Final Draft

Amendment 58
Severance Taxes on the Oil and Natural Gas Industry

Amendment 58 proposes changing the Colorado statutes to:

- increase the amount of state severance taxes paid by oil and natural gas companies, primarily by eliminating an existing state tax credit;

- allocate the increased severance tax revenue to college scholarships for state residents, wildlife habitat, renewable energy projects, transportation projects in energy-impacted areas, and water treatment grants; and

- exempt all oil and gas severance tax revenue from state and local spending limits.

Summary and Analysis

What is the severance tax? The severance tax is paid by companies that extract nonrenewable natural resources from the earth, including oil and gas, gold, coal, and molybdenum. Over the last five years, 92 percent of state severance tax collections have come from oil and gas, and nearly all of that is from gas. Last year, the state collected $140 million in oil and gas severance taxes. Collections fluctuate annually with changing energy prices.

How does Amendment 58 change Colorado's current severance taxes on oil and gas? Amendment 58 eliminates a state tax credit, increases the number of oil and gas wells subject to the tax, and changes the tax rate on oil and gas companies. These changes are estimated to increase state severance tax collections by $304 million in budget year 2010.

Eliminating the state tax credit. The state currently allows companies to reduce their severance tax payment by 87.5 percent of local property taxes paid on oil and gas production. Amendment 58 removes this tax credit, increasing state severance taxes by an estimated $241 million in budget year 2010.

Increasing the number of wells subject to the tax. Companies currently do not have to pay the severance tax on small wells. Amendment 58 increases the number of smaller wells subject to the tax. With this change, the production on which the tax is paid increases from 40 percent to 56 percent for oil and from 80 percent to 90 percent for gas. This change is expected to increase state severance tax revenue by $62 million in budget year 2010.

Changing the tax rate on oil and gas companies. Colorado currently taxes oil and gas companies at rates between 2 and 5 percent, depending on income. Amendment 58 changes the tax to a flat, 5 percent rate for companies earning

$300,000 or more, eliminating taxes for small companies and increasing taxes on large companies. As a result, a company earning more than $300,000 will pay 5 percent on all of its income, while a company earning less than $300,000 will pay no severance tax. The loss in revenue from small companies is expected to be minimal, while the tax increase on large companies is estimated to raise state severance tax collections by about $1 million annually.

How do Colorado's oil and gas taxes compare to other states? Colorado's actual severance tax rate is the lowest of the eight large-producing western states when each state's exemptions, deductions, and credits are taken into account. In budget year 2007, Colorado's actual severance tax rate was 1.3 percent; Montana's rate was the highest at 6.8 percent. Assuming the taxes in other states remain the same, Amendment 58 raises Colorado’s severance tax ranking to the third lowest. These rankings do not take into account other taxes that oil and gas companies pay, such as income, sales, and property taxes, which vary among the states.

How is severance tax revenue distributed under current law? Under current law, Colorado severance tax revenue is evenly divided between state programs and local governments. The state portion pays for water projects and programs related to mineral extraction, clean energy development, low-income energy assistance, and wildlife conservation. The local government portion is distributed to communities affected by mining, either based on mining activity in the area or through competitive loans or grants.

How does Amendment 58 distribute severance tax revenue? Under Amendment 58, the state programs and local governments that currently receive all of the severance tax revenue will evenly split 44 percent of severance tax collections. Although the portion of money set aside for these uses is less than under current law, the estimated increase in collections under Amendment 58 is expected to provide existing programs with about the same amount of money over the next four years. However, severance tax collections fluctuate with energy prices, and state programs and local governments could receive more or less money than currently anticipated.

Amendment 58 dedicates the remaining 56 percent of severance tax revenue to new uses. Ten percent is placed in a reserve account for future use by the state. Ninety percent pays for new programs as follows:

- 60 percent for a college scholarship program for lower- and middle-income Coloradans. The governor-appointed board that oversees the state's higher education system sets the specific eligibility criteria for the scholarship program, considering factors such as income, family size, and academic performance;

- 15 percent to assist local governments, nonprofit organizations, and the state to acquire and maintain wildlife habitat. The state board tasked with preserving Colorado's wildlife and open space distributes this money;

- 10 percent for projects that promote energy efficiency and the use of renewable, clean energy resources;
- 10 percent for transportation projects in areas of the state impacted by the oil and gas industry; and
- 5 percent for small community drinking water and domestic wastewater treatment projects.

Table 1 presents estimates of the money that Amendment 58 provides to these uses over the next four budget years.

Table 1. Use of New Money under Amendment 58 in Millions of Dollars

New Programs	2009 (half-year)	2010	2011	2012	Four-Year Total
Held in reserve	$14	$29	$32	$34	$109
College scholarships	$78	$157	$171	$183	$589
Wildlife habitat	$20	$39	$43	$46	$148
Clean energy	$13	$26	$29	$31	$99
Transportation projects	$13	$26	$29	$31	$99
Water grants	$7	$13	$14	$15	$49
Total new programs:	**$145**	**$290**	**$318**	**$340**	**$1,093**

How do Amendment 58 and Amendment 52 interact? Both Amendment 58 and Amendment 52 change how the state spends severance tax revenue, but the two measures propose different uses for the money. Thus, some of the provisions of these measures appear to conflict with one another. Should both measures pass, the state will be required to implement these conflicting provisions, but if challenged the courts will have to decide how the measures take effect. Amendment 52 proposes a change to the state constitution, while this measure proposes a change to state statute. To date, Colorado courts have not addressed this type of conflict between ballot measures, but it is likely that the constitutional provision would prevail.

Arguments For

1) Amendment 58 eliminates a state tax credit for an industry that is currently experiencing record profits. Better uses exist for state dollars than this credit. Amendment 58 directs the new money to state and community programs that help improve the state's economy, environment, and infrastructure. These programs are a sound investment in Colorado's future.

2) Increasing access to college for middle- and low-income Coloradans is critical to ensuring the state's long-term economic health. The scholarships funded through this

measure offset the high cost of college, making a college education attainable for more residents. As Colorado graduates more state residents, businesses benefit from a larger pool of educated workers that can help grow Colorado's economy.

3) Oil and gas production is necessarily limited by the location of reserves. Raising the extraction cost of those resources is not likely to have much of an effect on production in Colorado. Colorado currently has the lowest severance tax rate among large-producing western states. By eliminating the state tax credit and tightening the small-well tax exemption, Amendment 58 increases the compensation that Colorado citizens receive for the extraction of natural resources and brings Colorado's tax rate more in line with other states.

4) The money raised by Amendment 58 provides benefits to the state with little or no increase in the cost of energy for Colorado consumers. Oil and gas prices are influenced by numerous factors, and a change in Colorado's severance tax is not a large enough factor to make a significant difference in Colorado's prices. Colorado produces less than one-tenth of one percent of the world's oil. Increasing the state's severance tax on this level of production is unlikely to affect the market price of gasoline. Likewise, since most of the natural gas produced in Colorado is sold elsewhere, any additional costs are likely to be paid by consumers outside of Colorado.

Arguments Against

1) Increasing taxes on oil and gas companies could negatively affect the state's economy and its citizens. The industry directly contributes $16.5 billion and employs about 20,000 workers in the state. In addition, industry activity supports another 20,000 to 50,000 jobs as a result of its Colorado extraction activities. By more than doubling the state's severance tax, Amendment 58 is likely to make Colorado less attractive to the oil and gas industry, which may reduce the industry's investment in the state and result in a loss of jobs. Moreover, the tax increase is occurring at a time when more production could help lower energy prices.

2) The spending plan for the new money is vague and relies upon a volatile source of money. Amendment 58 contains few specifics on the distribution of the scholarship money or the other programs it creates. Further, funding statewide programs with money from the energy industry is risky because it has endured boom-and-bust cycles in the past. It is better to fund programs that address statewide needs with money from multiple sources.

