRETARY OF STATE



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

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

**Section 17. Colorado independent oil and gas board. (1) Declaration of the people.** THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) OIL AND GAS DEVELOPMENT SHOULD BE RIGOROUSLY AND COMPREHENSIVELY REGULATED BY AN INDEPENDENT BOARD, AS FAR REMOVED FROM PARTISAN, POLITICAL, AND INTEREST GROUP PRESSURE AS IS PRACTICABLE, IN A MANNER THAT PROTECTS THE PUBLIC HEALTH, SAFETY, AND WELFARE OF CITIZENS IN BALANCE WITH THE RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES;

(b) OIL AND GAS REGULATION ATTAINED THROUGH OVERLY POLITICAL PROCESSES LEADS TO IRRATIONAL AND ARBITRARY SWINGS IN POLICY THAT NEITHER PROTECT PUBLIC HEALTH NOR PROMOTE REGULATORY CERTAINTY FOR PROPERTY OWNERS, COMMUNITIES, OR OPERATORS. THE RESPONSIBILITY TO REGULATE OIL AND GAS DEVELOPMENT SHOULD BE REMOVED FROM THE GOVERNOR, THE GOVERNOR'S POLITICAL APPOINTEES, AND THE LEGISLATURE, AND TRANSFERRED TO AN INDEPENDENT OIL AND GAS BOARD THAT WILL BALANCE THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS WITH RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES THROUGH THE ISSUANCE AND ENFORCEMENT OF RULES AND OTHER DECISIONS AND ACTIONS THAT ARE NECESSARY, FEASIBLE, AND REASONABLE;

(c) THE INDEPENDENT OIL AND GAS BOARD SHOULD CONSIST OF MEMBERS WITH EXPERTISE IN APPLICABLE FIELDS OF SCIENCE, ENGINEERING, ENVIRONMENTAL PROTECTION, AND NATURAL RESOURCE MANAGEMENT, SELECTED THROUGH PROCESSES WITH CHECKS AND BALANCES THAT WOULD PREVENT ANY ONE OR MORE PERSON, POLITICAL PARTY, OR INTEREST GROUP FROM EXERTING CONTROL OR UNDUE INFLUENCE OVER THE DECISIONS OF THE INDEPENDENT BOARD. BOARD MEMBERS SHOULD BE SELECTED THROUGH A MERIT-BASED, FAIR, AND NEUTRAL PROCESS THAT AVOIDS APPOINTMENT OF APPLICANTS WHO ARE BIASED OR UNQUALIFIED OR WHO HAVE A CONFLICT OF INTEREST, INSTEAD ELEVATING THE VALUES OF SOUND SCIENCE, ENGINEERING PRINCIPLES, AND COLLABORATIVE DECISION-MAKING THAT PRIORITIZE BALANCED AND REASONABLE REGULATORY ACTION;

(d) THE INDEPENDENT BOARD SHALL ESTABLISH RULES AND MAKE DECISIONS THROUGH THE APPLICATION OF BEST AVAILABLE SCIENCE AND ENGINEERING PRINCIPLES AND CONSIDERATION OF LOCAL INPUT, AND SHALL SEEK TO RESOLVE CONFLICTING FACTORS AND VALUES IN A BALANCED, REASONABLE AND JUDICIOUS MANNER;

(e) STATE OIL AND GAS REGULATORS SHOULD HAVE COMPREHENSIVE AUTHORITY TO MONITOR AND CONSISTENTLY ENFORCE THE STRINGENT DEVELOPMENT OF LAWS AND RULES; AND

(f) OIL AND GAS DEVELOPMENT POLICY AND RELATED HEALTH AND SAFETY ISSUES ARE COMPLEX AND REQUIRE PROFESSIONAL EXPERTISE AND IMPARTIAL DECISION-MAKING, AND, TO THAT END, THE STATE'S OIL AND GAS REGULATORS SHOULD BE EMPOWERED TO ACT IN A PROFESSIONAL AND INDEPENDENT MANNER THAT IS FREE FROM PARTISAN POLITICS, SO THAT NO ONE OR MORE



Proposed Initiative #307 Final

POLITICAL PARTY, SPECIAL INTEREST GROUP, OR SINGLE POLITICIAN HAS CONTROL OR UNDUE INFLUENCE.

(2) THERE IS HEREBY CREATED THE COLORADO INDEPENDENT OIL AND GAS BOARD.

(3)(a) EFFECTIVE JULY 1, 2021, THE INDEPENDENT BOARD SHALL CONSIST OF NINE MEMBERS, AND EACH SHALL HAVE THE FOLLOWING MINIMUM QUALIFICATIONS:

(I) HAS BEEN UNAFFILIATED WITH ANY POLITICAL PARTY OR HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY FOR A CONSECUTIVE PERIOD OF NO LESS THAN FIVE YEARS AT THE TIME OF THE APPLICATION;

(II) HAS AT LEAST TEN YEARS OF PROFESSIONAL EXPERIENCE RELEVANT TO THE INDEPENDENT BOARD'S ACTIVITIES AND JURISDICTION, INCLUDING EXPERTISE IN PUBLIC HEALTH, ENVIRONMENTAL PROTECTION, WILDLIFE PROTECTION, OR LAND USE PLANNING OR SUBSTANTIAL ENGINEERING EXPERIENCE IN THE OIL AND GAS INDUSTRY; AND

(III) HAS A PROFESSIONAL BACKGROUND DEMONSTRATING AN ABILITY TO CONTRIBUTE TO THE INDEPENDENT BOARD'S BODY OF EXPERTISE THAT WILL AID THE INDEPENDENT BOARD IN MAKING SOUND, IMPARTIAL, FACT-BASED DECISIONS RELATED TO SAFE AND RESPONSIBLE OIL AND GAS DEVELOPMENT.

(b) NO PERSON MAY BE APPOINTED TO SERVE ON THE INDEPENDENT BOARD OR HOLD THE OFFICE OF BOARD MEMBER IF THE PERSON HAS A CONFLICT OF INTEREST WITH OIL AND GAS DEVELOPMENT IN COLORADO. EXAMPLES OF CONFLICTS OF INTEREST INCLUDE BEING REGISTERED AS A LOBBYIST AT THE LOCAL OR STATE LEVELS WITHIN THE PRIOR THREE YEARS, SERVING IN THE GENERAL ASSEMBLY WITHIN THE PRIOR THREE YEARS, SERVING AS A PAID POLITICAL PARTY EMPLOYEE WITHIN THE PRIOR THREE YEARS, OR SERVING IN AN OFFICIAL CAPACITY WITH AN ENTITY THAT EDUCATES OR ADVOCATES FOR OR AGAINST OIL AND GAS ACTIVITY WITHIN THE PRIOR THREE YEARS. THIS SUBSECTION (3)(b) SHALL BE CONSTRUED REASONABLY WITH THE OBJECTIVE OF DISQUALIFYING FROM THE INDEPENDENT BOARD ANY PERSON WHO MIGHT HAVE AN IMMEDIATE CONFLICT OF INTEREST OR WHO MAY NOT BE ABLE TO MAKE BALANCED DECISIONS ABOUT OIL AND GAS REGULATION IN COLORADO. A LOCAL GOVERNMENT OFFICIAL OR PERSON WHO HAS WORKED WITH OR FOR AN ENERGY OR ENVIRONMENTAL ENTITY NEED NOT BE DISQUALIFIED IF THE PERSON'S EXPERIENCE SHOWS SUBJECT MATTER KNOWLEDGE COUPLED WITH AN ABILITY TO RENDER INFORMED, THOROUGH, AND BALANCED DECISION-MAKING.

(4)(a)(I) AFTER HOLDING ONE OR MORE PUBLIC HEARINGS, NONPARTISAN STAFF SHALL PREPARE AN APPLICATION FORM THAT WILL FACILITATE THE EVALUATION OF AN APPLICANT'S EXPERIENCE AND QUALIFICATIONS. NONPARTISAN STAFF SHALL MAKE SUCH APPLICATION AVAILABLE ON THE GENERAL ASSEMBLY'S WEBSITE OR COMPARABLE MEANS OF COMMUNICATING WITH THE PUBLIC. THE APPLICATION SHALL BE PREPARED BY FEBRUARY 1, 2021. AFTER JULY 1, 2021, THE DIRECTOR OF THE INDEPENDENT BOARD MAY AMEND THE APPLICATION AT ANY TIME FOR VACANCY APPOINTMENTS AS THE DIRECTOR DEEMS APPROPRIATE.

Proposed Initiative #307 Final

(II) TO REQUEST APPLICATIONS FOR THE INITIAL APPOINTMENT OF MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021, NONPARTISAN STAFF SHALL POST NOTICE BY FEBRUARY 1, 2021, ON THE GENERAL ASSEMBLY'S WEBSITE OR COMPARABLE MEANS OF COMMUNICATING WITH THE PUBLIC.

(III) TO REQUEST APPLICATIONS FOR ANY VACANCY ON THE BOARD OCCURRING AT THE END OF A TERM OR OTHERWISE, THE DIRECTOR OF THE INDEPENDENT BOARD SHALL POST NOTICE OF VACANCY AT LEAST NINETY DAYS PRIOR TO THE END OF A BOARD MEMBER'S TERM OR WITHIN FIVE DAYS AFTER ANY OTHER VACANCY ON THE BOARD'S WEBSITE OR COMPARABLE MEANS OF COMMUNICATING WITH THE PUBLIC.

