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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 #112, concerning Tax on Oil and Gas and Other Revenue for Public School Buildings and Programs

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.

Purposes

The major purposes of the proposed initiative appear to be:

1. To create a tax of one and one-half percent on the gross income from the sale of oil and natural gas from large wells located in the state that will be imposed on producers who receive more than three hundred thousand dollars from such sales;
2. To require the revenue from the proposed oil and natural gas tax to be deposited in the public school improvement fund;
3. To treat revenue from the proposed oil and natural gas tax as a voter-approved revenue change and to address its impact on another voter-approved revenue change;
4. To modify the current distribution of the moneys that the state receives from the federal government pursuant to the federal "Mineral Lands Leasing Act", as amended, by requiring a portion of the moneys to be deposited into the public school improvement fund;
5. To permit the general assembly, for four state fiscal years, to use a portion of the federal mineral moneys that are deposited in the public school improvement fund for any preschool through twelfth grade education purpose;
6. To require a portion of the revenues in the public school improvement fund be transferred to the capital construction expenditures reserve in the state public school fund to be used for specified purposes related to preschool through twelfth grade public education, prioritizing certain uses;
7. To require any remaining revenues in the public school improvement fund to be transferred to the public school fund; and
8. To require interest generated from the public school fund be used annually to fund preschool through twelfth grade educational programs as a supplement to existing educational funding.

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. 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".

2. 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.
3. The amending clause for section 3 of the proposed initiative does not match the proposed change. Did you intend to amend section 34-63-102, Colorado Revised Statutes, by the addition of two new subsections. If so, you should change the amending clause to read as follows: "**SECTION 3.** 34-63-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:".
4. 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. The following questions refer to section 22-51.5-102 of the proposed initiative:
 - a. You refer to proposed oil and natural gas tax as "a public school improvement tax". What is the connection between the severance of oil and natural gas and public school improvement?
 - b. The following questions relate to the new subsection (3) of this section:
 - i. 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?
 - ii. Will the revenues from the proposed oil and natural gas tax still be calculated as fiscal year spending?
 - iii. 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?
 - iv. 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?
 - v. 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?

- vi. 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?
 - vii. 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, Colorado Revised Statutes, 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?
 - viii. 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?
2. The following questions and comments refer to section 22-51.5-103 of the proposed initiative:
- a. Subsection (1) of this section does not apply to revenues received during the state fiscal year 2006-07, correct?
 - b. From state fiscal year 2007-08 to state fiscal year 2010-11, could the general assembly appropriate all of the moneys from the federal government that are credited to the public school improvement fund pursuant to section 34-63-102, Colorado Revised Statutes? Does the phrase "some portion" mean at least one dollar must be for new education spending?
 - c. What are examples of "any preschool through twelfth grade education purpose"? Are there any limitations on the general assembly?
 - d. What does the phrase "after the operation of section 22-51.5-103 (1)" 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)?
 - 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) to be made on June 30 of a state fiscal year? Would it be possible to make the transfers required in

subsection (2) of this section "after the operation of section 22-51.5-103 (1)"?

- e. If the phrase "after the operation of section 22-51.5-103 (1)" is not a timing requirement, but rather it is intended to reduce the amount that will be transferred, than what is the difference between the phrase "after the operation of section 22-51.5-103 (1)" and "less any moneys encumbered pursuant to section 22-51.5-103"? Is there a chance that the appropriations required by subsection (1) of this section are being double-counted?
 - f. The phrase "less any moneys encumbered pursuant to section 22-51.5-103 (1)" in subsection (2) of this section would permit the treasurer to transfer moneys appropriated pursuant to subsection (1) of this section but not yet encumbered. Did you mean to say "appropriated or encumbered pursuant to subsection (1) of this section"? (Please note, it is more common to use the phrase "unexpended and unencumbered" to refer to the unused balance remaining in a fund.)
 - g. Is there any limit on the amount that the treasurer must transfer to the capital construction expenditures reserve for state fiscal year 2006-07? Is the limit in state fiscal year 2007-08, \$120 million? In 2008-09, is the limit \$120 million, adjusted for inflation?
 - h. The inflation rate for what calendar year will be applied to a given state fiscal year in making the adjustments to the \$120 million? For example, would inflation for the 2006, 2007, or some other year be used to determine the adjustment for the state fiscal year 2007-08?
 - i. "Inflation" is defined to be the same as set forth in section 20 (2) (f) of article X of the Colorado constitution, correct?
 - j. Because there is no cap on the amount that is required to be transferred to the capital construction expenditures reserve for the 2006-07 state fiscal year, there will not be any money transferred to the public school fund for state fiscal year 2006-07, correct?
3. 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?
4. The following questions relate to the proposed changes to section 22-41-106, Colorado Revised Statutes:
- a. Is it still your intention that the uses of the interest in the public school fund required by the proposed initiative apply to interest from revenue from any source, not just moneys deposited pursuant to section 22-51.5-103 (3)?
 - b. Prior to state fiscal year 2011-12, is the general assembly free to use all interest to fund existing preschool through twelfth grade education purpose? Does the phrase

"some portion" mean at least one dollar must be for new education spending? Rather than creating an exception, would it be more clear to begin the subparagraph with the phrase "Beginning with state fiscal year 2011-12,"?

5. As you have amended section 34-63-102, Colorado Revised Statutes, in the proposed initiative, it appears that you intend the 40% to be paid into the public school improvement fund, and then for the general assembly to decide how to split the other 60%. However, you have not changed the current distribution. The following questions relate to these proposed changes:
 - a. The statute now requires more than 100% of the moneys in the mineral leasing fund to be distributed. Isn't this an absurd result?
 - b. What happens prior to the general assembly passing any legislation? How is the state treasurer supposed to know how to distribute the money?
 - c. What happens if the general assembly does not pass any legislation? How is the state treasurer supposed to know how to distribute the money?