3) The existing state tax credit is justifiable given the higher property taxes paid by the industry. Currently, oil and gas property is valued at nearly three times the rate as other business properties. The higher property taxes paid by the industry provide local communities in energy-impacted areas with the financial resources to address the effects of oil and gas production. The state tax credit offsets these higher local taxes.

4) Amendment 58 may increase energy prices for Colorado consumers. A portion of the gasoline sold in the state is refined from Colorado oil, and a major utility

purchases gas from companies that produce in Colorado. Therefore, a portion of the higher costs from this measure could be passed on in monthly heating bills and higher gasoline prices. Colorado consumers are already faced with high gasoline and electricity costs.

Estimate of Fiscal Impact

Amendment 58 is expected to increase state severance tax revenue by almost $1.1 billion over the next four years, as indicated in Table 2. Amendment 58 also changes the allocation of severance tax revenue and directs revenue to several new and existing state programs. Based on the current state forecast, Amendment 58 reduces the money for existing state programs and local governments by $44 million in the current budget year, but provides between $7 and $14 million more per year over the next three budget years than current law. These numbers are estimates based on forecasts of oil and gas prices; existing state programs and local governments could receive more or less money depending on actual prices. The new programs created by Amendment 58 will receive a total of $1.1 billion over the next four years, of which a portion will cover the administrative costs of the programs.

Table 2
Estimated Fiscal Impact of Amendment 58, Millions of Dollars

	2009	2010	2011	2012	Total
Projected severance taxes under current law	$315	$213	$244	$254	$1,026
Projected severance taxes under Amendment 58	$416	$517	$569	$606	$2,108
New severance taxes under Amendment 58	**$101**	**$304**	**$325**	**$352**	**$1,083**
Distribution to state programs and local governments under current law	$315	$213	$244	$254	$1,026
Distribution to state programs and local governments under Amendment 58	$271	$228	$250	$267	$1,016
Difference in distribution to existing state programs and local governments	-$44	$15	$6	$13	-$10
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- ♦ exempt all oil and gas severance tax revenue from state and local spending limits.

Summary and Analysis

What is the severance tax? The severance tax is paid by companies that extract nonrenewable natural resources from the earth, including oil and gas, gold, coal, and molybdenum. Over the last five years, 92 percent of state severance tax collections have come from oil and gas, and nearly all of that is from gas. Last year, the state collected $140 million in oil and gas severance taxes. Collections fluctuate annually with changing energy prices.

How does Amendment 58 change Colorado's current severance taxes on oil and gas? Amendment 58 eliminates a state tax credit, increases the number of oil and gas wells subject to the tax, and changes the tax rate on oil and gas companies. These changes are estimated to increase state severance tax collections by $304 million in budget year 2010.

Eliminating the state tax credit. The state currently allows companies to reduce their severance tax payment by 87.5 percent of local property taxes paid on oil and gas production. Amendment 58 removes this tax credit, increasing state severance taxes by an estimated $241 million in budget year 2010.

Increasing the number of wells subject to the tax. Companies currently do not have to pay the severance tax on small wells. Amendment 58 increases the number of smaller wells subject to the tax. With this change, the production on which the tax is paid increases from 40 percent to 56 percent for oil and from 80 percent to 90 percent for gas. This change is expected to increase state severance tax revenue by $62 million in budget year 2010.

Changing the tax rate on oil and gas companies. Colorado currently taxes oil and gas companies at rates between 2 and 5 percent, depending on income. Amendment 58 changes the tax to a flat, 5 percent rate for companies earning $300,000 or more, eliminating taxes for small companies and increasing taxes on

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How does Amendment 58 distribute severance tax revenue? Under Amendment 58, the state programs and local governments that currently receive all of the severance tax revenue will evenly split 44 percent of severance tax collections. Although the portion of money set aside for these uses is less than under current law, the estimated increase in collections under Amendment 58 is ~~expected~~ INTENDED to provide existing programs with about the same amount of money over the next four years. HOWEVER, BASED ON THE FACT THAT AMENDMENT 58'S FORMULA WOULD HAVE REDUCED REVENUES TO LOCAL GOVERNMENTS IN SIX OF THE LAST SEVEN YEARS, THERE IS SOME CONCERN THAT AMENDMENT 58 WILL ACTUALLY REDUCE THE REVENUES WHICH LOCAL GOVERNMENTS CURRENTLY RECEIVE TO MITIGATE THE IMPACTS OF ENERGY DEVELOPMENT IN THEIR COMMUNITIES. Severance tax collections fluctuate with energy prices, and state programs and local governments could receive more or less money than currently anticipated.

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Arguments Against

1) Increasing taxes on oil and gas companies could negatively affect the state's economy and its citizens. The industry directly contributes $16.5 billion and employs about 20,000 workers in the state. In addition, industry activity supports another 20,000 to 50,000 jobs as a result of its Colorado extraction activities. By more than doubling the state's severance tax, Amendment 58 is likely to make Colorado less attractive to the oil and gas industry, which may reduce the industry's investment in the state and result in a loss of jobs. Moreover, the tax increase is occurring at a time when more production could help lower energy prices.

2) The spending plan for the new money is vague and relies upon a volatile source of money. Amendment 58 contains few specifics on the distribution of the scholarship money or the other programs it creates. Further, funding statewide programs with money from the energy industry is risky because it has endured boom-and-bust cycles in the past. It is better to fund programs that address statewide needs with money from multiple sources.

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Severance Taxes on the Oil and Natural Gas Industry

Amendment 58 proposes changing the <u>Colorado statutes</u> to:

- ~~increase the amount of state severance taxes paid by oil and natural gas companies, primarily by eliminating an existing state tax credit;~~ ELIMINATE AN EXISTING PROPERTY TAX CREDIT FOR OIL AND NATURAL GAS COMPANIES AND OTHER EXEMPTIONS, EFFECTIVELY INCREASING THE AMOUNT OF SEVERANCE TAXES PAID;

- allocate the increased severance tax revenue to college scholarships for state residents, wildlife habitat, renewable energy projects, transportation projects in energy-impacted areas, and water treatment grants; and

- exempt all oil and gas severance tax revenue from state and local spending limits.

Summary and Analysis

What is the severance tax? The severance tax is paid by companies that extract nonrenewable natural resources from the earth, including oil and gas, gold, coal, and molybdenum. Over the last five years, 92 percent of state severance tax collections have come from oil and gas, and nearly all of that is from gas. Last year, the state collected $140 million in oil and gas severance taxes. THE SEVERANCE TAX RATE ON INCOME OVER $300,000 FOR OIL AND GAS COMPANIES IS 5 PERCENT, BUT BECAUSE OF COLORADO'S LARGE TAX CREDIT, THE EFFECTIVE SEVERANCE TAX RATE IS 1.3 PERCENT. Collections fluctuate annually with changing energy prices.

How does Amendment 58 change Colorado's current severance taxes on oil and gas? Amendment 58 eliminates a state tax credit, increases the number of oil and gas wells subject to the tax, and changes the tax rate on oil and gas companies. These changes are estimated to increase state severance tax collections by $304 million in budget year 2010.

Eliminating the state tax credit. The state currently allows companies to reduce their severance tax payment by 87.5 percent of local property taxes paid on oil and gas production. Amendment 58 removes this tax credit, increasing state severance taxes by an estimated $241 million in budget year 2010.

