

Pursuant to Colo. Rev. Stat. § 1-40-107(2), registered Colorado elector Timothy Steven Howard (“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 #301.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #301

The Title Board conducted its initial public hearing and set the title for Initiative #301 on April 15, 2020. Petitioner filed his timely motion for rehearing on April 22, 2020. The Title Board considered the motion at its April 23, 2020 hearing and, aside from making minor changes 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 his Petition for Review certified copies of the final Proposed Initiative, the Title and Submission Clause, Fiscal Impact Statement, and the Motion for Rehearing and ruling thereon.

GROUND FOR APPEAL

The Title for #301 set by the Title Board violates the legal requirements imposed on the Board to comply with 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 Opening Brief:

The title set by the Title Board is legally flawed because the title is misleading and fails to inform voters of certain central elements of Initiative #301, including the following:

1. The regulatory impact findings must include any direct or indirect impact to employment;
2. The regulatory impact findings must include the cumulative cost of each proposed rule;
3. The regulatory impact findings must identify if the proposed rule requires the acquisition or use of any product, technology or equipment and that such product, technology or equipment is commercially available; and
4. The measure creates a two-step process whereby first the regulatory impact analysis must be published and interested parties will have the opportunity to comment on the analysis as though it were a proposed rule, and then there is the

requirement that the final regulatory impact analysis be published at least 14 days prior to the public hearing.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, the Court direct the Title Board to correct the title to address the deficiencies outlined in the Petitioner's Petition and briefs.

Respectfully submitted this 30th day of April 2020.

TIERNEY LAWRENCE LLC

By: s/Martha M. Tierney
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 30th 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 #301** was filed and served via the Colorado Courts E-Filing System to the following:

Michael Kotlarczyk, Esq.
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
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Denver, Colorado 80203
Michael.kotlarczyk@coag.gov
Attorneys for Title Board

I hereby certify that on this 30th 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 #301** was served via email to the following:

Eric Waeckerlin, Esq.
Brownstein Hyatt Farber Schreck LLP
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Attorneys for Respondents

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 30, 2020 3:04 PM

STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

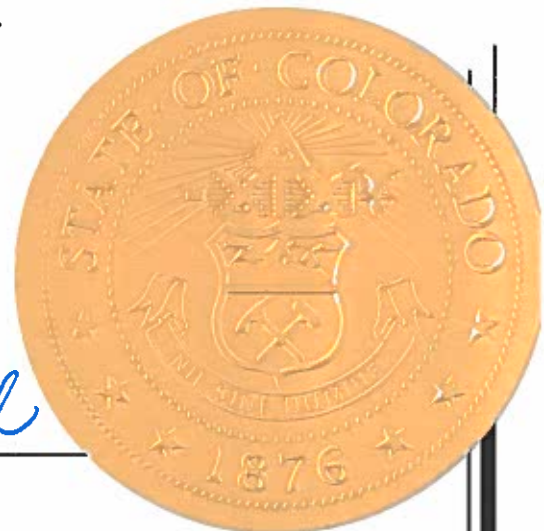
I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #301 'Require Regulatory Impact Analysis for Oil and Gas Conservation Commission Rules'".....

..... **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 27th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



RECEIVED

By Steven Ward at 11:29 am, Mar 27, 2020

Initiative 2019-2020 #301 Regulatory impact analysis of oil and gas rules

Final

Be it enacted by the People of the State of Colorado. SECTION 1. In Colorado Revised Statutes, add 34-60-108.1 as follows:

34-60-108.1. Full Consideration of Public Health and Welfare Impacts of Commission Rules and Regulations –Regulatory Impact Finding – Legislative Declaration – Definitions.

(1) The People of the State of Colorado find and declare that:

(a) Oil and gas development in this State creates economic and social benefits that contribute to and improve the welfare of the citizens of this State;

(b) Among these benefits are direct and indirect employment, ad valorem taxes, State and other royalties, severance taxes, and Federal mineral royalties and rentals;

(c) Revenue generated from oil and gas development helps fund essential services across the State and in counties and municipalities, including funding contributions to emergency response and community protection, the Colorado public school system, the Colorado General Fund, the Colorado Water Conservation Board, the Oil and Gas Conservation and Environmental Response Fund, the Innovative Energy Fund, and the Division of Colorado Parks and Wildlife;

(d) Revenue generated from oil and gas development in Colorado also includes disbursements to the Federal government that contribute to the nation's welfare;

(e) Reductions in revenue and other contributions from oil and gas development have a detrimental impact on public health, safety, and welfare, including through lost direct and indirect employment, reductions in State and local essential services, and reduced tax and royalty payments to the State and local governments;

(f) To protect public health, safety, and welfare, the People of Colorado desire to ensure that all rules promulgated pursuant to any provision of this Article 60 are adopted only after full consideration of the economic and social health and welfare costs imposed by such rules.

