

Colorado Clean Energy Tax Shift (COCETS)

DRAFT

PROPOSED LANGUAGE

~~For discussion purposes only~~

SKR 11-19-07

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO TO  
BE SUBMITTED TO THE STATE'S ELECTORS AT THE NOVEMBER 8, 2008 REGULAR  
ELECTION

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THAT THE COLORADO STATE CONSTITUTION BE AMENDED BY ADDING THE  
FOLLOWING TO ARTICLE X:

Section 22 Colorado Clean Energy Tax Shift (COCETS)

(1) General Provisions.

This section takes effect December 31, 2008 or as stated. Its preferred interpretation shall reasonably result in a decline either in the level of carbon dioxide emissions or a decline in its rate of growth. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. The State of Colorado would retain no funds generated by such fees beyond those needed to administer the program, and it is expected that the measure will result in no net change to the state's annual revenues. The State of Colorado shall charge a fee on each metric ton of carbon dioxide emissions resulting from the burning or other conversion of fossil fuels. Net revenue from this fee shall be refunded to Colorado taxpayers, which shall be accomplished through funding of the Colorado supplement to the earned income tax credit at Twenty Percent (20%) of the federal level, by reducing the state sales tax rate, by rebating the business personal property tax, by funding rebates to employers based on payroll taxes paid, and by making direct payments to individual taxpayers on a per capita basis.

(2) Definitions.

- (a) *Emissions* shall mean the release to the atmosphere of the substance in question.
- (b) *End User* shall mean any person or entity that obtains a substance and does not resell it or give it away.
- (c) *Fossil Fuels* shall mean coal, petroleum, natural gas and other fuels derived from those substances or any other carbon-based fuels obtained from geologic deposits.

(3) Determination of Fee.

- (a) The amount of the fee to be charged for each metric ton of carbon dioxide emissions pursuant to this section shall be determined annually by a non-partisan committee consisting of: Two (2) members of the staff of the Colorado Legislative Council, One (1) member who must be an economist from a Colorado state university and who shall be chosen by the Speaker of The Colorado House of Representatives, One (1) member chosen by the Governor of Colorado from his or her staff, and One (1) member chosen by the Colorado State Treasurer from his or her staff.
- (b) This fee shall be in effect for one calendar year, with a new fee taking effect at the beginning of each such year.
- (c) Legislative Council staff will post the economic model used to calculate the fee on the internet where it will be available for public review. Staff will also post comments on the model from qualified PhD economists working in the field for the public to read.
- (d) Upon request, the Department of Revenue shall forward any data requested for the calculation to the Legislative Council staff.
- (e) Such calculation shall result in an estimate of annual carbon dioxide emissions such that the total amount of carbon dioxide emitted from the consumption of fossil fuels in Colorado would meet an emissions target chosen by the Governor of Colorado and confirmed by the Colorado State Legislature.
- (f) If the legislature has not or can not adopt the emissions target called for in this section, such target shall be the same as that adopted by the State of California for the same period.
- (g) In addition to the next year's fee, the Legislative Council staff shall publish non-binding projected fees for the following four years.
- (h) The Colorado State Legislature may reject the fee recommended by the non-partisan committee each year. If the Legislature cannot come to an agreement with the committee, the projected fee for the period from the most recent committee recommendations not rejected will be used. If no projection was accepted for the period, and the legislature rejects the committee's current recommendation, the fee will remain unchanged from the previous year.
- (i) The annual change in the fee from the previous year will be limited to twenty-five dollars (\$25) per metric ton carbon dioxide or ten percent (10%) of the fee from the previous year, whichever amount is higher.

(4) Application and Collection of Fee.

- (a) The fee shall be paid on all sales of fossil fuels to all end users, including government entities and non-profit organizations, except electric utility fuel purchases for electric generation and fuels sold for uses that do not release carbon dioxide. The fee will also apply to carbon dioxide emissions released by producers, wholesalers and distributors of fossil fuels and fossil fuel derivatives in

the normal course of business including but not limited to carbon dioxide emissions released in the production of their energy products regardless of the source from which that fuel is obtained.