Increasing the number of wells subject to the tax. Companies currently do not have to pay the severance tax on ~~small~~ OIL wells PRODUCING LESS THAN 15 BARRELS A DAY OR GAS WELLS PRODUCING LESS THAN 90,000 CUBIC FEET PER DAY. BECAUSE OF THIS EXEMPTION, MORE THAN 94 PERCENT OF OIL WELLS AND 60 PERCENT OF GAS WELLS IN COLORADO ARE EXEMPT FROM SEVERANCE TAX. Amendment 58 increases the number of smaller wells subject to the tax. With this change, the production on which the tax is paid increases from 40 percent to 56 percent for oil and from 80 percent to 90 percent for gas. This change is expected to increase state severance tax revenue by $62 million in budget year 2010.

Changing the tax rate on oil and gas companies. Colorado currently taxes oil and gas companies at rates between 2 and 5 percent, depending on income. Amendment 58 changes the tax to a flat, 5 percent rate for companies earning $300,000 or more, eliminating taxes for small companies and increasing taxes on large companies. As a result, a company earning more than $300,000 will pay 5 percent on all of its income, while a company earning less than $300,000 will pay no severance tax. The loss in revenue from small companies is expected to be minimal, while the tax increase on large companies is estimated to raise state severance tax collections by about $1 million annually.

How do Colorado's oil and gas taxes compare to other states? Colorado's actual severance tax rate is the lowest of the eight large-producing western states when each state's exemptions, deductions, and credits are taken into account. In budget year 2007, Colorado's actual severance tax rate was 1.3 percent; Montana's rate was the highest at 6.8 percent IN 2007. APPENDIX A CONTAINS MORE INFORMATION ON THIS RANKING. Assuming the taxes in other states remain the same, Amendment 58 raises Colorado’s severance tax ranking to the third lowest. These rankings do not take into account other taxes that oil and gas companies pay, such as income, sales, and property taxes, which vary among the states.

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George Merritt

Arguments For

1) ~~Amendment 58 eliminates a state tax credit for an industry that is currently experiencing record profits~~. THE PROPERTY TAX CREDIT PROVIDED TO OIL AND GAS COMPANIES IS NO LONGER NEEDED BY AN INDUSTRY THAT IS CURRENTLY EXPERIENCING RECORD PROFITS. Better uses exist for state dollars than this credit. Amendment 58 directs the new money to state and community programs that help improve the state's economy, environment, and infrastructure. These programs are a sound investment in Colorado's future.

2) Increasing access to college for middle- and low-income Coloradans is critical to ensuring the state's long-term economic health. The scholarships funded through this measure offset the high cost of college, making a college education attainable for more residents. As Colorado graduates more state residents, businesses benefit from a larger pool of educated workers that can help grow Colorado's economy.

3) Oil and gas production is necessarily limited by the location of reserves, AND OIL AND GAS PRODUCERS HAVE ANNOUNCED PLANS TO CONTINUE TO EXPAND INVESTMENT IN COLORADO AT AN UNPRECEDENTED RATE. Raising the extraction cost of those resources is not likely to have much of an effect on production in Colorado. Colorado currently has the lowest severance tax rate among large-producing western states. By eliminating the state tax credit and tightening the small-well tax exemption, Amendment 58 increases the compensation that Colorado citizens receive for the extraction of natural resources and brings Colorado's tax rate more in line with other states.

4) The money raised by Amendment 58 provides benefits to the state with little or no increase in the cost of energy for Colorado consumers. Oil and gas prices are influenced by numerous factors, and a change in Colorado's severance tax is not a large enough factor to make a significant difference in Colorado's prices. Colorado produces less than one-tenth of one percent of the world's oil. Increasing the state's severance tax on this level of production is unlikely to affect the market price of gasoline. Likewise, since most of the natural gas produced in Colorado is sold elsewhere, any additional costs are likely to be paid by consumers outside of Colorado.

Arguments Against

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4) ~~Amendment 58 may increase energy prices for Colorado consumers. A portion of the gasoline sold in the state is refined from Colorado oil, and a major utility purchases gas from companies that produce in Colorado. Therefore, a portion of the higher costs from this measure could be passed on in monthly heating bills and higher gasoline prices. Colorado consumers are already faced with high gasoline and electricity costs.~~

Estimate of Fiscal Impact

Amendment 58 is expected to increase state severance tax revenue by almost $1.1 billion over the next four years, as indicated in Table 2. Amendment 58 also changes the allocation of severance tax revenue and directs revenue to several new and existing state programs. Based on the current state forecast, Amendment 58 reduces the money for existing state programs and local governments by $44 million in the current budget year, but provides between $7 and $14 million more per year over the next three budget years than current law. ALSO, LOCAL COMMUNITIES WILL RECEIVE ABOUT $150 MILLION OF THE NEW MONEY OVER THE NEXT FOUR YEARS IN FUNDING FOR TRANSPORTATION AND WATER GRANTS. These numbers are estimates based on forecasts of oil and gas prices; existing state programs and local governments could receive more or less money depending on actual prices. The new programs created by Amendment 58 will receive a total of $1.1 billion over the next four years, of which a portion will cover the administrative costs of the programs.

Table 2
Estimated Fiscal Impact of Amendment 58, Millions of Dollars

	2009	2010	2011	2012	Total
Projected severance taxes under current law	$315	$213	$244	$254	$1,026
Projected severance taxes under Amendment 58	$416	$517	$569	$606	$2,108
New severance taxes under Amendment 58	**$101**	**$304**	**$325**	**$352**	**$1,083**
Distribution to state programs and local governments under current law	$315	$213	$244	$254	$1,026
Distribution to state programs and local governments under Amendment 58	$271	$228	$250	$267	$1,016
Difference in distribution to existing state programs and local governments	-$44	$15	$6	$13	-$10
Distribution to new programs, identified in Table 1	$145	$290	$318	$340	$1,093

Appendix A: Severance Tax Rates in Other Large Producing Western States

State	Base Tax Rate	ACTUAL* Severance Tax Rate (FY 2006-07)
Colorado	2.0-5.0%	1.3%
Utah	5.0%	2.1%
Kansas	8.0%	2.8%
Texas	7.5%	4.4%
Wyoming	6.0%	4.5%
Oklahoma	7.0%	5.6%
New Mexico	7.94%	6.6%
Montana	9.26- 15.06%	6.8%

** ACTUAL tax rates are measured by dividing severance taxes after exemptions, deductions, and credits by the value of oil and gas produced in each state.*

Bill Ray

Amendment 58
Severance Taxes on the Oil and Natural Gas Industry

Amendment 58 proposes changing the Colorado statutes to:

- increase the amount of state severance taxes paid by oil and natural gas companies, primarily by eliminating an existing state tax credit;
- allocate the increased severance tax revenue to college scholarships for state residents, wildlife habitat, renewable energy projects, transportation projects in energy-impacted areas, and water treatment grants; and
- exempt all oil and gas severance tax revenue from state and local spending limits.

Summary and Analysis

What is the severance tax? The severance tax is paid by companies that extract nonrenewable natural resources from the earth, including oil and gas, gold, coal, and molybdenum. Over the last five years, 92 percent of state severance tax collections have come from oil and gas, and nearly all of that is from gas. Last year, the state collected $140 million in oil and gas severance taxes. Collections fluctuate annually with changing energy prices.

How does Amendment 58 change Colorado's current severance taxes on oil and gas? Amendment 58 eliminates a state tax credit, increases the number of oil and gas wells subject to the tax, and changes the tax rate on oil and gas companies. These changes are estimated to increase state severance tax collections by $304 million in budget year 2010.

Eliminating the state tax credit. The state currently allows companies to reduce their severance tax payment by 87.5 percent of local property taxes paid on oil and gas production. Amendment 58 removes this tax credit, increasing state severance taxes by an estimated $241 million in budget year 2010.

Increasing the number of wells subject to the tax. Companies currently do not have to pay the severance tax on small wells. Amendment 58 increases the number of smaller wells subject to the tax. With this change, the production on which the tax is paid increases from 40 percent to 56 percent for oil and from 80 percent to 90 percent for gas. This change is expected to increase state severance tax revenue by $62 million in budget year 2010.