(2) As used in this Section, unless the context otherwise requires:

(a) "Commercially Available" means any product, technology or equipment that has been adequately tested and is generally available through a common marketplace, is affordable, is fit and suitable for the purpose required, generates reliable and quality data, where applicable, and requires

little or no modification. The Commission shall promulgate rules to further describe the terms used in this Subsection 2(a) as necessary.

(b) “Cumulative Cost” means for an average oil and gas operator, the total cost of compliance with the rules of the Commission established pursuant to this Article 60, including the expected costs of the proposed rule being considered.

(3) Prior to or simultaneously with issuing a notice of proposed rule making as required by 24-4-103(3) C.R.S. for the adoption of any rule or rule revision under the authority provided by any provision of this Article 60, the Commission shall adopt and publish on the Commission’s website and make part of the administrative record an initial written regulatory impact finding that identifies the following information regarding the proposed rule, including the regulatory impact for the first, fifth, and tenth year following the Effective Date of any ultimately adopted rule for Paragraphs (a)-(e) below:

(a) The cumulative cost of the proposed rule;

(b) Any direct or indirect impact to employment expected as a result of the proposed rule;

(c) The expected impact of the proposed rule on State and local, including municipal, tax revenue;

(d) The expected impact of the proposed rule on all royalty payments for oil and gas development in the State;

(e) The projected impacts on the growth or retraction of the oil and gas industry in the State as a result of the proposed rule;

(f) That the proposed rule is capable of implementation by oil and gas operators;

(g) If the proposed rule requires the acquisition or use of any product, technology or equipment, that such product, technology or equipment is commercially available;

(h) The provision(s) of this Article 60 authorizing the proposed rule and, where applicable, the deficiency in existing rules that the proposed rule improves or corrects.

(4) The Commission shall adopt and publish a final written regulatory impact finding including the same information and in the same manner as provided in Subsection (3) herein at least 14 days prior to the public hearing required by 24-4-103(4) C.R.S.

(5) This Section takes effect upon official declaration of the Governor and is self-executing.

(6) This Section applies to any rule proposed after the Effective Date of this Section.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #301¹

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

A change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings that specify the authority and need for the rule and estimate certain impacts of the rule on the oil and gas industry, employment, state and local tax revenue, and oil and gas royalty payments.

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

Shall there be a change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings that specify the authority and need for the rule and estimate certain impacts of the rule on the oil and gas industry, employment, state and local tax revenue, and oil and gas royalty payments?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:08 p.m.

¹ Unofficially captioned “**Require Regulatory Impact Analysis for Oil and Gas Conservation Commission Rules**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

By Steven Ward at 4:33 pm, Apr 22, 2020

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2019-2020 #301**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #301

On behalf of Timothy Steven Howard, 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 #301 (“Initiative #301”) pursuant to Section 1-40-107, C.R.S. (2019), and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 15, 2018 HEARING

On April 15, 2020, the Title Board set the following ballot title and submission clause for Initiative #301:

Shall there be a change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings that specify the authority and need for the rule and estimate certain impacts of the rule on the oil and gas industry, employment, state and local tax revenue, and oil and gas royalty payments?

II. GROUND FOR REHEARING

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 #301 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. . . .

The title of Initiative #301 misleads the voters by including only a partial list of the key features of the measure and omitting the following: (1) the regulatory impact findings must include any direct or indirect impact to employment; (2) the regulatory impact findings must include the cumulative cost of each proposed rule; (3) the regulatory impact findings must identify if the proposed rule is capable of implementation by oil and gas operators; and (4) the

regulatory impact findings must identify if the proposed rule requires the acquisition or use of any product, technology or equipment and that such product, technology or equipment is commercially available; and (5) the measure creates a two-step process whereby first the regulatory impact analysis must be published and interested parties will have the opportunity to comment on the analysis as though it were a proposed rule, and then there is the requirement that the final regulatory impact analysis be published at least 14 days prior to the public hearing.