(b) THE APPLICATION FORM MUST CLEARLY STATE THE QUALIFICATIONS REQUIRED OF POTENTIAL APPOINTEES. INFORMATION REQUIRED OF APPLICANTS MUST INCLUDE, BUT IS NOT NECESSARILY LIMITED TO, PROFESSIONAL BACKGROUND, PARTY AFFILIATION, A DESCRIPTION OF PAST POLITICAL ACTIVITY, A LIST OF ALL POLITICAL AND CIVIC ORGANIZATIONS TO WHICH THE APPLICANT HAS BELONGED WITHIN THE PREVIOUS FIVE YEARS, AND WHETHER THE APPLICANT MEETS THE QUALIFICATIONS STATED IN SUBSECTION (3) OF THIS SECTION. IN ADDITION, THE APPLICATION FORM MUST REQUIRE THE APPLICANTS TO EXPLAIN WHY THEY WANT TO SERVE ON THE BOARD AND THE APPLICATION MUST AFFORD THE APPLICANTS AN OPPORTUNITY TO MAKE A STATEMENT ABOUT HOW THEY WILL PROMOTE CONSENSUS AMONG MEMBERS IF APPOINTED TO THE BOARD. APPLICANTS MAY CHOOSE TO INCLUDE UP TO FOUR LETTERS OF RECOMMENDATION WITH THEIR APPLICATION.

(c) FOR PURPOSES OF THIS SECTION, "NONPARTISAN STAFF" SHALL MEAN THE STAFF OF THE GENERAL ASSEMBLY'S LEGISLATIVE COUNCIL AND OFFICE OF LEGISLATIVE LEGAL SERVICES, OR THEIR SUCCESSOR OFFICES, WHO ARE ASSIGNED TO ASSIST THE BOARD. THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL AND THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES, OR THE DIRECTORS OF SUCCESSOR NONPARTISAN OFFICES OF THE GENERAL ASSEMBLY, SHALL APPOINT STAFF FROM THEIR RESPECTIVE OFFICES AS NEEDED TO ASSIST THE BOARD AND THE PANEL OF JUDGES AS DESCRIBED IN THIS SECTION.

(5)(a) THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT SHALL DESIGNATE A PANEL TO REVIEW APPLICATIONS FOR THE INITIAL APPOINTMENT OF MEMBERS AND SHALL DESIGNATE A PANEL AS NEEDED TO FILL ANY VACANCY. THE PANEL MUST CONSIST OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS, APPOINTED SEQUENTIALLY STARTING WITH THE MOST RECENT JUSTICE OR JUDGE TO RETIRE WHO HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY OR UNAFFILIATED WITH ANY POLITICAL PARTY FOR THE TWO YEARS PRIOR TO APPOINTMENT; EXCEPT THAT NO APPOINTEE, WITHIN TWO YEARS PRIOR TO APPOINTMENT, SHALL HAVE BEEN AFFILIATED WITH THE SAME POLITICAL PARTY AS A JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF ANY OF THE THREE JUSTICES OR JUDGES WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS IS UNABLE OR UNWILLING TO SERVE ON THE PANEL OR HAS BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH A POLITICAL PARTY ALREADY REPRESENTED ON THE PANEL, THEN THE CHIEF JUSTICE SHALL APPOINT THE NEXT JUSTICE OR JUDGE WHO MOST RECENTLY RETIRED FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS AND WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT

Proposed Initiative #307 Final

WITH THE SAME POLITICAL PARTY AS ANY JUSTICE OR JUDGE ALREADY APPOINTED TO THE PANEL. IF, AFTER CONSIDERING ALL JUSTICES AND JUDGES WHO HAVE RETIRED FROM THE COLORADO SUPREME COURT AND THE COLORADO COURT OF APPEALS, FEWER THAN THREE ELIGIBLE PARTICIPANTS FOR THE PANEL HAVE BEEN IDENTIFIED WHO ARE ABLE AND WILLING TO SERVE, THE CHIEF JUSTICE SHALL APPOINT THE MOST RECENTLY RETIRED DISTRICT COURT JUDGE WHO HAS NOT BEEN AFFILIATED WITHIN TWO YEARS PRIOR TO APPOINTMENT WITH THE SAME POLITICAL PARTY AS A PREVIOUS APPOINTEE TO THE PANEL AND WHO ACCEPTS SUCH APPOINTMENT.

(b) ALL DECISIONS OF THE PANEL REGARDING THE SELECTION OF APPLICANTS PURSUANT TO THIS SECTION REQUIRE THE AFFIRMATIVE APPROVAL OF ALL THREE MEMBERS OF THE PANEL.

(c) THE GENERAL ASSEMBLY SHALL PRESCRIBE BY LAW THE COMPENSATION OF MEMBERS OF THE PANEL. NONPARTISAN STAFF SHALL ASSIST THE PANEL IN CARRYING OUT ITS DUTIES.

(6) THE PROCESS FOR APPOINTING BOARD MEMBERS IS AS FOLLOWS:

(a)(I) ANY PERSON WHO SEEKS TO SERVE ON THE INDEPENDENT BOARD MUST SUBMIT A COMPLETED APPLICATION. ALL APPLICATIONS ARE PUBLIC RECORDS AND SHALL BE POSTED ON THE GENERAL ASSEMBLY'S WEBSITE OR COMPARABLE MEANS OF COMMUNICATING WITH THE PUBLIC.

(II) FOR THE INITIAL APPOINTMENT OF MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021, COMPLETED APPLICATIONS SHALL BE SUBMITTED TO NONPARTISAN STAFF AND ARE DUE BY MARCH 1, 2021.

(III) FOR ANY VACANCY ON THE BOARD OCCURRING AT THE END OF A TERM OR OTHERWISE, COMPLETED APPLICATIONS SHALL BE SUBMITTED TO THE DIRECTOR OF THE INDEPENDENT BOARD AND ARE DUE AT LEAST SIXTY DAYS PRIOR TO THE END OF A BOARD MEMBER'S TERM OR WITHIN THIRTY-FIVE DAYS AFTER ANY OTHER VACANCY.

(b)(I) FOR THE INITIAL APPOINTMENT OF MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021, THE PANEL DESIGNATED PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION SHALL BE ESTABLISHED NO LATER THAN MARCH 15, 2021.

(II) FOR ANY VACANCY ON THE BOARD OCCURRING AT THE END OF A TERM OR OTHERWISE, THE PANEL DESIGNATED PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION SHALL BE ESTABLISHED NO LATER THAN THIRTY DAYS PRIOR TO THE END OF ANY BOARD MEMBER'S TERM, OR SIXTY-FIVE DAYS AFTER ANY OTHER VACANCY.

(c)(I) AS PROVIDED IN THIS SUBSECTION (6)(c), OFFICIALS IN THIS SUBSECTION (6)(c) SHALL NOMINATE APPLICANTS THAT THEY DEEM QUALIFIED PURSUANT TO SUBSECTION (3) OF THIS SECTION AND THAT THEY BELIEVE TO BEST DEMONSTRATE RELEVANT EXPERIENCE AND SKILLS AND THE ABILITY TO BE IMPARTIAL.

(II) BY MARCH 15, 2021, FOR THE INITIAL APPOINTMENT OF MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021:

(i) THE GOVERNOR AND THE HIGHEST-RANKING STATE HOUSE OF REPRESENTATIVES OFFICER AFFILIATED WITH A DIFFERENT POLITICAL PARTY THAN THE GOVERNOR SHALL AGREE TO

Proposed Initiative #307 Final

NOMINATE FIFTEEN APPLICANTS, WHICH MUST CONSIST OF FIVE APPLICANTS AFFILIATED WITH THE STATE'S LARGEST POLITICAL PARTY, FIVE APPLICANTS AFFILIATED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY, AND FIVE APPLICANTS WHO ARE UNAFFILIATED.

(ii) THE MAJORITY LEADER OF THE STATE SENATE AND THE MINORITY LEADER OF THE STATE SENATE SHALL AGREE TO NOMINATE FIFTEEN APPLICANTS, WHICH MUST CONSIST OF FIVE APPLICANTS AFFILIATED WITH THE STATE'S LARGEST POLITICAL PARTY, FIVE APPLICANTS AFFILIATED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY, AND FIVE APPLICANTS WHO ARE UNAFFILIATED.

(III) NO LATER THAN THIRTY DAYS PRIOR TO THE END OF ANY BOARD MEMBER'S TERM, OR SIXTY-FIVE DAYS AFTER ANY OTHER VACANCY, FOR ANY VACANCY ON THE BOARD OCCURRING AT THE END OF A TERM OR OTHERWISE, THE OFFICIALS IN THIS SUBSECTION (6)(c) SHALL MAKE NOMINATIONS AS FOLLOWS:

(i) THE GOVERNOR AND THE HIGHEST-RANKING STATE HOUSE OF REPRESENTATIVES OFFICER AFFILIATED WITH A DIFFERENT POLITICAL PARTY THAN THE GOVERNOR SHALL AGREE TO NOMINATE THREE APPLICANTS WHO HAVE THE SAME POLITICAL AFFILIATION AS THE MEMBER THAT HAS CREATED OR WILL CREATE THE VACANCY.

(ii) THE MAJORITY LEADER OF THE STATE SENATE AND THE MINORITY LEADER OF THE STATE SENATE SHALL AGREE TO NOMINATE THREE APPLICANTS WHO HAVE THE SAME POLITICAL AFFILIATION AS THE MEMBER THAT HAS CREATED OR WILL CREATE THE VACANCY.

(IV) IF THERE IS AN INSUFFICIENT NUMBER OF APPLICANTS DEEMED QUALIFIED PURSUANT TO THIS SECTION FOR OFFICIALS IN THIS SUBSECTION (6)(c) TO MAKE THE NOMINATIONS REQUIRED IN THIS SUBSECTION (6)(c), THEN THE OFFICIALS MAY NOMINATE A FEWER NUMBER OF APPLICANTS THAN IS REQUIRED IN THIS SUBSECTION (6)(c).