Changing the tax rate on oil and gas companies. Colorado currently taxes oil and gas companies at rates between 2 and 5 percent, depending on income. Amendment 58 changes the tax to a flat, 5 percent rate for companies earning $300,000 or more, eliminating taxes for small companies and increasing taxes on

Bill Ray

large companies. As a result, a company earning more than $300,000 will pay 5 percent on all of its income, while a company earning less than $300,000 will pay no severance tax. The loss in revenue from small companies is expected to be minimal, while the tax increase on large companies is estimated to raise state severance tax collections by about $1 million annually.

How do Colorado's oil and gas taxes compare to other states? Colorado's ~~actual~~ EFFECTIVE severance tax rate is the lowest of the eight large-producing western states when each state's exemptions, deductions, and credits are taken into account. In budget years 2005 AND 2007, Colorado's ~~actual~~ EFFECTIVE severance tax rate was 1.9 PERCENT AND 1.3 percent RESPECTIVELY. Montana's rate was the highest at 6.8 percent IN BUDGET YEAR 2007. Assuming the taxes in other states remain the same, Amendment 58 raises Colorado's severance tax ranking to the third lowest. These rankings do not take into account other taxes that oil and gas companies pay, such as income, sales, and property taxes, which vary among the states. A RECENT ANALYSIS FOUND THAT WHEN INCLUDING THESE OTHER TAXES, THE TOTAL TAX BURDEN ON OIL AND GAS COMPANIES IN COLORADO IS COMPARABLE TO OTHER STATES. THE ANALYSIS ALSO FOUND THAT UNDER AMENDMENT 58, THE STATE'S TOTAL TAX BURDEN WOULD BECOME THE SECOND HIGHEST AMONG NINE WESTERN STATES.

How is severance tax revenue distributed under current law? Under current law, Colorado severance tax revenue is evenly divided between state programs and local governments. The state portion pays for water projects and programs related to mineral extraction, clean energy development, low-income energy assistance, and wildlife conservation. The local government portion is distributed to communities affected by mining, either based on mining activity in the area or through competitive loans or grants.

How does Amendment 58 distribute severance tax revenue? Under Amendment 58, the state programs and local governments that currently receive all of the severance tax revenue will evenly split 44 percent of severance tax collections. Although the portion of money set aside for these uses is less than under current law, the estimated increase in collections under Amendment 58 is expected to provide existing programs with about the same amount of money over the next four years. However, severance tax collections fluctuate with energy prices, and state programs and local governments could receive more or less money than currently anticipated.

Amendment 58 dedicates the remaining 56 percent of severance tax revenue to new uses. Ten percent is placed in a reserve account for future use by the state. Ninety percent pays for new programs as follows:

- 60 percent for a college scholarship program for lower- and middle-income Coloradans. The governor-appointed board that oversees the state's higher education system sets the specific eligibility criteria for the scholarship program, considering factors such as income, family size, and academic performance;

- 15 percent to assist local governments, nonprofit organizations, and the state to acquire and maintain wildlife habitat. The state board

Bill Ray

tasked with preserving Colorado's wildlife and open space distributes this money;

- 10 percent for projects that promote energy efficiency and the use of renewable, clean energy resources;
- 10 percent for transportation projects in areas of the state impacted by the oil and gas industry; and
- 5 percent for small community drinking water and domestic wastewater treatment projects.

Table 1 presents estimates of the money that Amendment 58 provides to these uses over the next four budget years.

Table 1. Use of New Money under Amendment 58 in Millions of Dollars

New Programs	2009 (half-year)	2010	2011	2012	Four-Year Total
Held in reserve	$14	$29	$32	$34	$109
College scholarships	$78	$157	$171	$183	$589
Wildlife habitat	$20	$39	$43	$46	$148
Clean energy	$13	$26	$29	$31	$99
Transportation projects	$13	$26	$29	$31	$99
Water grants	$7	$13	$14	$15	$49
Total new programs:	**$145**	**$290**	**$318**	**$340**	**$1,093**

How do Amendment 58 and Amendment 52 interact? Both Amendment 58 and Amendment 52 change how the state spends severance tax revenue, but the two measures propose different uses for the money. Thus, some of the provisions of these measures appear to conflict with one another. Should both measures pass, the state will be required to implement these conflicting provisions, but if challenged the courts will have to decide how the measures take effect. Amendment 52 proposes a change to the state constitution, while this measure proposes a change to state statute. To date, Colorado courts have not addressed this type of conflict between ballot measures, but it is likely that the constitutional provision would prevail.

Arguments For

1) Amendment 58 eliminates a state tax credit for an industry that is currently experiencing record profits. Better uses exist for state dollars than this credit. Amendment 58 directs the new money to state and community programs that help improve the state's economy, environment, and infrastructure. These programs are a sound investment in Colorado's future.

2) Increasing access to college for middle- and low-income Coloradans is critical to ensuring the state's long-term economic health. The scholarships funded through this measure offset the high cost of college, making a college education attainable for more residents. As Colorado graduates more state residents, businesses benefit from a larger pool of educated workers that can help grow Colorado's economy.

3) Oil and gas production is necessarily limited by the location of reserves. Raising the extraction cost of those resources is not likely to have much of an effect on production in Colorado. Colorado currently has the lowest severance tax rate among large-producing western states. By eliminating the state tax credit and tightening the small-well tax exemption, Amendment 58 increases the compensation that Colorado citizens receive for the extraction of natural resources and brings Colorado's tax rate more in line with other states.

4) The money raised by Amendment 58 provides benefits to the state with little or no increase in the cost of energy for Colorado consumers. Oil and gas prices are influenced by numerous factors, and a change in Colorado's severance tax is not a large enough factor to make a significant difference in Colorado's prices. Colorado produces less than one-tenth of one percent of the world's oil. Increasing the state's severance tax on this level of production is unlikely to affect the market price of gasoline. Likewise, since most of the natural gas produced in Colorado is sold elsewhere, any additional costs are likely to be paid by consumers outside of Colorado.

Arguments Against

1) Increasing taxes on oil and gas companies could negatively affect the state's economy and its citizens. The industry directly contributes $16.5 billion and employs about 20,000 workers in the state. In addition, industry activity supports another 20,000 to 50,000 jobs as a result of its Colorado extraction activities. By more than doubling the state's severance tax, Amendment 58 is likely to make Colorado less attractive to the oil and gas industry, which may reduce the industry's investment in the state and result in a loss of jobs. Moreover, the tax increase is occurring at a time when more production could help lower energy prices.

2) The spending plan for the new money is vague and relies upon a volatile source of money. Amendment 58 contains few specifics on the distribution of the scholarship money or the other programs it creates. Further, funding statewide programs with money from the energy industry is risky because it has endured boom-and-bust cycles in the past. It is better to fund programs that address statewide needs with money from multiple sources.

3) The existing state tax credit is justifiable given the higher property taxes paid by the industry. Currently, oil and gas property is valued at ~~nearly~~ OVER three times the rate as other business properties. The higher property taxes paid by the industry provide local communities in energy-impacted areas with the financial resources to address the effects of oil and gas production. The state tax credit offsets these higher local taxes.

4) Amendment 58 may increase energy prices for Colorado consumers. A portion of the gasoline sold in the state is refined from Colorado oil, and a major utility purchases gas from companies that produce in Colorado. Therefore, a portion of the higher costs from this measure could be passed on in monthly heating bills and higher gasoline prices. Colorado consumers are already faced with high gasoline and electricity costs.

