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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 #114, 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 #101. Proposal 2005-2006 #101, 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 two percent on the proceeds 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 in such proceeds;
2. To require the revenue from the proposed oil and natural gas tax to be deposited into 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 "Mineral Lands Leasing Act", as amended, by requiring forty percent of the moneys to be deposited into the public school improvement fund;
5. To require a portion of the revenues in the public school improvement fund to be used for public school renovations or construction, prioritizing certain uses, and the remaining balance to be transferred to the permanent school fund; and
6. To require interest generated from the permanent school fund be used to fund preschool through twelfth grade educational programs.

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 preposition "in" would be more appropriate than the preposition "into" in the phrase "deposited into".
2. There should be a comma before the nonrestrictive clause "which is hereby created in the state treasury".
3. Was there a reason that you removed the quotation marks from the federal "Mineral Lands Leasing Act"? It is in quotation marks elsewhere in the Colorado Revised Statutes.
4. The preposition "to" would be more appropriate than the preposition "into" in the phrase "transferred to".

5. "State" is misspelled in the third sentence.

Substantive questions:

1. Is forty percent the minimum amount of the moneys received by the state from the federal "Mineral Lands Leasing Act" (federal mineral moneys) that the state is required to deposit in the public school improvement fund?
2. In the absence of further legislation, could the treasurer transfer more than forty percent of the federal mineral moneys to the public school improvement fund?
3. The federal mineral moneys include all moneys that the state receives irrespective of whether they are currently distributed to local governments, correct?
4. There still appears to be a conflict between the proposed initiative and the distribution required pursuant to section 34-63-102, Colorado Revised Statutes. Is this your intention?
5. When are the federal mineral moneys required to be transferred to the public school improvement fund?
6. Is the \$120 million, adjusted for inflation, a limit on the amount that may be deposited in the public school improvement fund or is it the amount that must be used for public school renovations or construction?
7. The maximum amount from the public school improvement fund to be used for preschool through twelfth grade renovations or construction for the state fiscal years 2006-07 and 2007-08 is \$120 million, correct? The maximum amount for 2008-09 is \$120 million, adjusted for inflation, correct?
8. What happens if an existing education spending requirement is expanded after the effective date of the proposed initiative? Could the moneys in the public school improvement fund be used to fund the expansion to the existing requirement?
9. Are the allowable administrative costs that are paid out of the public school improvement fund based on preschool through twelfth grade capital construction and renovation that is paid from the public school improvement fund only, or does it include capital construction and renovation that is paid for by any fund?
10. In the statutes, it is more common to use the phrase "unexpended and unencumbered" to refer to the unused balance remaining in a fund.
11. Will the interest from the permanent school fund be used in the year that it is earned?
12. The following questions relate to subsection (2) of the proposed initiative:
 - a. Is "this tax" the proposed oil and natural gas tax set forth in subsection (1) of this

section? If so, you may want to refer to it as "the tax imposed in subsection (1) of this section".

- b. 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?
- c. Will the revenues from the proposed oil and natural gas tax still be calculated as fiscal year spending?
- d. As the state is permitted to keep all state revenues in excess of the TABOR spending limit through state fiscal year 2009-10, what effect, if any, would this voter-approved revenue change have through those years?
- e. 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?
- f. Does the phrase "without limiting in any year the amount of other revenue that may be collected and spent 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?
- g. 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?
- h. 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 will not 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?
- i. 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?