(V) IF ANY OF THE OFFICIALS IN THIS SUBSECTION (6)(c) FAIL TO AGREE ON NOMINEES BY THE REQUIRED DATE, SUCH OFFICIALS SHALL FORFEIT THE OPPORTUNITY TO NOMINATE APPLICANTS.

(d)(I) THE PANEL SHALL APPOINT AS BOARD MEMBERS INDIVIDUALS FROM THE POOL OF NOMINEES ESTABLISHED ACCORDING TO SUBSECTION (6)(c) OF THIS SECTION; EXCEPT THAT, IF NONE OF THE OFFICIALS IN SUBSECTION (6)(c) CAN AGREE ON APPLICANTS TO NOMINATE BY THE REQUIRED DATE, THE PANEL MAY APPOINT AS A BOARD MEMBER ANY INDIVIDUAL WHO SUBMITTED AN APPLICATION. THE PANEL MAY INTERVIEW NOMINEES OR APPLICANTS BEFORE MAKING THE APPOINTMENTS.

(II) FOR THE INITIAL APPOINTMENT OF MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021, THE PANEL SHALL APPOINT NINE MEMBERS, IN SUCH ORDER AS THE PANEL DETERMINES, BY MAY 1, 2021.

(III) FOR ANY VACANCY ON THE BOARD OCCURRING AT THE END OF A TERM OR OTHERWISE, THE PANEL SHALL APPOINT ONE INDIVIDUAL TO FILL THE VACANCY NO LATER THAN FIFTEEN DAYS PRIOR TO THE END OF ANY BOARD MEMBER'S TERM, OR EIGHTY DAYS AFTER ANY OTHER VACANCY.

Proposed Initiative #307 Final

(e) THE INDEPENDENT BOARD SHALL BE COMPOSED OF THREE MEMBERS WHO ARE NOT AFFILIATED WITH ANY POLITICAL PARTY, THREE MEMBERS WHO ARE AFFILIATED WITH THE STATE'S LARGEST POLITICAL PARTY, AND THREE MEMBERS WHO ARE AFFILIATED WITH THE STATE'S SECOND LARGEST POLITICAL PARTY. THE PANEL SHALL MAKE APPOINTMENTS ACCORDINGLY.

(f) THE PANEL SHALL ONLY APPOINT AN INDIVIDUAL AS A BOARD MEMBER IF THE PERSON MEETS THE QUALIFICATIONS SET FORTH IN SUBSECTION (3) OF THIS SECTION AND DEMONSTRATES RELEVANT EXPERIENCE AND SKILLS AND THE ABILITY TO BE IMPARTIAL.

(g) IN SELECTING APPLICANTS TO APPOINT TO AN INITIAL TERM OR TO FILL A VACANCY, THE PANEL SHALL CONSIDER APPLICANTS' QUALIFICATIONS AND, TO THE EXTENT POSSIBLE, ENDEAVOR TO APPOINT BOARD MEMBERS THAT:

(I) REFLECT COLORADO'S RACIAL, ETHNIC, GENDER, AND GEOGRAPHIC DIVERSITY; AND

(II) REPRESENT A VARIETY OF RELEVANT EXPERTISE, INCLUDING BUT NOT LIMITED TO SUBSTANTIAL TRAINING OR EXPERIENCE IN PUBLIC HEALTH, ENVIRONMENTAL REGULATION, WILDLIFE PROTECTION, LAND USE PLANNING, EARTH SCIENCE, ENGINEERING, AGRICULTURAL STEWARDSHIP, WATER CONSERVATION, AND WATER RESOURCE MANAGEMENT.

(h) FOR PURPOSES OF THIS SECTION, THE STATE'S TWO LARGEST POLITICAL PARTIES SHALL BE DETERMINED BY THE NUMBER OF REGISTERED ELECTORS AFFILIATED WITH EACH POLITICAL PARTY IN THE STATE ACCORDING TO VOTER REGISTRATION DATA PUBLISHED BY THE SECRETARY OF STATE FOR THE EARLIEST DAY IN JANUARY OF YEAR OF APPOINTMENT FOR WHICH SUCH DATA IS PUBLISHED.

(7)(a) BOARD MEMBERS SHALL SERVE TERMS OF FOUR YEARS EACH; EXCEPT THAT, FOR THE INITIAL MEMBERS WITH TERMS EFFECTIVE JULY 1, 2021, THE PANEL SHALL APPOINT FOUR OF THE MEMBERS FOR INITIAL TERMS OF TWO YEARS EACH. IF A BOARD MEMBER IS APPOINTED TO FILL AN UNEXPIRED TERM, THAT MEMBER SHALL SERVE FOR THE REMAINDER OF THE UNEXPIRED TERM. MEMBERS MAY BE APPOINTED TO SERVE SUCCESSIVE TERMS BUT SHALL NOT SERVE FOR MORE THAN TEN TOTAL YEARS ON THE INDEPENDENT BOARD.

(b) A MEMBER'S POSITION ON THE INDEPENDENT BOARD WILL BE DEEMED VACANT IF THE MEMBER, HAVING BEEN APPOINTED AS A REGISTERED ELECTOR WHO IS NOT AFFILIATED WITH A POLITICAL PARTY, AFFILIATES WITH A POLITICAL PARTY DURING THE MEMBER'S TERM. A MEMBER'S POSITION ON THE INDEPENDENT BOARD WILL ALSO BE DEEMED VACANT IF THE MEMBER, HAVING BEEN AFFILIATED WITH ONE OF THE STATE'S TWO LARGEST POLITICAL PARTIES AT THE TIME OF APPOINTMENT, AFFILIATES WITH A DIFFERENT POLITICAL PARTY OR BECOMES UNAFFILIATED WITH ANY POLITICAL PARTY DURING THE MEMBER'S TERM.

(c) A MEMBER MAY BE REMOVED FOR INCOMPETENCY, NEGLECT OF DUTY, OR MALFEASANCE IN OFFICE BY THE VOTE OF A MAJORITY OF THE BOARD MEMBERS.

(8) THE MEMBERS OF THE INDEPENDENT BOARD SHALL DEVOTE THEIR ENTIRE TIME TO THE DUTIES OF THEIR OFFICES TO THE EXCLUSION OF ANY OTHER EMPLOYMENT AND ARE ENTITLED TO RECEIVE COMPENSATION EQUIVALENT TO THE COMPENSATION PAID TO A COLORADO DISTRICT COURT

JUDGE. THE BOARD MEMBERS SHALL BE EXEMPT FROM THE STATE PERSONNEL SYSTEM IN SECTION 13 OF ARTICLE XII OF THIS CONSTITUTION. EACH BOARD MEMBER, BEFORE ENTERING UPON THE DUTIES OF OFFICE, SHALL TAKE THE CONSTITUTIONAL OATH OR AFFIRMATION OF OFFICE.

(9) A MAJORITY OF THE INDEPENDENT BOARD CONSTITUTES A QUORUM FOR THE TRANSACTION OF ITS BUSINESS. THE INDEPENDENT BOARD SHALL APPOINT A CHAIR AND VICE-CHAIR OF THE INDEPENDENT BOARD WHO SHALL POSSESS SUCH QUALIFICATIONS AS MAY BE ESTABLISHED BY THE INDEPENDENT BOARD.

(10) THE INDEPENDENT BOARD SHALL APPOINT A DIRECTOR TO SERVE AS THE EXECUTIVE OFFICER OF THE INDEPENDENT BOARD. THE DIRECTOR SHALL HAVE THE QUALIFICATIONS AS MAY BE DEEMED APPROPRIATE BY THE INDEPENDENT BOARD. THE DIRECTOR SHALL BE EXEMPT FROM THE STATE PERSONNEL SYSTEM IN SECTION 13 OF ARTICLE XII OF THIS CONSTITUTION, SHALL SERVE AT THE PLEASURE OF THE INDEPENDENT BOARD, AND SHALL RECEIVE SUCH COMPENSATION AS MAY BE DETERMINED BY THE INDEPENDENT BOARD. BEFORE ENTERING UPON OFFICIAL DUTIES, THE DIRECTOR SHALL SUBSCRIBE TO AN OATH OR AFFIRMATION OF OFFICE.

(11)(a) PROFESSIONALS MUST REGULATE OIL AND GAS DEVELOPMENT BASED ON SCIENCE AND DATA AND FREE FROM PARTISAN INFLUENCES AND SPECIAL INTERESTS. THEREFORE, ALL REGULATORY POWER AND JURISDICTION OVER OIL AND GAS DEVELOPMENT ARE HEREBY VESTED IN THE COLORADO INDEPENDENT OIL AND GAS BOARD, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

(b) IN THE EXECUTION OF THE POWERS VESTED IN THE INDEPENDENT BOARD, AND IN CARRYING OUT THE PROVISIONS OF THIS SECTION, THE INDEPENDENT BOARD SHALL REGULATE AND AUTHORIZE OIL AND GAS DEVELOPMENT IN A MANNER THAT BALANCES THE PROTECTION OF THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS, THE PROTECTION OF THE ENVIRONMENT, AND RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES IN THE STATE OF COLORADO. IN SO DOING, THE INDEPENDENT BOARD SHALL ENSURE THAT ITS ACTIONS ARE FEASIBLE AND REASONABLE. THE INDEPENDENT BOARD SHALL PROTECT AND MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES, AND PROTECT AGAINST ADVERSE ENVIRONMENTAL IMPACTS ON ANY AIR, WATER, SOIL, OR BIOLOGICAL RESOURCE IN BALANCE WITH RESPONSIBLE OIL GAS AND DEVELOPMENT.

(c) THE INDEPENDENT BOARD SHALL ENSURE THAT OPPORTUNITIES FOR PUBLIC COMMENT ARE MEANINGFUL AND REASONABLE.