Estimate of Fiscal Impact

Amendment 58 is expected to increase state severance tax revenue by almost $1.1 billion over the next four years, as indicated in Table 2. Amendment 58 also changes the allocation of severance tax revenue and directs revenue to several new and existing state programs. Based on the current state forecast, Amendment 58 reduces the money for existing state programs and local governments by $44 million in the current budget year, but provides between $7 and $14 million more per year over the next three budget years than current law. These numbers are estimates based on forecasts of oil and gas prices; existing state programs and local governments could receive more or less money depending on actual prices. The new programs created by Amendment 58 will receive a total of $1.1 billion over the next four years, of which a portion will cover the administrative costs of the programs.

Table 2
Estimated Fiscal Impact of Amendment 58, Millions of Dollars

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Projected severance taxes under current law	$315	$213	$244	$254	$1,026
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New severance taxes under Amendment 58	**$101**	**$304**	**$325**	**$352**	**$1,083**
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Difference in distribution to existing state programs and local governments	-$44	$15	$6	$13	-$10
Distribution to new programs, identified in Table 1	$145	$290	$318	$340	$1,093

REEVES BROWN'S COMMENTS ON LAST DRAFT OF AMENDMENT 58

Thanks for sharing the "last draft" of the I-113 Ballot Analysis. I apparently overlooked the 2nd draft and was a little surprised to see that none of the arguments which we raised to the initial draft appear in the current draft. Specifically, we are very concerned that I-113 will REDUCE the revenues which local communities impacted by oil & gas development are currently receiving. Despite the I-113 proponents' projections of potential increased future revenues, the I-113 formula -- had it been in place -- would have resulted in a REDUCTION in revenues to these local governments in 6 of the last 7 years. The proposed Blue Book analysis states that -- *"Although the portion of money set aside for (local government impacts) is less than under current law, the increased collections under Amendment (?) are estimated to provide existing programs with about the same amount of money"* – but this statement is based entirely on anticipated revenues and not actual history. We think it is unfair and disingenuous to state that I-113 is *"estimated to provide (local impacted governments) with about the same amount of money"* without even mentioning the fact that those same local government beneficiaries strongly disagree with this supposition and are adamantly opposed to this measure because of that concern.

If there is not room enough within the Blue Book analysis to articulate this concern as an additional "Argument Against", then I would suggest that you at least rephrase the aforementioned sentence as follows to provide the reader with a more accurate view of the anticipated impact:

> *"Although the portion of money set aside for (local government impacts) is less than under current law, the increased collections under Amendment (?) are INTENDED to provide existing programs with about the same amount of money; HOWEVER, BASED ON THE FACT THAT (A-?)'S FORMULA WOULD HAVE REDUCED REVENUES TO LOCAL GOVERNMENTS IN 6 OF THE LAST 7 YEARS, THERE IS SOME CONCERN THAT (A-?) WILL ACTUALLY REDUCE THE REVENUES WHICH LOCAL GOVERNMENTS CURRENTLY RECEIVE TO MITIGATE THE IMPACTS OF ENERGY DEVELOPMENT IN THEIR COMMUNITIES."*
>
> (CAPS indicate proposed new additional language)

Thanks for your consideration of this second request to include reference to this concern.

Reeves Brown
Executive Director, CLUB 20
w: 970-242-3264
f: 970-245-8300
rebrown@club20.org

GEORGE MERRITT'S COMMENTS ON LAST DRAFT OF AMENDMENT 58

To whom it may concern,

Thank you again for your work over the past weeks. We feel, with few exceptions your work has produced a document that will inform voters and accurately reflect this initiative.

In our final opportunity to critique this document, however, we must strongly object to section added to the 3rd draft. We go through our other comments in order, but we have pulled this objection out of order to emphasize it's importance:

We respectfully object to the Lines 18-28 on page 3 of the 3rd Draft of the Ballot Analysis for Initiative # 113 ("How do Amendment #113 and Amendment # 120 interact?"), as well as to the comparable Addendum proposed for the Ballot Analysis for Initiative #120. These statements are directly contrary to the applicable law on the point discussed.

According to our attorney, Ed Remey, the controlling statute on the question of how to deal with conflicting ballot initiatives when both receive a majority of affirmative votes in a single election is C.R.S. § 1-40-123, which provides in pertinent part: "A majority of the votes cast thereon shall adopt any measure submitted, and, in case of adoption of conflicting provisions, the one that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict."

There is no distinction in this provision between statutory or constitutional measures, i.e., the measure (whether statutory or constitutional) that receives the greatest number of affirmative votes shall prevail as to all particulars as to which there is a conflict. Constitutional amendments adopted by initiative do not automatically trump statutory amendments adopted by initiative at the same election - - it depends upon which measure receives the greatest number of affirmative votes.

The logic of this result (in addition to being mandated by the plain language of C.R.S. § 1-40-123) is as follows: if a statutory provision were to pass with a greater number of affirmative votes than a conflicting constitutional amendment offered at the same election, it would be presumed that a greater number of voters wanted the statutory measure to take effect than wanted it to be subject to invalidation by the constitutional measure that drew fewer affirmative votes. Thus, the conflicting constitutional measure would give way as to all particulars as to which there is a conflict.

To our knowledge, the Colorado appellate courts have not rendered a dispositive ruling on this issue, though we are confident such a ruling would be consistent with the analysis set forth above.

It is extremely important that official statements to the voters in the Blue Book not misstate or misrepresent the law on this critical issue, or even seek to determine the law if the point is subject to debate.

Below are the changes that are still necessary to convey the express intent of this initiative.

At its core, this initiative's primary goal is to sunset the outdated subsidy, put in place to incentivize the oil and gas industry 30 years ago. The industry has clearly matured. The state has issued new well permits at a rate of 20 per day. In fact, no group can offer credible evidence to show anything other than a frothy economic outlook for Colorado's oil and gas production. The pressure from across the nation is to drill more – not less – in Colorado. Colorado oil and gas producers such as XTO, Occidental and Chevron have told investors they intent to EXPAND operations in Colorado.

With that in mind, we still believe it is necessary to introduce this initiative as a chance to repeal Colorado's tax credits for oil and gas. The first sentence (Page 1, line 2) should read "Repeal Colorado's system of tax credits and exemptions for oil and natural gas producers, effectively increasing revenue."
At the very least, we suggest flipping the sentence you have crafted. "Eliminate an existing property tax credit for oil and natural gas companies and other exemptions, effectively increasing the amount of severance taxes."

Under "What is the Severance Tax?" (Page 1, Line 12) voters would benefit from know how the severance tax rate is affected by Colorado's large subsidy by inserting the following line: "The severance tax rate on income over $300,000 is 5 percent, but because of Colorado's large tax credit, the effective severance tax rate is 1.3 percent."

Under "How does Amendment (?) change Colorado's current severance taxes on oil and gas?" (Page 1, line 19) we appreciate the changes made in this draft to more accurately convey the changes.

Under "Increasing the number of Wells subject to the tax" it is necessary to define the exemption rather than use a relative term like "small wells" (Page 1, Line 27). We suggest using the law "… Companies currently do not have to pay severance tax on oil wells producing less than 15 barrels a day or gas wells producing less than 90,000 cubic feet per day." Voters also need to put the exemption into perspective: Because of this exemption, more than 94 percent of oil wells and 60 percent of gas wells in Colorado we exempt from taxes."

The section titled "Changing the tax rate on oil and gas companies" (Page 1, line 33) we appreciate the needed changes you have made. Thank you.

Under "How does Amendment (?) distribute severance tax revenue?" (Page 2, line 26) you have provided a great deal of clarity on how the local portion of our initiative is distributed. This is an important section for voters in local communities.

Under "Arguments For" (Page 3, line 30) you have removed a critical line in this draft. We would like to replace the opening argument to again say "The property tax credit provided to oil and gas companies is no longer needed by an industry that is currently experiencing record profits."

