



Colorado Legislative Roundup

By: [Jill Fulcher](#) and [Malinda Morain](#)

On Wednesday, May 10th, the 2017 Colorado Legislative Session came to a close. Thanks to the hard work of our industry members, trade groups, associations, and lawmakers, the oil and gas industry was largely successful in protecting the industry’s interests (and Colorado’s economy) from anti-industry special interest groups determined to ban oil and gas development in Colorado.

As the industry is well aware, despite our successes, opposition to the industry is not going away. This article looks back at the successes of this Session, and also outlines some issues likely to be at the forefront in the coming years—either as legislation, regulation, litigation, or ballot initiatives.

Legislative Successes

Setbacks: Following the defeat of two setback-related ballot initiatives in 2016, on March 28, 2017, Representative Foote introduced a bill (HB17-1256) that would have circumvented the Colorado Oil and Gas Conversation Commission’s (“COGCC”) rules and Oil and Gas Task Force’s recommendations by moving the 1,000 foot setback requirement of COGCC Rule 604.a.(3) to be from a school property line rather than a school building. This bill was defeated 5-6 by Senate Committee on April 12, 2017.

Raise the Bar: On April 28, 2017, Governor Hickenlooper signed into law a bill (SB17-152) implementing the Raise the Bar ballot initiative, Initiative 71, which made it more difficult to amend the Colorado Constitution by: (1) prohibiting a petition for an initiated state constitutional amendment to be submitted to voters unless the petition is signed by 2% of voters in each state senate district, as opposed to 2% of voters in the state as a whole; and (2) requiring a vote of at least 55%, rather than a simple majority, to adopt a constitutional amendment that does not repeal, in whole or in part, a previous amendment. A vast coalition of interests and business groups, including the oil and gas industry, supported both Initiative 71 and SB17-152.

Statutory Pooling: On April 12, 2017, Representatives Foote and Young introduced HB17-1336 misleadingly-titled, “Additional Protections Forced Pooling Order.” The bill, as introduced, required a majority of the mineral estate to agree to lease before the COGCC could enter a statutory pooling order. As amended, the bill imposed burdensome additional notice and reporting requirements for operators seeking to statutorily pool interests and required the

COGCC to compile and make public additional information regarding statutory pooling. HB17-1336 failed to pass out of the Senate Committee on State Affairs.

Flowline Mapping: At the eve of the session, on May 5, 2017, Representative Foote introduced a bill (HB17-1372) attempting to, among other things, codify and expand the requirements imposed on operators in COGCC's Notice to Operators on Flowline Inventory and Testing in response to the tragedy in Firestone, Colorado. The bill did not make it to a vote in the House prior to the end of the session.

Legislative Struggles

Tampering With Oil and Gas Equipment: A bill to increase the penalties for tampering with oil and gas gathering operation equipment from a class 2 misdemeanor to a class 6 felony passed the Senate, but failed to make it out of the House State Affairs Committee on April 12, 2017.

Making Local Government Liable For Fracking Bans and Moratoria: A bill making any local government that bans hydraulic fracturing liable to the mineral interest owner for the value of the lost mineral interest and requiring a local government that enacts a moratorium to compensate the operator, lessees, and royalty owners for costs, damages, and losses associated with the moratorium failed to pass out of the House Committee on State Affairs on February 22, 2017.

Oil and Gas Ballot Initiatives

Proposed 2017-2018 Initiative #20 sought to increase the severance tax rates on oil and gas from 2% to 5% depending on gross income, to 7% to 10%. The Title Board denied setting title on Initiative #20 on April 28, 2017, but the proponent of the initiative has appealed the Title Board's decision to the Colorado Supreme Court.

Future Sessions

Although the industry saw successes related to setbacks, pooling, ballot initiatives, flowlines, and severance tax increases this session, the industry has likely not seen the last of these issues. Although the process for amending the Colorado Constitution was modified, the process for implementing legislative ballot initiatives remains the same.

Even though a legislative ballot initiative can be overturned by the legislature, will be a lengthy, if not impossible process in the coming years. Any bill to correct an anti-industry ballot initiative will need to pass both the Republican-controlled Senate and the Democratic-controlled House, which will remain split through at least 2018.

In addition, continued pressure from vocal interest groups, as well as concern following the tragedy in Firestone, will likely cause increased pressure on the COGCC for further rulemaking, particularly with respect to setbacks, pooling, and flowlines.

For further information regarding the 2017-2018 Legislative Session, Ballot Initiatives, and COGCC Rulemaking, please contact [Jill Fulcher](#), [Malinda Morain](#), [Karen Spaulding](#) or [Jim Martin](#).

Copyright © 2017 Beatty & Wozniak, P.C. All Rights Reserved.

This newsletter does not constitute legal advice. The views expressed in this newsletter are the views of the authors and not necessarily the views of the firm. Please consult with legal counsel for specific advice and or information.

Read our complete legal disclaimer