- (b) All electric utilities, regardless of ownership, shall collect the fee from their customers located in Colorado regardless of where the electricity is generated.
    - (i) For each electric utility providing electricity to Colorado customers a corporate average emissions per kilowatt hour is defined as the total metric tons of carbon dioxide emitted from fossil fuel burning at all of that company's generation facilities in North America during a one year period ending September 30 of the previous year divided by the total kilowatt hours of electricity generated by that company in those facilities during the same period. Renewable generation facilities providing power to specific customers at a separate rate will not be included in the calculation of the corporate average emissions per kilowatt hour.
    - (ii) The emission fee charged per kilowatt hour to Colorado customers by an electric utility for a given calendar year shall be based on a one year period ending September 30 of the previous year and shall equal the emission fee per metric ton carbon dioxide for the current year divided by the total number of kilowatt hours of electricity delivered to Colorado customers by the company times the sum of the number of kilowatt hours of electricity delivered to Colorado customers by the utility from its own generation capacity during the calculation period times its corporate average emissions per kilowatt hour plus the same calculation for electricity purchased from each Colorado utility plus the number of kilowatt hours purchased for delivery to Colorado customers from any utility outside Colorado times eight (8) metric tons carbon dioxide per kilowatt hour.
  - (c) Utilities shall bill building owners directly for carbon dioxide emissions resulting from heating, ventilation, air conditioning, lighting and building mechanical systems in their buildings. Tenants may be charged for the emissions resulting from their use of a building only if the portion of the utility consumption unrelated to building HVAC, lighting and mechanical systems is monitored through a separate meter. Building owners may not pass such fees directly to tenants.
  - (d) Except as otherwise noted, fees collected by fossil fuel and electricity sellers will be collected by the State of Colorado using the same mechanisms as the state shall adopt in its collection of sales taxes or highway taxes, as appropriate. Those funds shall be held separately in a "Clean Energy Fund" and transferred to the general fund or paid out as described below.
- (5) Distribution Mechanisms:  
Once the annual determination is made regarding the per ton fee and the projection of total emissions for the next calendar year, the anticipated revenue from the fee will be allocated by non-partisan staff at the Department of Revenue based on projections of tax revenue for that calendar year. If the actual amounts of revenue and expenses

exactly matched estimates, and the amount available for rebates did not exceed the total paid for a given tax to be rebated, the distribution of emission fee revenue would be as follows:

Earned income tax credit supplement fully funded at 20% of federal level.

Thirty percent (30%) of remaining funds used to reduce sales tax.

Twenty percent (20%) of remaining funds used to rebate business personal property tax.

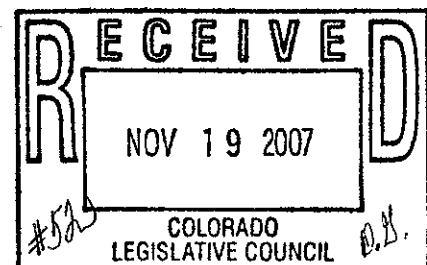
Twenty percent (20%) of remaining funds used to rebate payroll taxes.

Thirty percent (30%) of remaining funds used for per capita rebate to residents.

A conservative estimation process should leave a small amount of revenue remaining in the clean energy fund after refunds for the year are complete. This revenue will remain in the clean energy fund to be returned to the people of Colorado in the next year. The distribution shall be made as follows:

- (a) Earned income tax credit funding. The anticipated expense of funding the Colorado supplement to the earned income tax credit at Twenty Percent (20%) of the federal level will be subtracted from the total anticipated emission fee revenue.
- (b) Sales tax reduction. Thirty Percent (30%) of the remaining anticipated emission fee revenue will be used to reduce the Colorado state sales tax. The new sales tax rate, effective for the calendar year shall be calculated as follows:
  - (i) The new sales tax rate shall equal the original sales tax rate times the quantity one (1) minus the quotient of the anticipated pollution fee revenue available for sales tax reduction divided by the total anticipated sales tax revenue at the original rate.
  - (ii) If the calculated new sales tax rate is less than zero point one percent (0.1%), the new sales tax rate will be zero point one percent (0.1%).
  - (iii) Emission fee revenue equal to the amount of actual uncollected sales taxes may be transferred from the clean energy fund to the general fund as it becomes available. The amount of uncollected sales taxes shall be calculated as:
    - (iv) Uncollected sales tax shall equal actual sales tax collections at the new rate times the quantity one minus the quotient of the new sales tax rate divided by the original sales tax rate.
- (c) Business personal property tax rebate. Two sevenths (2/7) of the amount remaining after the earned income tax credit and the sales tax reduction are satisfied will be used to rebate to businesses a percentage of their business personal property tax payments. This percentage will be calculated as:
  - (i) The percentage of business personal property tax to be refunded shall equal two sevenths (2/7) of the amount remaining after the earned income tax credit and the sales tax reduction are satisfied divided by the total statewide anticipated business personal property tax payments times one hundred (100).

- (ii) If the calculated percent of business personal property tax to be refunded exceeds one hundred percent (100%), one hundred percent (100%) of business personal property tax will be rebated.
- (d) Payroll tax rebate. Two sevenths ( $2/7$ ) of the amount remaining after the earned income tax credit and the sales tax reduction are satisfied will be used to rebate a percentage of payroll taxes to employers and the self-employed, including federal payroll taxes and payments to the Public Employees' Retirement Association (PERA). This percentage is calculated as:
  - (i) The percentage of payroll taxes to be refunded shall equal two sevenths ( $2/7$ ) of the amount remaining after the earned income tax credit and the sales tax reduction are satisfied divided by the anticipated total statewide payroll and PERA taxes paid times one hundred (100).
  - (ii) The calculated percentage of payroll and PERA taxes will be refunded even if it exceeds one hundred percent (100%).
- (e) Per Capita rebate. Three sevenths ( $3/7$ ) of the amount remaining after the earned income tax credit and the sales tax reduction are satisfied will be used to provide per capita payments to individuals domiciled in Colorado at the time distribution is made. Payments made to dependents shall be made to the party claiming such dependents on that year's Colorado State Income Tax return.



Sponsor information for Colorado Clean Energy Tax Shift (COCETS)

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