Under "Argument 3" (Page 4, Line 3) we would insert one sentence: "Oil and gas producers have announced plans to continue to expand invests in Colorado at an unprecedented rate."

Under “Argument 4” (Page 4, Lines 10-17) we would like to reiterate again how important this argument is. An independent study on this initiative is attached to support this argument.

Under “Arguments Against” (Page 4, line 19) we again take issue with the figure of 71,000 jobs. The state’s own record for the number of jobs is less than one-third of this figure. The figure should be struck for inaccuracy. Also, the final line (Page 4, line 14) has no basis in reality. Oil and gas producers’ filings with the Securities and Exchange Commission and recent second-quarter reports show the industry is planning exactly the opposite action. New well permits continue to be issued at a record pace with no indications of a slowing down. The line should be removed for inaccuracy.

Under “Argument 3” (Page 4, line 33) this is critical: this argument has no basis in reality. It should be removed for misleading voters. Our initiative makes no change to local property taxes. It eliminates the tax credit – the local property taxes stay the same. As your own staff has shown, Colorado’s overall tax rate is lower than almost every other state in the region (5.7 percent). We can end this unique tax credit and still have a lower overall rate than Wyoming and New Mexico.

Under “Argument 4” (Page 4, Line 38) if this augment had any basis, Wyoming’s oil and gas prices would be higher than Colorado. Wyoming has nearly twice the overall taxes on the oil and gas industry (11.2 percent), but has lower oil and gas prices. What is more, the vast majority of the gas produced in Colorado is either sent out of state, or to the Cheyenne Hub where it is mixed (and priced) with gas from Wyoming. Again, this is an argument without basis in fact.

Under “Estimate of Fiscal Impact” (Page 5, Line 2) We appreciate the change you have made to make this section more clear to voters, however, we still feel strongly that it is necessary to include the addition revenue for local communities in this section. The intent of this initiative is clearly stated, “that the programs currently funded by the severance tax paid by oil and gas producers not be adversely impacted by the distribution of the additional revenue generated by the changes to the severance tax”.
In plain language this initiative holds existing program funds harmless. Indeed, to clearly explain the impact of the measure the entire effect of this measure on local communities must be taken into account. A key component of the measure directs 15% of the additional funding to road and water projects. Certainly when trying to convey to voters the actual effect of the measure those additional local funds must be taken into account. Furthermore, while revenue forecasts and projections will vary over time the fact remains that upon passage of the measure local communities will receive more net revenues than they did the previous year.

Finally, the chart that accompanied the second draft should be included in the final version. It give voters a clear visual on Colorado’s severance taxes and how they compare to other states.

The time and dedication that your staff has spent on our initiative means a great deal to us. Thank you again for your work and for the opportunity to critique this draft. Please do not hesitate to contact me with any questions as we work toward a final draft.

BILL RAY'S COMMENTS ON LAST DRAFT OF AMENDMENT 58

M E M O R A N D U M

TO: Legislative Council
Initiative 113 Ballot Analysis Team

FROM: Bill Ray
Coloradans for a Stable Economy
303-885-1881

DATE: August 18, 2008

RE: Comments on Draft 3 of Blue Book

Thank you for reviewing the following comments concerning the final draft of the 2008 Blue Book. Coloradans for a Stable Economy believes that on balance the drafts have provided a fair assessment of severance tax and what Initiative 113 would do if approved by voters. Below are our final suggestions:

- We believe the section that begins on page 2 line 7 needs some additional context and information. For example, by only using one year of data, the paragraph gives the impression that Colorado's severance tax is always 1.3 percent. Prior Legislative Council research shows that in 2004 the rate was 1.9 percent, or almost 50 percent higher. Many things influence the effective state severance tax rate, including the county in which the production occurs as well as the price of the commodity extracted. We also believe the word "actual," which is used a few times in the paragraph, contributes to the impression of a constant tax rate. If we understand the methodology used to create the comparison, the word "effective" would be more precise.

- Additionally, with respect to the same paragraph, the concept of the total tax burden paid by oil and gas companies is alluded to only briefly. Based on the research prepared by LECG, we believe that at current prices, the total tax burden paid by oil and gas companies is comparable to other states and that with Initiative 113, the total tax burden would grow such that Colorado would have the second highest total tax burden of nine Western states.

- In the arguments against section, page 4 line 34, strike the word "nearly" and replace with "over." The assessment rate for most business properties is 29 percent and the oil and gas rate is 87.5 percent.

Last Draft as Mailed to Interested Parties

Initiative #113
Severance Taxes on the Oil and Natural Gas Industry

Amendment (?) proposes changing the Colorado statutes to:

- increase the amount of state severance taxes paid by oil and natural gas companies, primarily by eliminating an existing state tax credit;

- allocate the increased severance tax revenue to college scholarships for state residents, wildlife habitat, renewable energy projects, transportation projects in energy-impacted areas, and water treatment grants; and

- exempt all oil and gas severance tax revenue from state and local spending limits.

Summary and Analysis

What is the severance tax? The severance tax is paid by companies that extract nonrenewable natural resources from the earth. Colorado collects severance taxes on several minerals, including oil and gas, gold, coal, and molybdenum. Over the last five years, 92 percent of state severance tax collections have come from oil and gas, and nearly all of that is from gas. In budget year 2007, the state collected $117 million in oil and gas severance taxes.

How does Amendment (?) change Colorado's current severance taxes on oil and gas? Amendment (?) eliminates a state tax credit, increases the number of oil and gas wells subject to the tax, and changes the tax rate on oil and gas companies. These changes are estimated to increase state severance tax collections by $304 million in budget year 2010.

Eliminating the state tax credit. The state currently allows companies to reduce their severance tax payment by 87.5 percent of local property taxes paid on oil and gas. Amendment (?) removes this tax credit, increasing state severance taxes by an estimated $241 million in budget year 2010.

Increasing the number of wells subject to the tax. Companies currently do not have to pay the severance tax on small wells. Amendment (?) increases the number of smaller wells subject to the tax. With this change, the production on which the tax is paid increases from 40 percent to 56 percent for oil and from 80 percent to 90 percent for gas. This change is expected to increase state severance tax revenue by $62 million in budget year 2010.

Changing the tax rate on oil and gas companies. Colorado currently taxes oil and gas companies at rates between 2 and 5 percent, depending on income. Amendment (?) changes the tax to a flat, 5 percent rate for companies earning

$300,000 or more, eliminating taxes for small companies and increasing taxes on large companies. As a result, a company earning more than $300,000 will pay 5 percent on all of its income, while a company earning less than $300,000 will pay no severance tax. The loss in revenue from small companies is expected to be minimal, while the tax increase on large companies is estimated to raise state severance tax collections by about $1 million annually.

How do Colorado's oil and gas taxes compare to other states? Colorado's actual severance tax rate is the lowest of the eight large-producing western states when each state's exemptions, deductions, and credits are taken into account. In budget year 2007, Colorado's actual severance tax rate was 1.3 percent; Montana's rate was the highest at 6.8 percent. Assuming the taxes in other states remain the same, Amendment (?) raises Colorado's severance tax ranking to the third lowest. These rankings do not take into account other taxes that oil and gas companies pay, such as income, sales, and property taxes, which vary among the states.

How is severance tax revenue distributed under current law? Under current law, Colorado severance tax revenue is evenly divided between state programs and local governments. The state portion pays for water projects and programs related to mineral extraction, clean energy development, low-income energy assistance, and wildlife conservation. The local government portion is distributed to communities affected by mining, either based on mining activity in the area or through competitive loans or grants.