(d) THE INDEPENDENT BOARD SHALL ESTABLISH MINIMUM DISTANCE REQUIREMENTS FROM STRUCTURES INTENDED FOR HUMAN OCCUPANCY FOR NEW OIL AND GAS DEVELOPMENT AS A STATEWIDE STANDARD.

(e) THE INDEPENDENT BOARD SHALL SET A MINIMUM FINANCIAL ASSURANCE PER WELL FOR OPERATORS.

(f) THE INDEPENDENT BOARD SHALL ADOPT AS ITS INITIAL RULES AND POLICIES THE OIL AND GAS CONSERVATION COMMISSION RULES AND POLICIES AS THEY EXISTED ON THE EFFECTIVE DATE OF

Proposed Initiative #307 Final

THIS SECTION. THESE INITIAL RULES AND POLICIES MAY BE ADOPTED WITHOUT PRIOR NOTICE, OPPORTUNITY FOR COMMENT, HEARING, OR OTHER USUAL RULEMAKING PROCEDURES.

(g) THE FOLLOWING RULES AS THEY EXISTED ON JANUARY 1, 2020, ARE DEEMED TO COMPLY WITH SUBSECTION (11)(b) OF THIS SECTION, AND THE INDEPENDENT BOARD SHALL NOT REPEAL THESE RULES OR AMEND THESE RULES TO MAKE THEM LESS STRINGENT:

(I) OIL AND GAS CONSERVATION COMMISSION SAFETY RULES, 2 CCR 404-1, RULES 601 TO 610;

(II) OIL AND GAS CONSERVATION COMMISSION AESTHETIC AND NOISE CONTROL RULES, 2 CCR 404-1, RULES 801 TO 805;

(III) OIL AND GAS CONSERVATION COMMISSION SPILL REPORTING RULES, 2 CCR 404-1, RULES 901 TO 912;

(IV) OIL AND GAS CONSERVATION COMMISSION RECLAMATION RULES, 2 CCR 404-1, RULES 1001 TO 1004;

(V) OIL AND GAS CONSERVATION COMMISSION FLOWLINE RULES, 2 CCR 404-1, RULES 1101 TO 1105;

(VI) AIR QUALITY CONTROL COMMISSION AIR EMISSION REDUCTION RULES, 5 CCR 1001-9, REG. NO. 7, PART D § II.C; AND

(VII) AIR QUALITY CONTROL COMMISSION AIR EMISSION INVENTORY RULES, 5 CCR 1001-9, REG. NO. 7, PART D § V.

(12) THE INDEPENDENT BOARD'S AUTHORITY SUPERSEDES PRIOR GRANTS OF AUTHORITY CONCERNING OIL AND GAS DEVELOPMENT IN THE STATE, EXCEPT AS PROVIDED IN SECTION 34-60-105(4), COLORADO REVISED STATUTES, AS OF THE DATE OF ENACTMENT OF THIS SECTION; AND EXCEPT THAT, BECAUSE THE FOLLOWING AREAS OF REGULATION ARE OF SUCH IMPORTANCE IN BALANCING THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS WITH RESPONSIBLE DEVELOPMENT THAT REVIEW AND OVERSIGHT BY MORE THAN ONE AUTHORITY IS WARRANTED, THE FOLLOWING ENTITIES OR ANY SUCCESSOR ENTITIES HAVE THE AUTHORITY TO ADOPT RULES PURSUANT TO THE FOLLOWING STATUTES OR SUCCESSOR STATUTES, BUT SUCH RULES SHALL ONLY BECOME EFFECTIVE UPON APPROVAL OF THE INDEPENDENT BOARD:

(a) THE AIR QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 7 OF TITLE 25, COLORADO REVISED STATUTES, THE EMISSION OF AIR POLLUTANTS FROM OIL AND GAS OPERATIONS;

(b) THE WATER QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 8 OF TITLE 25, COLORADO REVISED STATUTES, THE DISCHARGE OF WATER POLLUTANTS FROM OIL AND GAS OPERATIONS;

(c) THE STATE BOARD OF HEALTH FOR RULES REGARDING SECTION 25-11-104, COLORADO REVISED STATUTES, THE DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIALS AND TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS FROM OIL AND GAS OPERATIONS; AND

Proposed Initiative #307 Final

(d) THE SOLID AND HAZARDOUS WASTE COMMISSION FOR RULES REGARDING:

(I) ARTICLE 15 OF TITLE 25, COLORADO REVISED STATUTES, THE DISPOSAL OF HAZARDOUS WASTE FROM OIL AND GAS OPERATIONS; OR

(II) SECTION 30-20-109(1.5), COLORADO REVISED STATUTES, THE DISPOSAL OF EXPLORATION AND PRODUCTION WASTE FROM OIL AND GAS OPERATIONS.

(13)(a) NOTHING IN THIS SECTION ALTERS, IMPAIRS, OR NEGATES THE AUTHORITY OF A LOCAL GOVERNMENT TO REGULATE OIL AND GAS DEVELOPMENT PURSUANT TO ARTICLE 65.1 OF TITLE 24 AND SECTIONS 29-20-104 AND 34-60-131, COLORADO REVISED STATUTES, EXCEPT AS PROVIDED IN SUBSECTIONS (13)(b) AND (13)(c) OF THIS SECTION .

(b) A LOCAL GOVERNMENT SHALL REGULATE AND AUTHORIZE OIL AND GAS DEVELOPMENT IN A MANNER THAT BALANCES THE PROTECTION OF THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS, THE PROTECTION OF THE ENVIRONMENT, AND RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES IN THE STATE OF COLORADO. IN SO DOING, THE LOCAL GOVERNMENT SHALL ENSURE THAT ITS ACTIONS ARE FEASIBLE AND REASONABLE. THE INDEPENDENT BOARD SHALL PROTECT AND MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES, AND PROTECT AGAINST ADVERSE ENVIRONMENTAL IMPACTS ON ANY AIR, WATER, SOIL, OR BIOLOGICAL RESOURCE IN BALANCE WITH RESPONSIBLE OIL GAS AND DEVELOPMENT.

(c) EACH LOCAL GOVERNMENT WITHIN ITS RESPECTIVE JURISDICTION HAS THE AUTHORITY TO PLAN FOR AND REGULATE OIL AND GAS DEVELOPMENT BY:

(I) REQUIRING ANY NEW OIL AND NATURAL GAS DEVELOPMENT TO BE LOCATED UP TO ONE THOUSAND FEET FROM STRUCTURES INTENDED FOR HUMAN OCCUPANCY IF THE STATEWIDE MINIMUM DISTANCE REQUIREMENT ESTABLISHED PURSUANT TO SUBSECTION (11)(d) IS LESS THAN ONE THOUSAND FEET;

(II) REQUIRING NEW PERMIT HOLDERS TO CONDUCT ADDITIONAL AIR QUALITY MONITORING AROUND NEW OIL AND GAS LOCATIONS;

(III) REQUIRING NEW PERMIT HOLDERS TO ENSURE SAFETY OF PLUGGED AND ABANDONED WELLS IN AREAS WHERE NEW PRODUCTION HAS OCCURRED;

(IV) REGULATING FLOW LINES; AND

(V) REQUIRING ENHANCED HEALTH AND SAFETY TRAINING FOR WORKERS IN THE OIL AND GAS INDUSTRY.

(14) THE GENERAL ASSEMBLY SHALL APPROPRIATE REASONABLE AND NECESSARY FUNDS TO COVER STAFF AND ADMINISTRATIVE EXPENSES TO ALLOW THE INDEPENDENT BOARD TO CARRY OUT ITS DUTIES PURSUANT TO THIS SECTION.

**SECTION 2.** In the constitution of the state of Colorado, section 13 of article XII, **amend** (2)(a)(I) as follows:



**Section 13. State personnel system – merit system.**

(2)(a) The state personnel system shall comprise all appointive public officers and employees of the state, except the following:

(I) Members of the public utilities commission, the industrial commission of Colorado, the state board of land commissioners, the Colorado tax commission, the state parole board, ~~and~~ the state personnel board, AND THE COLORADO INDEPENDENT OIL AND GAS BOARD;

**SECTION 3.** In Colorado Revised Statutes, 34-60-103, **amend** (2) as follows:

**34-60-103. Definitions.**

As used in this article 60, unless the context otherwise requires:

(2) ~~"Commission" means the oil and gas conservation commission~~ "BOARD" AND "INDEPENDENT BOARD" MEAN THE COLORADO INDEPENDENT OIL AND GAS BOARD ESTABLISHED IN SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

**SECTION 4.** In Colorado Revised Statutes, **repeal** 34-60-104.3.

**SECTION 5.** In Colorado Revised Statutes, 34-60-104.5, **repeal** (1) as follows:

**34-60-104.5. Director of independent board – duties.** (1) ~~Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint a director of the commission who shall possess such qualifications as may be established by the executive director, the commission, and the state personnel board.~~

**SECTION 6.** In Colorado Revised Statutes, **add** 34-60-104.7 as follows:

**34-60-104.7. Independent board transfer.**

(1)(a) ON AND AFTER JULY 1, 2021, THE OIL AND GAS CONSERVATION COMMISSION'S POWERS, DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 3** TRANSFER TO THE COLORADO INDEPENDENT OIL AND GAS BOARD, PURSUANT TO THE PROVISIONS OF SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION, AND THE OIL AND GAS CONSERVATION COMMISSION IS ABOLISHED.

(b) EXCEPT FOR THE DIRECTOR, THE OFFICERS AND EMPLOYEES OF THE OIL AND GAS CONSERVATION COMMISSION WHOSE DUTIES AND FUNCTIONS CONCERNED THE DUTIES AND FUNCTIONS GRANTED TO THE INDEPENDENT BOARD SHALL BE TRANSFERRED TO THE INDEPENDENT BOARD. ANY SUCH EMPLOYEES WHO ARE CLASSIFIED EMPLOYEES IN THE STATE PERSONNEL SYSTEM SHALL RETAIN ALL RIGHTS TO THE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICES SHALL BE DEEMED TO HAVE BEEN CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND RULES.