The title 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, Timothy Steven Howard requests a rehearing of the Title Board for Initiative 2019-2020 #301, because the initiative contains multiple subjects, and the title is misleading to voters because 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 return the measure to the proponents.

Respectfully submitted this 22nd day of April 2020.

TIERNEY LAWRENCE LLC

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ATTORNEYS FOR OBJECTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of April, 2020, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #301** was filed and served via email or U.S. mail, postage prepaid, to the following:

Eric Waeckerlin, Esq.
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Sam Bradley
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Holyoke, CO 80734

/s/ Martha M. Tierney

Ballot Title Setting Board

Proposed Initiative 2019-2020 #301¹

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

A change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings, after allowing public comment, that specify the authority and need for the rule and whether it can be implemented and estimate certain impacts of the rule on: the oil and gas industry, including compliance costs; employment; state and local tax revenue; and oil and gas royalty payments.

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

Shall there be a change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings, after allowing public comment, that specify the authority and need for the rule and whether it can be implemented and estimate certain impacts of the rule on: the oil and gas industry, including compliance costs; employment; state and local tax revenue; and oil and gas royalty payments?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:08 p.m.

Rehearing April 23, 2020:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 4:55 p.m.

¹ Unofficially captioned “**Require Regulatory Impact Analysis for Oil and Gas Conservation Commission Rules**” 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

INITIAL FISCAL IMPACT STATEMENT

Date: April 14, 2020

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

LCS TITLE: REQUIRE REGULATORY IMPACT ANALYSIS FOR OIL AND GAS CONSERVATION COMMISSION RULES

Fiscal Impact Summary		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	Cash Funds	\$54,069	\$54,069

***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 amends Colorado statute to require that a regulatory impact analysis be conducted for any new or revised rule proposed by the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources. An initial analysis must be published prior to or concurrent with the issuing of a notice of proposed rulemaking, and a final analysis must be published at least 14 days prior to the public hearing. For each rule the analysis must include the following information, including first, fifth, and tenth year impacts as applicable:

- cumulative cost;
- direct or indirect impacts to employment;
- impacts on state and local government revenue;
- impact on royalty payments for oil and gas development;
- impacts on growth or retraction of the oil and gas industry in Colorado;
- that the rule is capable of implementation by oil and gas operators;
- whether any equipment or product that is required is commercially available; and
- the statutory provision authorizing the rule, and if applicable, the deficiency in existing rules that the proposed rule improves or corrects.

Background

Under the state Administrative Procedure Act (APA), current law requires a cost-benefit analysis for any rule if ordered by the executive director of the Department of Regulatory Agencies, and a regulatory analysis if requested by any person. The measure expands upon this by detailing several components of analysis beyond what is required under the APA, requiring two rounds of regulatory impact analysis, and requiring analysis for all proposed rules.

State Expenditures

The initiative increases state expenditures by \$54,069 and 0.4 FTE in FY 2020-21 and future years. Costs will be paid from the Oil and Gas Conservation and Environmental Response Fund. These costs are shown on Table 2 and described below.

**Table 2
Expenditures Under Initiative #301**

	FY 2020-21	FY 2021-22
Department of Natural Resources		
Personal Services	\$26,353	\$26,353
Legal Services	\$27,716	\$27,716
FTE – Personal Services	0.3 FTE	0.3 FTE
FTE – Legal Services	0.1 FTE	0.1 FTE
Total Cost	\$54,069	\$54,069
Total FTE	0.4 FTE	0.4 FTE

Department of Natural Resources. The COGCC will require an estimated 250 hours of staff time per rulemaking to conduct the regulatory impact analyses. Assuming two rulemakings per year, the COGCC requires 500 additional hours of staff time annually, or 0.3 FTE. In addition, 130 hours of legal services will be required from the Department of Law for each rulemaking (260 hours per year) at a rate of \$106.60 per hour.

Economic Impact

The measure is not anticipated to have an economic impact.

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

Natural Resources Regulatory Agencies

Abstract of Initiative 301: REQUIRE REGULATORY IMPACT ANALYSIS FOR OIL AND GAS CONSERVATION COMMISSION RULES

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 April 14, 2020, identifies the following impacts:

State expenditures. The initiative increases state cash fund expenditures by \$54,069 and 0.4 FTE in FY 2020-21 and future years. This is based on assumptions of 500 hours of workload in the Department of Natural Resources and 260 hours of legal services from the Department of Law to complete regulatory impact analyses for two rulemakings each year.

Economic impacts. The measure is not anticipated to have an economic impact.