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MEMORANDUM

May 2, 2006

TO: Liane Morrison and Bruce Broderius

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #117, concerning Severance Taxes for Public School Buildings

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 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.

This initiative was submitted with a series of initiatives including proposals 2005-2006 #111 to 117 and 2005-2006 #132 to 134. These proposed initiatives are similar to a series of initiatives that were previously submitted and included proposals 2005-2006 #87 and 2005-2006 #97 to #101. The current proposal seems to be most similar to proposal 2005-2006 #99. Proposal 2005-2006 #99, was the subject of a memorandum dated April 5, 2006, and it was discussed at a hearing on April 7, 2006. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. Comments and questions addressed in the memoranda for the other proposals may also be relevant. All comments and questions from the earlier memoranda and hearings are hereby incorporated by reference in this memorandum.

The language of this proposed initiative is substantially the same as the language for proposed initiative 2005-2006 #115, which was submitted simultaneously with this proposed

initiative. The only differences are how the two proposed initiatives modify the existing severance tax credit and there is an extra section relating to the disposition of income in the public school fund in proposed initiative 2005-2006 #115, but not in this proposed initiative. With the exception of substantive questions 1 and 2, all other questions in this memorandum are identical to questions set forth in the memorandum for proposed initiative 2005-06 #115.

Purposes

The major purposes of the proposed initiative appear to be:

1. To reduce the amount of a tax credit that applies to the tax on severance of oil and gas;
2. To treat revenue from the tax on the severance of oil and gas tax as a voter-approved revenue change and to address its impact on another voter-approved revenue change;
3. To decrease the percentage of the severance tax revenues that are credited to the state severance tax trust fund and to the local government severance tax fund;
4. To require a percentage of the severance tax revenues to be credited to the newly created public school improvement fund; and
5. To require the moneys in the public school improvement fund to be used to provide opportunities to low income children, to provide funding for preschool through twelfth grade public school buildings, and to be transferred to public school fund.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

The following comments are technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices.

1. The amending clause for section 1 of the proposed initiative needs to specify that you are amending paragraph (b) of subsection (2) and adding a new subsection. The amending clause would read as follows: "**SECTION 1.** 39-29-105 (2) (b), Colorado Revised Statutes, is amended, and the said 39-29-105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:".
2. When referring the public school improvement fund in section 39-29-108, Colorado Revised Statutes, it would be helpful to reference where the fund is created, as was done in the existing references to the state severance tax trust fund and the local government severance tax fund.

3. Only the last two years of the second calendar year that comprises a fiscal year need to be written out. For example, in section 22-51.5-102 (1) of the proposed initiative, "state fiscal year 2007-2008" can be written as "state fiscal year 2007-08".
4. When referring to another subsection within the same section, it is unnecessary to include the full citation. Instead, you should refer to the "subsection __ of this section".
5. The definition of the term "inflation" in section 22-51.5-103 (2) (a) of the proposed initiative should be added to the end of subsection (2) rather than separated as paragraph (a) because the term only appears in subsection (2) and is the only defined term.
6. Was there a reason that sections of the proposed initiative address statutes out of order? Standard drafting practice is to address statutes in numerical order.

Substantive questions:

1. What is your intention in amending section 39-29-105 (2) (b), Colorado Revised Statutes to reduce the amount of the tax credit that may be claimed? What affect do you think it will have?
2. As of what date will the reduced tax credit take effect? Will this affect credits granted prior to the date of the reduction?
3. Is voter approval required pursuant to section 20 (4) of article X of the state constitution (TABOR) prior to reducing the credit? If so, was it your intention that referring this measure to the voters would constitute this prior voter approval?
4. The following questions related to the proposed subsection (3) to section 39-29-105, Colorado Revised Statutes:
 - a. What is the phrase "this tax" referring to? Is it the entire tax levied pursuant to section 39-29-105? Is it additional revenues that are collected as a result of the repeal of paragraph (b) of subsection (2) of section 39-29-105, Colorado Revised Statutes? Is it something else?
 - b. If the phrase "this tax" is referring to the additional revenue collected as a result of the change in paragraph (b) of subsection (2) of section 39-29-105, how will the state determine the amount of this additional revenue when the value of the ad valorem credit is currently not known?
 - c. What is a "voter-approved revenue change"? Does it mean that the state will be permitted to retain and spend an amount of revenue above the fiscal year spending limit set forth in section 20 (7) (d) of article X of the Colorado constitution (TABOR) equal to the proceeds from the proposed oil and natural gas tax?
 - d. Will the revenues from "this tax" still be calculated as fiscal year spending?