How does Amendment (?) distribute severance tax revenue? Under Amendment (?), the state programs and local governments that currently receive all of the severance tax revenue will evenly split 44 percent of severance tax collections. Although the portion of money set aside for these uses is less than under current law, the increased collections under Amendment (?) are estimated to provide existing programs with about the same amount of money. Amendment (?) dedicates the remaining 56 percent of severance tax revenue to new uses. Ten percent is placed in a reserve account for future use by the state. Ninety percent pays for new programs as follows:

- 60 percent for a college scholarship program for lower- and middle-income Coloradans. The governor-appointed board that oversees the state's higher education system sets the specific eligibility criteria for the scholarship program, considering factors such as income, family size, and academic performance;

- 15 percent to assist local governments, nonprofit organizations, and the state to acquire and maintain wildlife habitat. The state board tasked with preserving Colorado's wildlife and open space distributes this money;

- 10 percent for projects that promote energy efficiency and the use of renewable, clean energy resources;

- 10 percent for transportation projects in areas of the state impacted by the oil and gas industry; and

- 5 percent for small community drinking water and domestic wastewater treatment projects.

Table 1 presents estimates of the money that Amendment ? provides to these uses over the next four budget years.

Table 1. Use of New Money Under Amendment (?) in Millions of Dollars

New Programs	2009 (half-year)	2010	2011	2012	Four-Year Total
Held in reserve	$14	$29	$32	$34	$109
College scholarships	$78	$156	$172	$183	$589
Wildlife habitat	$20	$39	$43	$46	$148
Clean energy	$13	$26	$29	$31	$99
Transportation projects	$13	$26	$29	$31	$99
Water grants	$7	$13	$14	$15	$49
Total new programs:	**$145**	**$289**	**$319**	**$340**	**$1,093**

How do Amendment (#113) and Amendment (#120) interact? Both Amendment (#113) and Amendment (#120) change how the state spends severance tax revenue, but the two measures propose different uses for the money. Thus, some of the provisions of these measures appear to conflict with one another. Amendment (#120) proposes a change to the state constitution, and this measure proposes a change to state statute. When conflicts arise between the constitution and statutes, the constitution prevails. Since Amendment (#120) is a constitutional change, if both measures pass, any parts of this measure that are found to be in conflict with Amendment (#120) will not take effect. These issues will be resolved after the election. The state will likely implement the measures based on a state legal opinion, or the court system may have to decide how the measures take effect.

Arguments For

1) Amendment (?) creates a new source of money for state and community programs that will help improve the state's economy, environment, and infrastructure. These programs are a sound investment in Colorado's future and a better use of state dollars than providing a tax credit to oil and gas companies. These companies are experiencing record profits and no longer need the tax break.

2) Increasing access to college for middle- and low-income Coloradans is critical to ensuring the state's long-term economic health. The scholarships funded through this measure offset the high cost of college, making a college education attainable for more

residents. As Colorado graduates more state residents, businesses benefit from a larger pool of educated workers that can help grow Colorado's economy.

3) Oil and gas production is necessarily limited by the location of reserves, so raising the extraction cost of those resources is not likely to have much of an effect on production in Colorado. Colorado currently has the lowest severance tax rate among large-producing western states. By eliminating the state tax credit and tightening the small-well tax exemption, Amendment (?) increases the compensation that Colorado citizens receive for the extraction of natural resources and brings Colorado's tax rate more in line with other states.

4) The money raised by Amendment (?) provides benefits to the state with little or no increase in the cost of energy for Colorado consumers. Oil and gas prices are influenced by numerous factors, and a change in Colorado's severance tax is not a large enough factor to make a significant difference in Colorado's prices. Colorado produces less than one-tenth of one percent of the world's oil. Increasing the state's severance tax on this level of production is unlikely to affect the market price of gasoline. Likewise, since most of the natural gas produced in Colorado is sold elsewhere, any additional costs are likely to be paid by consumers outside of Colorado.

Arguments Against

1) Increasing taxes on oil and gas companies is likely to negatively affect the state's economy and its citizens. According to one recent analysis, the industry accounts for over 70,000 jobs in the state – either through direct employment or as a result of the industry's activities – and contributes around $23 billion to the state's economy. By more than doubling the state's severance tax, Amendment (?) is likely to make Colorado less attractive to the oil and gas industry, which may reduce investment and result in a loss of jobs. Moreover, the tax increase is occurring at a time when more production could help lower energy prices.

2) The spending plan for the new money is vague and relies upon a volatile source of money. Amendment (?) contains few specifics on the distribution of the scholarship money or the other programs it creates. Further, funding statewide programs with money from the energy industry is risky because it has endured boom-and-bust cycles in the past. It is better to fund programs that address statewide needs with money from multiple sources.

3) The existing state tax credit is justifiable given the higher property taxes paid by the industry. Currently, oil and gas property is valued at nearly three times the rate as other business properties. The higher property taxes paid by the industry provide local communities in energy-impacted areas with the financial resources to address the effects of oil and gas production. The state tax credit offsets these higher local taxes.

4) Amendment (?) may increase energy prices for Colorado consumers. A portion of the gasoline sold in the state is refined from Colorado oil, and a major utility purchases gas from companies that produce in Colorado. Therefore, a portion of the

higher costs from this measure could be passed on in monthly heating bills and higher gasoline prices. Colorado consumers are already faced with high energy costs with gasoline at record levels and electricity costs projected to increase by as much as 38 percent annually.

Estimate of Fiscal Impact

Amendment (?) is expected to increase state severance tax revenue by almost $1.1 billion over the next four years. The amendment also changes the allocation of severance tax revenue and increases spending for several new state programs. Based on the current state forecast, Amendment (?) reduces the money for existing state programs and local governments by $22 million in the current budget year, but provides between $3 and $7 million more per year over the next three budget years than current law. The new programs created by the amendment will gain a total of $1.1 billion over the next four years, of which a portion will cover the administrative costs of the programs.

Amendment 58
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Amendment 58
Severance Taxes on the Oil and Natural Gas Industry

Ballot Title: STATE TAXES SHALL BE INCREASED $321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST $300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND 5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS.

Text of Proposal:

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

SECTION 1. 39-29-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS AND INTEREST OWNERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE AS APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION SHALL SUPPLEMENT, RATHER THAN SUPPLANT, CURRENT APPROPRIATIONS TO THE FOLLOWING ENUMERATED PURPOSES AND SHALL BE USED TO PROVIDE FUNDING FOR THE FOLLOWING PUBLIC PURPOSES: SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; THE PRESERVATION OF WILDLIFE HABITAT; RENEWABLE AND CLEAN ENERGY PROJECTS; TRANSPORTATION PROJECTS IN COMMUNITIES IMPACTED BY OIL AND GAS PRODUCTION; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. IT IS THE FURTHER INTENT OF THE PEOPLE OF THE STATE THAT THE PROGRAMS CURRENTLY FUNDED BY THE

SEVERANCE TAX NOT BE ADVERSELY IMPACTED BY THE DISTRIBUTION OF THE ADDITIONAL REVENUE GENERATED BY THE CHANGES TO THE SEVERANCE TAX APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3).

SECTION 2. 39-29-105 (1) (b), Colorado Revised Statutes, is amended, and the said 39-29-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2009, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

Under $25,000	2%
$25,000 and under $100,000	3%
$100,000 and under $300,000	4%
$300,000 and over	5%

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2009, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE; EXCEPT THAT OIL PRODUCED FROM ANY WELLS THAT PRODUCE SEVEN AND ONE HALF BARRELS OR LESS OF OIL PER DAY AND GAS PRODUCED FROM WELLS THAT PRODUCE FORTY-FIVE THOUSAND CUBIC FEET OR LESS OF GAS PER DAY, FOR THE AVERAGE OF ALL PRODUCING DAYS FOR SUCH OIL AND GAS PRODUCTION DURING THE TAXABLE YEAR SHALL BE EXEMPT FROM THE TAX. NOTHING IN THIS PARAGRAPH (c) SHALL EXEMPT A PRODUCER OF OIL AND GAS FROM SUBMITTING A PRODUCTION EMPLOYEE REPORT AS REQUIRED BY SECTION 39-29-110 (1) (d) (I). THE TAX FOR OIL AND GAS PROVIDED FOR IN THIS PARAGRAPH (c) SHALL BE AT THE FOLLOWING RATE OF GROSS INCOME:

$300,000 AND OVER	5% OF TOTAL GROSS INCOME

SECTION 3. 39-29-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-105. Tax on severance of oil and gas. (3) THE PROCEEDS OF THIS TAX RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AND INVESTMENT INCOME THEREON SHALL BE COLLECTED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING LIMITATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, OR ANY OTHER LAW, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE STATE OR ANY DISTRICT.