(2) ON JULY 1, 2021, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE OIL AND GAS CONSERVATION COMMISSION PRIOR TO SAID DATE PERTAINING TO THE DUTIES AND FUNCTIONS GRANTED TO THE INDEPENDENT BOARD PURSUANT TO THIS SECTION, ARE TRANSFERRED TO THE INDEPENDENT BOARD AND BECOME THE PROPERTY THEREOF.

(3) WHENEVER THE COLORADO OIL AND GAS CONSERVATION COMMISSION IS REFERRED TO OR DESIGNATED BY A CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES AND FUNCTIONS GRANTED TO THE INDEPENDENT BOARD PURSUANT TO THIS SECTION, SUCH REFERENCE OR DESIGNATION SHALL BE DEEMED TO APPLY TO THE INDEPENDENT BOARD. ALL CONTRACTS ENTERED INTO BY THE OIL AND GAS CONSERVATION COMMISSION PRIOR TO JULY 1, 2021, IN CONNECTION WITH THE DUTIES AND FUNCTIONS GRANTED TO THE INDEPENDENT BOARD PURSUANT TO THIS SECTION ARE HEREBY VALIDATED, WITH THE INDEPENDENT BOARD SUCCEEDING TO ALL THE RIGHTS AND OBLIGATIONS OF SUCH CONTRACTS. ANY APPROPRIATIONS OF FUNDS FROM PRIOR FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED PURSUANT TO SUCH CONTRACTS ARE HEREBY TRANSFERRED AND APPROPRIATED TO THE INDEPENDENT BOARD FOR THE PAYMENT OF SUCH OBLIGATIONS.

**SECTION 7.** In Colorado Revised Statutes, 34-60-105, **repeal** (1)(b) as follows:

**34-60-105. Powers of commission.**

~~(1)(b) Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn, and that authority is unqualifiedly conferred upon the commission, as provided in this section; except that, as further specified in section 34-60-131, nothing in this article 60 alters, impairs, or negates the authority of:~~

~~(I) The air quality control commission to regulate, pursuant to article 7 of title 25, the emission of air pollutants from oil and gas operations;~~

~~(II) The water quality control commission to regulate, pursuant to article 8 of title 25, the discharge of water pollutants from oil and gas operations;~~

~~(III) The state board of health to regulate, pursuant to section 25-11-104, the disposal of naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials from oil and gas operations;~~

~~(IV) The solid and hazardous waste commission to:~~

~~(A) Regulate, pursuant to article 15 of title 25, the disposal of hazardous waste from oil and gas operations; or~~

~~(B) Regulate, pursuant to section 30-20-109(1.5), the disposal of exploration and production waste from oil and gas operations; and~~

~~(V) A local government to regulate oil and gas operations pursuant to section 29-20-104.~~

**SECTION 8.** In Colorado Revised Statutes, **amend** 34-60-131 as follows:

**34-60-131. No land use preemption.**

Local governments, THE COLORADO INDEPENDENT OIL AND GAS BOARD, and state agencies, ~~including the commission and agencies listed in section 34-60-105(1)(b)~~, AS PROVIDED IN SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION, have regulatory authority over oil and gas development, ~~including as specified in section 34-60-105(1)(b)~~. A local government's regulations may be more protective or stricter than state requirements.

**SECTION 9.** In Colorado Revised Statutes, **add** 34-60-132 as follows:

**34-60-132. Independent board ethics.**

(1) MEMBERS OF THE INDEPENDENT BOARD ARE GUARDIANS OF THE PUBLIC TRUST AND ARE SUBJECT TO ANTIBRIBERY AND ABUSE OF PUBLIC OFFICE REQUIREMENTS AS PROVIDED IN PARTS 3 AND 4 OF ARTICLE 8 OF TITLE 18.

(2) TO ENSURE TRANSPARENCY IN THE OIL AND GAS REGULATORY PROCESS:

(a) THE INDEPENDENT BOARD IS SUBJECT TO OPEN MEETINGS REQUIREMENTS AS PROVIDED IN PART 4 OF ARTICLE 6 OF TITLE 24;

(b) THE INDEPENDENT BOARD, EACH BOARD MEMBER, AND BOARD STAFF ARE SUBJECT TO OPEN RECORDS REQUIREMENTS AS PROVIDED IN PART 1 OF ARTICLE 72 OF TITLE 24; AND

(c) THE BOARD MEMBERS ARE “COVERED OFFICIALS” UNDER 24-6-301(1.7)(b) AND PART 3 OF ARTICLE 6 OF TITLE 24 SHALL APPLY.

**SECTION 10.** In Colorado Revised Statutes, 39-29-109.3, **amend** (1)(a) as follows:

**39-29-109.3. Severance tax operational fund--core reserve--grant program reserve--definitions—repeal.**

(1) For fiscal years commencing on and after July 1, 1997, the executive director of the department of natural resources shall submit with the department's budget request for each fiscal year a list and description of the programs the executive director recommends to be funded from the severance tax operational fund created in section 39-29-109(2)(b), referred to in this section as the “operational fund”. The general assembly may appropriate moneys from the total moneys available in the operational fund to fund recommended programs as follows:

(a)(I) For programs or projects within the ~~Colorado oil and gas conservation commission~~ COLORADO INDEPENDENT OIL AND GAS BOARD, up to thirty-five percent of the moneys in the operational fund for fiscal years commencing on or after ~~July 1, 2009~~ JULY 1, 2021.

(II) Moneys appropriated for programs or projects pursuant to subparagraph (I) of this paragraph (a) shall be used by the ~~Colorado oil and gas conservation commission~~ COLORADO INDEPENDENT OIL AND GAS BOARD for plugging and abandonment projects, for well-site location reclamation projects, or for regulatory and environmental programs or projects as specifically appropriated by the general assembly for use on such programs or projects; except that, if the ~~commission~~

INDEPENDENT BOARD determines that an emergency exists, the ~~commission~~ INDEPENDENT BOARD may expend any moneys received for the emergency without any further appropriation. In determining the uses of these moneys, the ~~commission~~ INDEPENDENT BOARD shall give priority to uses that reduce industry fees and mill levies.

**SECTION 11. Revisor of statutes.**

The revisor of statutes is authorized to change all references to the oil and gas conservation commission and sections 34-60-104 and 104.3, C.R.S., in the Colorado Revised Statutes to refer to the Colorado independent oil and gas board and section 17 of article XVIII of the state constitution.

**SECTION 12. Severability.**

If any provision of this initiative or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the initiative that can be given effect without the invalid provision or application, and to this end the provisions of this initiative are declared to be severable.

**SECTION 13. Effective date.**

Sections 1, 2, and 12 of this act take effect upon the proclamation of the Governor. All other sections of this act take effect on July 1, 2021.

## **Ballot Title Setting Board**

### **Proposed Initiative 2019-2020 #307<sup>1</sup>**

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

An amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the regulation of oil and gas operations, and, in connection therewith, replacing the oil and gas conservation commission with a new independent oil and gas board; specifying the appointment process for and qualifications of board members with the intent of ensuring the political independence of the board; vesting all regulatory power and jurisdiction over oil and gas development in the board except as otherwise specified; requiring the board and local governments to regulate and authorize oil and gas development in a manner that balances the protection of the public health, safety, and welfare of citizens, the protection of the environment, and the responsible development of oil and gas resources; requiring the board to establish a statewide minimum distance standard for new oil and gas development and to set a minimum financial assurance per well; prohibiting the board from repealing or making less stringent certain environmental and public safety rules; specifying a requirement that rules pertaining to oil and gas operations promulgated by certain other state rule-making entities may become effective only upon approval of the board; and granting local governments specified additional authority to plan for and regulate oil and gas development.

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 and a change to the Colorado Revised Statutes concerning the regulation of oil and gas operations, and, in connection therewith, replacing the oil and gas conservation commission with a new independent oil and gas board; specifying the appointment process for and qualifications of board members with the intent of ensuring the political independence of the board; vesting all regulatory power and jurisdiction over oil and gas development in the board except as otherwise specified; requiring the board and local governments to regulate and authorize oil and gas development in a manner that balances the protection of the public health, safety, and welfare of citizens, the protection of the environment, and the responsible development of oil and gas resources; requiring the board to establish a

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<sup>1</sup> Unofficially captioned “**Establish the Independent Oil and Gas Board**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

statewide minimum distance standard for new oil and gas development and to set a minimum financial assurance per well; prohibiting the board from repealing or making less stringent certain environmental and public safety rules; specifying a requirement that rules pertaining to oil and gas operations promulgated by certain other state rule-making entities may become effective only upon approval of the board; and granting local governments specified additional authority to plan for and regulate oil and gas development?

*Hearing April 15, 2020:*

*Single subject approved; staff draft amended; titles set.*

*The Board made one technical correction to 13(b) of the filed text.*

*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 5:37 p.m.*

**RECEIVED**

By Steven Ward at 1:24 pm, Apr 22, 2020

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR  
INITIATIVE 2019-2020 #307

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MOTION FOR REHEARING

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Tim Howard (“objector”), a registered elector of the State of Colorado, through undersigned counsel, hereby submits this Motion for Rehearing of Initiative 2019-2020 #307 pursuant to Section 1-40-107(I)(a)(I) C.R.S. As grounds therefore objector states the following:

**I. The Title Board lacks jurisdiction over Initiative #307 because it contains multiple separate and distinct subjects in violation of the Constitution’s single subject requirement.**

Initiative #307 contains multiple subjects and therefore the Title Board lacks jurisdiction to set title. Colorado law requires “that every constitutional amendment or law proposed by initiative ... be limited to a single subject, which shall be clearly expressed in its title.” C.R.S. § 1-40-106.5(1)(a); see also 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...”). A proposed initiative violates this rule if its text “relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other.” *People ex rel. Elder v. Sours*, 74 P. 167, 177 (1903); see *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d 438, 441 (Colo. 2002) (describing use of *Sours* test to analyze ballot initiatives). As such, the subject matter of an initiative must be “necessarily and properly connected” rather than “disconnected or incongruous.” *In re Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative “Pub. Rights in Waters II,”* 898 P.2d 1076, 1079 (Colo.1995). A proponent’s attempt to characterize a proposed initiative under “some overarching theme” will not save the measure if it contains separate and unconnected purposes. *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d at 442.