- e. As the state is permitted to keep all state revenues in excess of the TABOR spending through state fiscal year 2009-10, what affect, if any, would this voter-approved revenue change have through those years?
 - f. Assuming the voter-approved revenue change permits the state to retain and spend revenue in excess of the TABOR spending limit, how will it work with the voter-approved revenue change in Referendum C?
 - g. Does the phrase "without limiting in any year the amount of revenue that may be collected and spend by the state" refer to other voter-approved revenue changes? Does this mean that this voter-approved revenue change will be calculated last, in determining how much revenue the state may keep in a given state fiscal year?
 - h. How could a voter-approved revenue change for the state affect the amount of revenues that another district, as such term is used in TABOR, may collect and spend? Wouldn't a voter-approved revenue change for another district likewise require approval by the voters of that district?
 - i. Does the exclusion of the proceeds from the proposed oil and natural gas tax from the "excess state revenues cap", which is established in section 24-77-103.6, mean that these proceeds won't impact the amount of revenues in excess of the state fiscal year spending limit that the state is permitted to retain and spend for state fiscal years 2010-11 and beyond? Does this exclusion have any other effect?
 - j. In light of the fact that you intend to modify the operation of section 24-77-103.6, Colorado Revised Statutes, have you considered making a conforming amendment to such section?
 - k. To the extent that the severance tax currently collected is a part of fiscal year spending as defined in TABOR, then if this revenue is no longer used to determine the amount of the excess state revenues cap, then won't it reduce the excess state revenues cap?
5. The following questions related to the proposed changes to section 39-29-108, Colorado Revised Statutes:
- a. Was it your intention to change the distribution of the all severance taxes levied and collected by the state?
 - b. Was it your intention to change the distribution effective immediately? Is it possible to change the distribution mid-year?
 - c. How will the proposed allocation changes affect the total amounts that will be credited to the state severance tax trust fund and the local government severance tax fund? To the extent that it will lower the total amounts to these respective funds,

have the proponents considered the affect on appropriations that were made by the general assembly from these funds for the state fiscal year 2006-07 and beyond?

- d. What does the phrase that begins "except that the distribution" mean? What are "impacted counties and municipalities"? To the extent that you are trying to amend the distributions from the local government severance tax fund, you are encouraged to make that change directly to section 39-29-110, Colorado Revised Statutes.
6. With respect to section 22-51.5-101 of the proposed initiative, is the "revenue received pursuant to section 39-29-108, C.R.S.", or is it received by virtue of the tax levied in article 29 of title 39, Colorado Revised Statutes, and credited to the public school improvement fund pursuant to section 39-29-108, Colorado Revised Statutes?
 7. The following questions related to the section 22-51.5-102 of the proposed initiative:
 - a. With respect to the distribution required by subsection (1) of the section:
 - i. Is there any limit to be applied in state fiscal year 2006-07?
 - ii. Who is required to use the moneys "to provide opportunities for low income children"?
 - iii. What "opportunities" are you referring to?
 - iv. Is it mandatory that money be used to provide the opportunity to attend voluntary quality preschool program? Is this merely an illustration of an opportunity for low income children?
 - b. There appears to be an inconsistency insofar as money in the public school improvement fund is required to be distributed to provide opportunities for low income children, but "moneys encumbered pursuant to section 22-51.5-102 (1)" are also required to be transferred to the capital construction expenditures reserve. It is not clear how subsection (2) of this section should work. What is your intention?
 - c. There is no limit for the amount that must be transferred to the capital construction expenditures reserve for state fiscal year 2006-07, correct?
 - d. "Inflation" is defined to be the same as set forth in section 20 (2) (f) of article X of the Colorado constitution, correct?
 - e. As used in subsection (4) of this section, what does "after the operation of sections 22-51.5-103 (1) and section 22-51.5-102 (2)" mean?
 - i. Is it a timing requirement?
 - ii. Does it refer to appropriations or transfers made by the general assembly

pursuant to the authority set forth in section 22-51.5-103 (1) and (2)?

- iii. In light of the fact that the general assembly has the authority to make supplemental appropriations or transfers during a state fiscal year, how will the state treasurer know whether the general assembly has made all the appropriations and transfers pursuant to this authority?
 - iv. What would happen if the general assembly passed a law that required an appropriation pursuant to section 22-51.5-103 (1) or (2) to be made on June 30th of a state fiscal year? Would it be possible to make the transfers required in subsection (3) of this section "after the operation of section 22-51.5-103 (1)"?
 - f. In statutes, it is more common to use the phrase "unexpended and unencumbered" to refer to the unused balance remaining in a fund.
8. What is required to go in the report required pursuant to section 22-51.5-104 of the proposed initiative? How is the legislative council staff required to make the report "available to the public"?