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Colorado General Assembly

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MEMORANDUM

To: Stephen Ward and Suzanne Taheri
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 3, 2024
SUBJECT: Proposed initiative measure 2023-2024 #282, concerning regulation of
indirect sources

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

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

1. To require the air quality control commission (commission) to adopt certain rules for controlling emissions from one or more indirect source categories within the eight-hour ozone Denver metro/north front range nonattainment area (covered nonattainment area);

2. To allow the commission to adopt additional rules regulating indirect sources within the covered nonattainment area at the commission's discretion;
3. To allow the commission to establish a fee for indirect sources in an amount necessary to cover the division's costs;
4. To require, beginning in 2025, with certain exceptions, any oil and gas preproduction activity within the covered nonattainment area to pause for the duration of the implementation season, which begins June 1 and ends August 31 of each year;
5. To require each oil and gas operator, on or before June 30, 2024, and on or before each June 30 thereafter, to submit an oil and natural gas emission inventory report to the division of administration (division) in the department of public health and environment (department);
6. To require the division, in consultation with the commission, on or before October 1, 2024, and on or before each October 1 thereafter, to prepare a report that includes the natural gas emission inventory reports received by the division for the previous calendar year as well as certain other information concerning emissions from oil and gas operations;
7. To require each oil and gas operator, on or before November 30, 2024, and on or before each November 30 thereafter, to submit a report to the division estimating, for the ozone season of the subsequent year beginning May 1 and ending September 30, emissions of nitrogen oxides from the oil and gas operations controlled by the operator in the covered nonattainment area;
8. To require the division to make the reports available to the public in a searchable database;
9. To require the commission, in consultation with the division, to develop an ozone season nitrogen oxides emission budget for emissions of nitrogen oxides by oil and gas operations in the covered nonattainment area;
10. To require the commission, beginning in February 2025 and in each February thereafter, to act to limit emissions from oil and gas operations in the covered

nonattainment area in a manner that prevents an exceedance of the current year's ozone season nitrogen oxides emission budget;

11. To establish a maximum emissions level of nitrogen oxides by oil and gas operations in the covered nonattainment area and to allow the commission, in consultation with the division, to revise the maximum emissions level by rule;
12. To require the department to propose, and the commission to adopt, modify, or reject, average annual motor vehicle emission budgets for nitrogen oxides and volatile organic compounds for 2026 through 2050 that apply to the covered nonattainment area; and
13. To require the department to include information concerning the emission budgets in the department's annual reports to the general assembly.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What is the intended effective date of the proposed initiative? The proponents should consider including an effective date clause at the end of the proposed initiative.
3. Section 1 (8) of article V of the Colorado constitution requires all laws adopted by people through the initiative process to include the words "Be it Enacted by the People of Colorado." To comply with this requirement, the proponents should consider capitalizing the word "enacted."
4. In Section 1 of the proposed initiative, the portion of the definition of "indirect source" at section 25-7-146 (1)(b)(II) lists examples of an indirect source. To use proper drafting protocol, proponents may consider stating these examples in the singular rather than plural.
5. In Section 1 of the proposed initiative, section 25-7-146 (2)(b) authorizes an owner or operator of an indirect source to propose to the commission, for consideration in the commission's rule-making, alternative compliance approaches for achieving required emission reductions set forth in the commission's rules. This ability to propose alternative compliance approaches

would then be available only to owners and operators of indirect sources already in existence at the time of the commission's rules. The proponents might want to consider adding language to establish a process to allow owners and operators of new indirect sources to propose, and the commission to consider, alternative compliance approaches for the new indirect sources.

6. In Section 1 of the proposed initiative, section 25-7-146 (4)(a) states that the commission may establish a fee. Proponents may wish to indicate whether the commission is required to establish the fee through administrative rule-making.
7. In Section 1 of the proposed initiative, the definition of "covered nonattainment area" that appears at section 25-7-147 (1)(a) does not match the definitions of this term that appear in Section 1 at sections 25-7-146 (1)(a) and 25-7-148 (1)(b) and in Section 2 of the proposed initiative at sections 34-60-140 (1)(a) and 25-7-306 (1)(a). Specifically, only the definition at section 25-7-147 (1)(a) includes the language "as designated by the federal environmental protection agency." Should this language be added to each of the other definitions? In fact, should each of the definitions actually include the following language: "as designated by the federal environmental protection agency pursuant to the national ambient air quality standards for ozone under the federal act"? (See section 25-7-147 (2)(b)(I) in Section 1 of the proposed initiative.)
8. In Section 1 of the proposed initiative, in the definition of "oil and gas preproduction activity" in section 25-7-147 (1)(c), it lists activities included in the definition. Would predrilling activities such as construction of access roads and preparing the well pads be included in the definition of "oil and gas preproduction activity" as well?
9. In Section 1 of the proposed initiative, section 25-7-147 (2)(b)(II) exempts from the requirements of the section any oil and gas preproduction activity "that uses grid-powered electric drill rigs and grid-powered hydraulic fracturing engines." What if an owner or operator of an oil and gas facility uses both such grid-powered rigs and engines and nongrid-powered rigs and engines? The proponents might consider adding the word "only" before "grid-powered."
10. In Section 1 of the proposed initiative, section 25-7-147 (2)(b)(I) refers to the "United States Environmental Protection Agency." For consistency, the proponents may consider changing this to read "federal environmental protection agency" to match the language used elsewhere in the proposed initiative.
11. In Section 1 of the proposed initiative, section 25-7-148 (1)(a) defines the term "commission" to mean the energy and carbon management commission. This definition presents the potential for confusion because existing section 25-7-103 (7), C.R.S., defines "commission" as the air quality control commission for the