In this case, the proponents attempt to use an overarching theme of “concerning the regulation of oil and gas operation” to fuse together separate and unconnected purposes. The central theme of the initiative is disbanding the Colorado Oil and Gas Conservation Commission (“COGCC”) and replacing it with the Independent Oil and Gas Board. However, the following subjects are “coiled up in the folds” of the initiative that either would not have passed on their own accord or were written with the intent of misleading voters to garner support from those with diverse interests, *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 274 P.3d 562, 566 (Colo. 2012), including: (1) granting the new board veto authority over new rules promulgated by four other state agencies and creating a new rulemaking process that falls outside the state Administrative Procedures Act, (2) setting new minimum health, safety and environmental standards that all agencies must follow, and (3) limiting local government authority to regulate oil and gas regulation.

1. **Grants the new board veto authority over new rules promulgated by four other state agencies and creates a new rulemaking process that falls outside the state Administrative Procedures Act**

Initiative #307 grants the Independent Board veto authority over the rulemaking of the Air Quality Control Commission (“AQCC”), Water Quality Control Commission, Board of Health, and the Solid and Hazardous Waste Commission. This veto authority granted to the Independent Board is a separate subject. This “surreptitious provision ‘coiled up in the folds’ of a complex initiative,” *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d at 442; *see* § 1–40–106.5(1)(e)(II), is unrelated to eliminating the COGCC and replacing it with the Independent Board.

Initiative #307, at proposed Colo. Const. Art. XVIII, Sec. 17(12) states:

BECAUSE THE FOLLOWING AREAS OF REGULATION ARE OF SUCH IMPORTANCE IN BALANCING THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS WITH RESPONSIBLE DEVELOPMENT THAT REVIEW AND OVERSIGHT BY MORE THAN ONE AUTHORITY IS WARRANTED, THE FOLLOWING ENTITIES OR ANY SUCCESSOR ENTITIES HAVE THE AUTHORITY TO ADOPT RULES PURSUANT TO THE FOLLOWING STATUTES OR SUCCESSOR STATUTES, BUT SUCH RULES SHALL ONLY BECOME EFFECTIVE UPON APPROVAL OF THE INDEPENDENT BOARD:

- (a) THE AIR QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 7 OF TITLE 25, COLORADO REVISED STATUTES, THE EMISSION OF AIR POLLUTANTS FROM OIL AND GAS OPERATIONS;
- (b) THE WATER QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 8 OF TITLE 25, COLORADO REVISED STATUTES, THE DISCHARGE OF WATER POLLUTANTS FROM OIL AND GAS OPERATIONS;
- (c) THE STATE BOARD OF HEALTH FOR RULES REGARDING SECTION 25-11-104, COLORADO REVISED STATUTES, THE DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIALS AND TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS FROM OIL AND GAS OPERATIONS; AND
- (d) THE SOLID AND HAZARDOUS WASTE COMMISSION FOR RULES REGARDING:
  - (I) ARTICLE 15 OF TITLE 25, COLORADO REVISED STATUTES, THE DISPOSAL OF HAZARDOUS WASTE FROM OIL AND GAS OPERATIONS; OR
  - (II) SECTION 30-20-109(1.5), COLORADO REVISED STATUTES, THE DISPOSAL OF EXPLORATION AND PRODUCTION WASTE FROM OIL AND GAS OPERATIONS.

The initiative language does not state what form the “approval of the Independent Board” must take. Whether the Independent Board must take formal action to affirm the agencies’ rules or if it must undertake a separate independent rulemaking, the result is the same: No rule affecting oil and gas development passed by these four agencies may go into effect without the approval of the Independent Board.

As written, the Independent Board’s authority over the rulemaking of the AQCC, Water Quality Control Commission, Board of Health, and the Solid and Hazardous Waste Commission occurs despite the fact that the other state agencies have different missions and expertise. For example, the AQCC, acting on its authority pursuant to Article 7 of Title 25 of the Colorado Revised Statutes, would not be permitted to enact new oil and gas operation rules to address compliance with federal ozone standards without the explicit approval of the Independent Board. The considered judgment and expertise of the AQCC to accomplish its mission of achieving “the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards,” C.R.S. § 25-7-102(1), and its efforts to meet federal and state legislative air quality mandates are made subservient to the expertise and judgment of the Independent Board that is



charged with balancing public health safety and welfare with responsible oil and gas development.

The expertise, judgment, and missions of the Water Quality Control Commission, Board of Health, and the Solid and Hazardous Waste Commission also will be subservient to the Independent Board. The wholesale shift of authority from state agencies charged with protecting public health, air quality, drinking water quality, and radioactive and hazardous waste disposal to the Independent Board is an unlawful second subject.

Granting veto authority to one executive branch agency for rules promulgated by another executive branch agency also runs counter to the rules of all four impacted executive agencies and conflicts with the Colorado Administrative Procedures Act (“APA”). The Colorado APA only grants the General Assembly, the legislative branch, the legal authority to determine if a new or amended rule complies with statutes via the annual rule review bill, and the Governor, executive branch, has the power to veto the annual rule review bill. C.R.S. § 24-4-103 (8)(c) & (d). The Colorado APA process for adopting rules does not contemplate another agency also having to adopt the same rule.

An initiative violates the single subject rule when it proposes a shift in governmental powers that bear no necessary or proper connection to the central purpose of the initiative. *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1077 (Colo. 2010) (citing *In re No. 29*, 972 P.2d at 262–65; *In re # 64*, 960 P.2d at 1197–1200.) Granting veto authority to the new board over four other agencies within the Executive Branch is a separate subject.

2. **Sets new minimum health, safety, and environmental standards that all agencies must follow**

In subsection 11(g), the proposed initiative sets a baseline of health, safety, and environmental rules that are deemed to comply with the new mission to “REGULATE AND AUTHORIZE OIL AND GAS DEVELOPMENT IN A MANNER THAT BALANCES THE PROTECTION OF THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS, THE PROTECTION OF THE ENVIRONMENT, AND RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES IN THE STATE OF COLORADO.” This is an impermissible additional subject that will deceive voters into believing the initiative will not lead to weaker public health, safety, and environmental protections despite the fact the intent of changing the mission is to do just that. Moreover, voters would also be surprised that critically important rules for protecting public health and the environment have been omitted from the subsection, including how and where new oil and gas wells are located and how Colorado wildlife is protected (2 CCR 404-1, Rules 301-341 and 2 CCR 404-1, Rules 1201-1205).

As described above, the change to the mission statement is substantial and intends to require the balancing of public health and environmental concerns with allowing oil and gas development. The single subject requirement for ballot initiatives is meant to prevent proponents from engaging in this type of “log rolling” tactics of combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests. *In Matter of Title, Ballot Title*, 374 P.3d 460, 465 (Colo. 2016). More than one hundred pages of rules from the COGCC and AQCC about everything from tank labeling to weed control standards have been added to the constitution by reference. The addition of

hundreds of requirements to the Colorado Constitution is another subject and prevents the Title Board from having jurisdiction in this case.

### 3. **Limits local government authority to regulate oil and gas development**

The proposed initiative's elimination of a local government's ability to apply its statutory land use authority to oil and gas operations is a second subject that is unrelated to the subject of eliminating the COGCC and replacing it with an Independent Board. In Colo. Const. Art. XVIII, Sec. 17(13)(a), the proposed initiative states that subsections (13)(b) and (13)(c) "alter, impair, or negate the authority" of local governments to regulate oil and gas development pursuant to Colorado statutes at article 65.1 of title 24 and sections 29-20-104 and 34-60-131. The proposed initiative also strikes C.R.S. § 34-60-105(1)(b)(V), which says "...nothing...alters, impairs, or negates the authority of: (V) a local government to regulate oil and gas operations pursuant to section 29-20-104." The initiative limits local government authority by eliminating current laws that give local governments authority without limitation and replaces it with an enumerated list of regulatory powers in subsection (13)(c).

The construction of subsection (13)(c) specifically limits what regulatory powers are available to local governments, which results in rescinding all other local government planning for and regulating oil and gas development within its jurisdiction. Subsection (13)(c) is a limited list of activities that "each local government within its respective jurisdiction has the authority to plan for and regulate oil and gas development." The universe of activities that local governments can plan for and regulate is limited to five provisions: 1) creating a setback requirement, 2) requiring air quality monitoring at new oil and gas operations, 3) requiring safety at plugged and abandoned wells in areas of new production, 4) regulating flow lines, and 5) requiring health and safety training for oil and gas workers.

By declaring what regulatory authority a local government has over oil and gas development within its jurisdiction, everything not included in subsection (13)(c) is therefore excluded and beyond the regulation authority of the local government. In interpreting an initiative, the court will apply the general rules of statutory construction and accord the language of the measure its plain meaning. *In re Title, Ballot Title & Submission Clause, & Summary for 2005–2006 # 75*, 138 P.3d 267, 271 (Colo.2006). Under the rule of interpretation *expressio unius exclusio alterius*, the inclusion of certain items implies the exclusion of others. *Beeghly v. Mack*, 20 P.3d 610, 613 (Colo. 2001); *Cain v. People*, 327 P.3d 249, 253 (Colo. 2014). The phrase "expressio unius est exclusio alterius" (the express mention of one thing excludes all others) stands for the canon of construction that when a statute includes a list of specific items, the list is presumed to be exclusive. Therefore, the statute applies only to the listed items and not to others.