SECTION 4. The introductory portion to 39-29-108 (1) and 39-29-108 (2), Colorado Revised Statutes, are amended, and the said 39-29-108 is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-29-108. Allocation of severance tax revenues – definitions – repeal. (1) Except as provided in ~~subsections (2) and (3)~~ SUBSECTIONS (2), (2.3), AND (3) of this section, the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article shall be credited as follows:

(2) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 1981, EXCEPTING THOSE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), fifty percent shall be credited to the ~~state~~ severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), TWENTY-TWO PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX TRUST FUND CREATED BY SECTION 39-29-109, TWENTY-TWO PERCENT SHALL BE CREDITED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED BY SECTION 39-29-110, AND THE REMAINING FIFTY-SIX PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND CREATED BY SECTION 39-29-110.5.

SECTION 5. Article 29 of Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-29-110.5. Severance tax stabilization trust fund – creation – administration. (1) (a) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER THE SEVERANCE TAX STABILIZATION TRUST FUND. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL MONEYS IN THE

OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED BY THE GENERAL ASSEMBLY FOR THE PURPOSES AND IN THE PROPORTION SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(b) THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE HELD IN TWO ACCOUNTS, AS FOLLOWS:

(I) **The perpetual base account.** TEN PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED THEREON SHALL BE RETAINED IN THE PERPETUAL BASE ACCOUNT. THE MAXIMUM BALANCE IN THE PERPETUAL BASE ACCOUNT SHALL BE ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND PURSUANT TO SECTION 39-29-108 (2.3). IN ANY YEAR IN WHICH THE BALANCE OF THE PERPETUAL BASE ACCOUNT EXCEEDS ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND, THE INTEREST GENERATED BY THE PERPETUAL BASE ACCOUNT AND MONEYS IN EXCESS OF ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(II) **The operational account.** NINETY PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND, PLUS ANY MONEYS REQUIRED TO BE TRANSFERRED TO THE OPERATIONAL ACCOUNT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(2) EACH YEAR THE MONEYS IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED AS FOLLOWS:

(a) SIXTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF SCHOLARSHIPS, TO BE KNOWN AS COLORADO PROMISE SCHOLARSHIPS, FOR COLORADO RESIDENTS ATTENDING STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., AND LOCAL DISTRICT COLLEGES AS DESCRIBED BY SECTION 23-72-121.5, C.R.S., AND SHALL BE DIRECTED TOWARDS MAKING HIGHER EDUCATION AFFORDABLE FOR COLORADO RESIDENTS FROM LOWER AND MIDDLE INCOME FAMILIES. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL ESTABLISH GUIDELINES AND POLICIES SETTING FORTH THE ELIGIBILITY CRITERIA FOR SCHOLARSHIPS FUNDED BY THIS PARAGRAPH (a), TO INCLUDE CONSIDERATION OF SUCH FACTORS AS HOUSEHOLD INCOME, FAMILY SIZE, ELIGIBILITY FOR OTHER SOURCES OF FINANCIAL ASSISTANCE, AND THE INSTITUTION THE STUDENT ATTENDS. THE COMMISSION SHALL ESTABLISH ACADEMIC PERFORMANCE CRITERIA FOR OBTAINING AND MAINTAINING A COLORADO PROMISE SCHOLARSHIP.

(b) FIFTEEN PERCENT SHALL BE DEDICATED FOR THE EXCLUSIVE PURPOSE OF MAKING COMPETITIVE GRANTS TO COUNTIES, MUNICIPALITIES, OTHER POLITICAL SUBDIVISIONS OF THE STATE, THE COLORADO DIVISION OF WILDLIFE, THE COLORADO DIVISION OF PARKS AND OUTDOOR RECREATION, AND NONPROFIT CONSERVATION ORGANIZATIONS, FOR ACQUISITION OF REAL PROPERTY OR INTERESTS THEREIN THAT WILL PRESERVE NATIVE WILDLIFE HABITAT ASSOCIATED WITH NATURAL AREAS, WORKING FARMS OR RANCHES, AND RIVERS AND STREAMS; AND TO THE EXTENT ACQUIRED WITH SUCH MONEYS, TO ASSIST WITH STEWARDSHIP OF REAL PROPERTY OR INTERESTS THEREIN. SUCH MONEYS SHALL BE ADMINISTERED AND OVERSEEN BY THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND CREATED PURSUANT TO SECTION 6 OF ARTICLE XXVII OF THE STATE CONSTITUTION, BUT SUCH MONEYS SHALL NOT BE SUBJECT TO THE LIMITATIONS AND RESTRICTIONS MADE APPLICABLE TO THE GREAT OUTDOORS COLORADO TRUST FUND BY ARTICLE XXVII OF THE STATE CONSTITUTION. FURTHER, IN ADMINISTERING AND OVERSEEING THESE MONEYS, THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE USED FOR EXPENSES OF ADMINISTERING THESE MONEYS OR REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

(c) TEN PERCENT SHALL BE CREDITED TO THE CLEAN ENERGY FUND CREATED IN SECTION 24-75-1201, C.R.S.;

(d) TEN PERCENT SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF TRANSPORTATION TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES OF THE STATE THAT ARE IMPACTED BY THE DEVELOPMENT, PROCESSING, OR ENERGY CONVERSION OF OIL AND GAS SUBJECT TO TAXATION UNDER THIS ARTICLE, WHICH FUNDING INCLUDES MAKING GRANTS FOR TRANSPORTATION PURPOSES TO THOSE IMPACTED COMMUNITIES; AND

(e) FIVE PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION, FOR THE EXCLUSIVE PURPOSE OF MAKING SMALL COMMUNITY DRINKING WATER GRANTS AND DOMESTIC WASTEWATER TREATMENT GRANTS. THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

SECTION 6. 24-75-1201(1) (a), Colorado Revised Statutes, is amended to read:

24-75-1201. Clean energy fund – creation – use of fund – definitions. (1) (a) The clean energy fund is hereby created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund at the end of the 2006-07 state fiscal year and at the end of each succeeding state fiscal year from the limited gaming fund created in section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701 (5), C.R.S., ~~and~~ from moneys received by the governor's energy office pursuant to section 39-29-109 (1.5), C.R.S., in accordance with section 39-29-109 (1.5) (h) (VII), C.R.S., AND FROM MONEYS RECEIVED PURSUANT TO SECTION 39-29-110.5 (2) (c), C.R.S. Interest and income earned on the deposit and investment of moneys in the clean energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund.

SECTION 7. 33-60-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

33-60-107. State board of the great outdoors Colorado trust fund. (4) IN ADDITION TO ITS OTHER POWERS UNDER ARTICLE XXVII OF THE COLORADO CONSTITUTION AND THIS ARTICLE, THE TRUST FUND BOARD SHALL HAVE THE POWER TO ADMINISTER AND OVERSEE MONEYS APPROPRIATED PURSUANT TO SECTION 39-29-110.5 (2) (b), C.R.S.