entire article 7 of title 25, C.R.S. The proponents may consider changing this definition to read "'Energy and carbon management commission' means the energy and carbon management commission created in section 34-60-104.3," and then using the full term "energy and carbon management commission" rather than "commission" in the section 25-7-148 (2)(b) and (3)(b).

12. Many provisions of the proposed initiative include dates that appear to be too soon for the implementation of the proposed initiative's requirements, especially any dates in 2024, which would be before the proposed initiative would take effect upon the official declaration of the vote by proclamation of the governor pursuant to section 1-40-123 (1), C.R.S. The proponents may consider revising the dates that appear in sections 25-7-146 (2) introductory portion; 25-7-147 (2)(a); 25-7-148 (2)(a), (2)(b) introductory portion, (3)(a), and (3)(b); 34-60-140 (2) introductory portion, (2)(a), (2)(b), (3)(a), and (3)(b) introductory portion; and 25-7-306 (2)(a), (2)(b), and (3).
13. In Section 1 of the proposed initiative, section 25-7-148 (2)(b)(IV) requires the division to include in its report a "summary of information collected near oil and gas operations pursuant to the community-based air toxics monitoring program performed by the division pursuant to section 25-7-141 (6)(a)." However, the cross referenced section 25-7-141 (6)(a) does not actually create or describe a formal program. Therefore, the proponents may consider striking the word "program."
14. In Section 1 of the proposed initiative, section 25-7-148 (4)(b)(II), what does it mean that the division "shall encourage diversity in applicants for contracts"? How would such encouragement of diversity be achieved?
15. In Section 3 of the proposed initiative, how will the maximum emission levels of nitrogen oxides and volatile organic compounds from all individual on-road and nonroad motor vehicle classes in the covered nonattainment area be enforced? Would they be enforced against vehicle manufacturers and dealers? Would they be enforced against vehicle owners?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes. In Section 1 of the proposed initiative, in section 25-7-148 (2)(b)(VI), it appears that the first portion of the provision is rendered in lower-case type treated with small caps, but the second portion of the provision is all ALL CAPS type that is treated with small caps. Please convert the portion of the text that is in all caps to lower-case type with a small caps code.
2. In Section 1 of the proposed initiative, in section 25-7-148 (2)(b)(VI), the proponents may consider changing "attainment" to "attaining" in order to make this word parallel with the word "achieving" that appears earlier in the provision.
3. In Section 1 of the proposed initiative, in section 25-7-148 (3)(b), the proponents may consider changing the word "exceeds" to "exceed" for subject/verb agreement.
4. In Section 2 of the proposed initiative, in section 34-60-140 (3)(b)(I), the cross reference to "subsection (3)(b)(ii)(B) of this section" should read "subsection (3)(b)(II)(B) of this section."
5. Although the text of the proposed initiative should be in SMALL CAPITAL letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence:
 - i. In Section 1 of the proposed initiative, section 25-7-148 (4)(b), the first word should have a large capital;
 - ii. In Section 3 of the proposed initiative, section 25-7-306 (2)(a), the second sentence should have a large capital;
 - iii. In Section 3 of the proposed initiative, section 25-7-306 (2)(b), the second sentence should have a large capital;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon;
 - c. The first letter of proper names:
 - i. In Section 2 of the proposed initiative, section 34-60-140 (3)(b)(II), "United States" should have large capitals for each word;
 - d. The first letter in each word of a short title:
 - i. In Section 3 of the proposed initiative, section 25-7-306 (3), the word "Act" in the term "SMART Act" should have a large capital;
 - e. Acronyms:

- i. In Section 3 of the proposed initiative, section 25-7-306 (3), the word "SMART" in the term "SMART Act" should be in all capitals.
6. There is an unnecessary quotation mark at the end of the proposed initiative.