Subsection (13)(b) limits the ability of local governments to regulate oil and gas operations by requiring that they "regulate and authorize oil and gas development in a manner that balances" responsible oil and gas development with protections of public health, safety and welfare. Local governments are further required to ensure that its actions are "feasible and reasonable." The COGCC had a similar balancing requirement in its statute prior to SB19-181. In *COGCC v. Martinez*, 433 P.3d 22 (Colo. 2019), the Court addressed this exact balancing question and found it had multiple objectives. The Court determined that the legislative intent of the statute was "to

promote multiple policy objectives, including the continued development of oil and gas resources...” *COGCC v. Martinez*, 433 P.3d at 30. As discussed in *Martinez*, requiring local governments to “authorize oil and gas development in a manner that balances the protection of public health, safety, and welfare” and the environment places substantial new restrictions on local governments’ ability to protect public health, safety, welfare and the environment.

Voters would be surprised to learn that the initiative that abolishes the COGCC also severely curtails the ability of local governments to regulate oil and gas development within their jurisdictions. Reducing local government land use authority is “coiled within the folds” of this complex initiative and therefore represents a second subject. *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 274 P.3d 562, 566 (Colo. 2012).

## **II. Even if the Title Board has jurisdiction, the Ballot Title and Submission Clause is incomplete and misleading.**

Several parts of the proposed initiative are not adequately described in the title. The title and submission clause should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal. *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 328 P.3d 155, 162 (Colo. 2014). The Title Board’s language must “clearly and concisely reflect the central features of a proposed initiative.” *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d 963, 970 (Colo. 1992). To accomplish this task, the Court has required an initiative’s title to provide enough information that a voter, “whether familiar or unfamiliar with the subject matter of a particular proposal, [can] determine intelligently whether to support or oppose such a proposal.” *In re 2013–2014 #90*, 328 P.3d at 162. In addition, the title must “correctly and fairly express the true intent and meaning” of the initiative. C.R.S. §1-40-106(3)(b).

The title inadequately describes the initiative in the following ways: (1) The title is inaccurate because the initiative would remove most local government land use authority over oil and gas rather than granting “additional authority;” (2) The addition of more than 100 pages of rules by reference to the Colorado Constitution must be adequately described; (3) Certain rules can be repealed or made less stringent even though the proposed initiative implies they cannot; and (4) Recent flowline rulemaking and air emission rules may be deemed impermissible.

### **1. The title is inaccurate because the initiative would remove most local government land use authority over oil and gas rather than granting “additional authority.”**

The ballot title incorrectly states that local governments are being granted additional authority to plan for and regulate oil and gas development, when actually local government authority is severely limited by the proposed initiative.

As described above, the construction of proposed Colo. Const. Art. XVIII, Sec. 17(13)(a) & (13)(c) specifically limits what regulatory powers are available to local governments and rescinds all other current local government planning and regulating of oil and gas development within its jurisdiction. Subsection (13)(c) enumerates a limited list of activities that “each local

government within its respective jurisdiction has the authority to plan for and regulate oil and gas development.” By declaring what regulatory authority a local government has over oil and gas development within its jurisdiction, everything not included in subsection (13)(c) is therefore excluded and beyond the regulation authority of the local government.

Limiting setback distances to 1,000 feet is also a curtailment because local governments can and currently have setbacks greater than 1,000 feet. For example, Adams County and the Town of Superior have recently passed local land use regulations that provide setbacks that require oil and gas facilities to be located farther than 1,000 feet from homes and schools.

The universe of activities that local governments can plan for and regulate is therefore limited to five provisions: 1) creating a setback requirement of no greater than 1,000 feet, 2) requiring air quality monitoring at new oil and gas operations, 3) requiring safety at plugged and abandoned wells in areas of new production, 4) regulating flow lines, and 5) requiring health and safety training for oil and gas workers.

Therefore, an accurate ballot title would state the initiative is, “limiting local governments’ authority to plan for and regulate oil and gas development to the following areas:” and then list the five enumerated provisions. Language has been proposed in Exhibit A below.

**2. The addition of more than 100 pages of rules by reference to the Colorado Constitution must be adequately described.**

As discussed above, the proposed initiative adds more than 100 pages of COGCC and AQCC regulations to the Colorado Constitution by reference making it difficult or impossible for the average voter to understand the initiative and whether to support or oppose it. As written, the title states that the initiative would prohibit the Independent Board from “repealing or making less stringent certain environmental and public safety rules...” The description of “certain environmental rules and public safety rules” is not adequate to educate the voter.

The initiative states that the rules are deemed to satisfy the requirement to “balance” public health, safety, welfare and the environment with responsible development of oil and gas resources in the state of Colorado. Section 11(g) states that the “Independent Board may not repeal or amend the rules to make them less stringent.” Voters should have the ability to understand how the constitutional amendment ties the hands of both state agencies and describe the numerous rules that are now a floor for oil and gas development in the state of Colorado. This was not adequately accomplished by the ballot title and will lead to voter surprise.

**3. Certain rules can be repealed or made less stringent even though the proposed initiative implies they cannot.**

Although the proposed initiative states the new board is prohibited from repealing or making less stringent certain environmental and public safety rules and the new board is vested with all regulatory power and jurisdiction over oil and gas development, at least 11 entities could repeal certain rules or make them less stringent.

Numerous organizations can repeal certain rules in the proposed initiative subsection (11)(g) or make them less stringent because many of the COGCC rules referenced in the proposed initiative require compliance with statutes, rules, and national codes and standards beyond the control of the new board. The entities are the United States Congress, Occupational Safety and Health Administration, Bureau of Land Management, Colorado General Assembly, Colorado Water Quality Control Commission, Colorado Air Quality Control Commission, Colorado Geological Survey, Colorado Division of Reclamation, Mining, and Safety, Colorado Hazardous Materials and Waste Management Division, National Fire Protection Association Code, and the American Petroleum Institute.

The new board would be prohibited from such actions, but entities such as the American Petroleum Institute, a national oil and gas trade association, would have the ability to repeal certain rules or make them less stringent. Colorado voters would be surprised to learn that the new board is ceding power to a national oil and gas lobbyist association and ten other entities. It is inaccurate and misleading to state that certain environmental and public safety rules cannot be repealed or made less stringent. All entities with the ability to repeal certain rules or make them less stringent should be included in the ballot title.

#### **4. Recent flowline rulemaking and air emission rules may be deemed impermissible**

The proposed initiative will lead to voter confusion because it deems all existing regulations to comply with the new mandate to balance public health and oil and gas development – except those adopted in 2020. As written, the Independent Board may deem the recent COGCC flowline rulemaking and AQCC air emission reduction and inventory rules as not complying with the new board’s mandate to “protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources, and protect against adverse environmental impacts on any air, water, soil, or biological resource in balance with responsible oil gas and development (sic)” because they went into effect after January 1, 2020. The only difference in the new board’s proposed mandate and the current mandate, C.R.S. § 34-60-106(2.5)(a), is the phrase “in balance with responsible oil gas and development (sic).”

It is unclear when reading the proposed initiative or ballot title that those recent rulemakings may be repealed or weakened because that information is hidden behind a wall of legal language in a complex initiative. However, because the ballot title fails to state that only rules effective as of January 1, 2020 are protected, a voter may think the recent flowline and air emission rules cannot be repealed or amended. But the recently promulgated COGCC flowline rules went into effect on January 14, 2020, and the AQCC air emission rules on February 14, 2020.

Furthermore, even if the ballot title included language about the January 1, 2020 effective date, because the flowline and air emission rulemakings occurred in 2019, it may cause confusion unless it expressly stated that the flowline and air emission rules could be repealed or amended. The flowline rules were promulgated on November 21, 2019 but went into effect on January 14, 2020. The air emission standards and inventory rules were promulgated on December 19, 2019 but did not go into effect until February 14, 2020.

In response to the Firestone tragedy in 2017, where two people were killed when their home exploded due to an unmapped and improperly abandoned natural gas flowline, the COGCC enacted three fundamental changes to the agency's flowline and inactive well rules: (1) requiring mapping data for flowlines and a publicly available online map of the flowlines; (2) enabling inspections when an operator wanted to reactivate an inactive flowline or well; and (3) requiring third-party verification for flowlines abandoned underground.

Colorado voters would be surprised to learn that the proposed initiative, which purports to regulate oil and gas operators, could deem public health and safety rules recently implemented to protect Coloradans from abandoned flowlines not to comply because they are not "in balance with responsible oil gas and development (sic)."

The new air quality regulations that apply to the oil and gas industry were unanimously adopted by the AQCC. These regulations require: semi-annual leak detection and repair for low-producing wells statewide; stronger tank controls for low-producing wells; statewide expansion of the "find and fix" program for malfunctioning controllers and valves known as "pneumatic" devices; a performance-based standard to reduce emissions across the transmission segment of the oil and gas supply chain; more frequent leak detection and repair within 1,000 feet of homes, schools and other public areas; and a requirement that operators calculate and report all pollution, including methane emissions, to the state on an annual basis. These critical AQCC air emission rules went into effect on February 14, 2020 and therefore are not deemed by the initiative to comply with the proposed mission of the new board to balance public health safety, welfare, and the environment with oil and gas development.

We propose amending the ballot title language as shown in Exhibit A to correctly and fairly express the true intent and meaning of the initiative

### **III. Conclusion**

Accordingly, the objector respectfully requests that this Motion for Rehearing be granted and a hearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 22nd day of April, 2020.

By: /s/ Matt Samelson

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing MOTION FOR REHEARING was served via US Mail or email to the proponents on 22nd day of April, 2020 to the following:

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/s/ Matt Sura  
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Matt Sura, Atty. Reg. #44089

## EXHIBIT A

### Proposed Initiative 2019-2020 #307

An amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning the regulation of oil and gas operation, and, in connection therewith, replacing the oil and gas conservation commission with a new independent oil and gas board; specifying the appointment process for and qualification of board members with the intent of ensuring the political independence of the board; vesting all regulatory power and jurisdiction over oil and gas development in the board except as otherwise specified; requiring the board and local governments to regulate and authorize oil and gas development in a manner that balances the protection of the public health, safety, and welfare of citizens, the protection of the environment, and the responsible development of oil and gas resources; requiring the board to establish a statewide minimum distance standard for new oil and gas development and to set a minimum financial assurance per well; prohibiting the board from repealing or making less stringent certain ~~air quality control commission rules and oil and gas conservation commission safety rules, aesthetic and noise rules, spill and reporting rules, reclamation rules, and flowline rules environmental and public safety rules~~ as they existed on January 1, 2020; specifying a requirement that rules pertaining to oil and gas operations promulgated by ~~the air quality control commission, water quality control commission, board of health, and the solid and hazardous waste commission~~ ~~certain other state rule-making entities~~ may become effective only upon approval of the board; and ~~granting local governments specified additional authority to plan for and regulate oil and gas development~~ limiting local governments' authority to plan for and regulate oil and gas development to the following areas: 1) creating a setback requirement of no greater than 1,000 feet, 2) requiring air quality monitoring at new oil and gas operations, 3) requiring safety at plugged and abandoned wells in areas of new production, 4) regulating flow lines, and 5) requiring health and safety training for oil and gas workers.



**Ballot Title Setting Board**

**Proposed Initiative 2019-2020 #307<sup>1</sup>**

*Hearing April 15, 2020:*

*Single subject approved; staff draft amended; titles set.*

*The Board made one technical correction to 13(b) of the filed text.*

*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 5:37 p.m.*

*Rehearing April 23, 2020:*

*Motion for Rehearing granted; title setting denied on the grounds that the measure does not constitute a single subject.*

*Hearing adjourned 6:13 p.m.*

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<sup>1</sup> Unofficially captioned “**Establish the Independent Oil and Gas Board**” 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 # 307

## INITIAL FISCAL IMPACT STATEMENT

**Date:** April 14, 2020

**Fiscal Analyst:** Josh Abram (303-866-3561)

**LCS TITLE:** ESTABLISH THE INDEPENDENT OIL AND GAS BOARD

Fiscal Impact Summary		FY 2020-21	FY 2021-22	FY 2022-23
<b>Revenue</b>				
<b>Expenditures</b>	General Fund	\$371,081	\$323,326	\$310,926
	Cash Funds	-	\$1,364,096	\$1,248,694
<b>Total</b>		<b>\$371,081</b>	<b>\$1,687,422</b>	<b>\$1,559,620</b>

**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

Under current law, the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) regulates the development and production of oil and gas in the state. This measure amends the Colorado Constitution and statutes to eliminate the COGCC and transfer all existing operations to a new agency: the Colorado Independent Oil And Gas Board (CIOGB). Beginning July 1, 2021, the CIOGB assumes all regulatory authority over oil and gas development and production.

The measure requires that nonpartisan staff agencies of the state legislature create an application process for individuals wishing to be appointed to the new board. The chief justice of the Colorado Supreme Court must designate a panel of retired judges to review initial board applications, and to review applicants as needed to fill vacancies. With bipartisan agreement, the governor and legislative leadership may nominate applicants to serve on the board.

The measure provides for the composition of the board, minimum qualifications of members, length of terms, compensation, staffing requirements, interagency coordination, adoption of rules, and other organizational elements of transferring the existing operations of the COGCC to the CIOGB.

**Local government regulation of oil and gas.** The measure allows local governments to regulate oil and gas development by:

- requiring a 1,000 foot setback from sensitive areas;
- requiring that new permit holders conduct additional air quality monitoring and ensure safety of plugged and abandoned wells in areas of new production;
- regulating flow lines; and
- requiring enhanced safety training for workers in the oil and gas industry.

## State Expenditures

The measure increases state expenditures by \$371,081 and 0.5 FTE in FY 2020-21, by \$1,687,422 and 12.2 FTE in FY 2021-22, and by \$1,559,620 and 12.0 FTE in FY 2022-23. New expenses are in the Department of Natural Resources, the Department of Public Health and Environment, the Department of Law, and the Legislative Department. Costs are displayed in Table 2 and discussed below.

**Table 2**  
**Expenditures Under Initiative #307**

<b>Cost Components</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Natural Resources</b>			
Personal Services	-	\$937,942	\$937,942
Operating Expenses	-	\$13,500	\$13,500
Capital Outlay Costs	-	\$62,000	-
Legal Services	-	\$95,940	\$47,970
Centrally Appropriated Costs*	-	\$254,714	\$249,282
FTE – Personal Services	-	10.0 FTE	10.0 FTE
<b>Subtotal (DNR)</b>	<b>-</b>	<b>\$1,364,096</b>	<b>\$1,248,694</b>
<b>Department of Public Health &amp; Environment</b>			
Personal Services	-	\$175,447	\$175,447
Operating Expenses	-	\$2,700	\$2,700
Capital Outlay	-	\$12,400	-
Legal Services	-	\$47,970	\$47,970
Centrally Appropriated Costs*	-	\$84,809	\$84,809
FTE – Personal Services	-	2.0 FTE	2.0 FTE
<b>Subtotal (CDPHE)</b>	<b>-</b>	<b>\$323,326</b>	<b>\$310,926</b>
<b>Legislative Department</b>			
Personal Services	\$35,054	-	-
Operating Expenses	\$675	-	-
Capital Outlay	\$6,200	-	-
Compensation - Retired Judge Panel	\$321,253	-	-
Centrally Appropriated Costs*	\$7,899	-	-
FTE – Personal Services	0.5 FTE	-	-
<b>Subtotal (Legislative Department)</b>	<b>\$371,081</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>\$371,081</b>	<b>\$1,687,422</b>	<b>\$1,559,620</b>
<b>Total FTE</b>	<b>0.5 FTE</b>	<b>12.0 FTE</b>	<b>12.0 FTE</b>

\* Centrally appropriated costs include supplemental employee insurance, indirect costs, leased space, and additional disbursements to the Public Employee Retirement Association.

**Department of Natural Resources.** The measure transfers the operations and staff from the COGCC to the COIGB beginning in FY 2021-22. For FY 2019-20, the operating budget for the COGCC is \$20,613,071 and 140.3 FTE. In addition to this transfer, the measure increases expenditures in the DNR by increasing the size of the regulatory board from five to nine members, and by increasing the compensation paid to all CIOGB members. Additional board members increases costs for administrative staff and related operating and capital outlay in the DNR. Expenses for the CIOGB are paid using cash fund revenue from permit fees, fines, and the mill levy assessment on oil and gas development. The DNR receives no General Fund appropriations for regulating oil and gas development.

**Department of Public Health and Environment.** Under current law, the CDPHE has statutory authority to adopt certain rules related to oil and gas development. This measure requires coordination, co-regulation, and joint approval of rules with the CIOGB, which increases staff needs for the department. Additional environmental specialists are required to liaison with the new board and assist the Air Quality Control Commission with it's state and federal mandates. Expenses in the CDPHE are from the General Fund.

**Legislative Department.** Nonpartisan staff are required in the Office of Legislative Council Staff and the Office of Legislative Legal Services to create an application and selection process for CIOGB members in FY 2020-21. Expenditures also increase to compensate the panel of retired judges. Expenses for the legislative staff agencies are from the General Fund.

**Department of Law - Legal services.** Beginning in FY 2021-22, legal services are required by the administering agencies to assist with the agency transfer between COGCC and the new CIOGB, to advise the new board concerning its powers and responsibilities, to assist with the board selection process, and to provide legal coordination for the adoption of rules. Legal services are purchased by state agencies from the Department of Law.

**Centrally appropriated costs.** Certain costs associated with the measure are addressed through the annual budget process and centrally appropriated in the annual state budget. These costs include employee insurance, supplemental employee retirement payments, indirect costs, and leased space.

## Local Government Impact

The measure's impact on local revenue and expenditures will depend on the specific regulations a local government chooses to adopt, if any. The measure allows but does not require that a local government regulate oil and gas development. Local regulatory programs increase a local government's expenditures, and may also impact the amount of property taxes collected by counties, since regulatory limitations on new drilling can impact local property tax collections.

## Economic Impact

The measure transfers regulatory authority over oil and gas development from one board to another. This does not have an economic impact. The economic impacts of future actions of the board, if any, cannot be estimated.



## **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**

Law  
Natural Resources

Legislature  
Public Health and Environment

## **Abstract of Initiative 307: ESTABLISH THE INDEPENDENT OIL AND GAS BOARD**

*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](http://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 April 14, 2020, identifies the following impacts:**

**State expenditures.** The measure increases state expenditures by \$371,081 and 0.5 FTE in FY 2020-21, by \$1,687,422 and 12.2 FTE in FY 2021-22, and by \$1,559,620 and 12.0 FTE in FY 2022-23. New expenses are in the Department of Natural Resources, the Department of Public Health and Environment, the Department of Law, and the Legislative Department.

**Local government impact.** The measure's impact on local revenue and expenditures will depend on the specific regulations a local government chooses to adopt, if any. Local regulatory programs increase expenditures, and may also impact the amount of property taxes collected.

**Economic impacts.** The measure transfers regulatory authority over oil and gas development from one board to another. This does not have an economic impact. The economic impacts of future actions of the board, if any, cannot be estimated.