

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

November 30, 2007

TO: Sue Radford and Tim Hillman

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #52, concerning the imposition of carbon fee with offsetting rebates and tax reductions

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.

Purposes

The major purposes of the proposed amendment appear to be:

1. To reduce carbon dioxide emissions in the state by requiring a charge to be paid on each metric ton of such emissions; and
2. To require the revenue from the charge to be used to reduce other state taxes and to provide rebates to the taxpayers and citizens of the state.

Technical comments:

The following comments are technical changes that we would recommend you make in order

to conform the proposed initiative to standard drafting practices.

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative, and replace everything before the line that begins "Section 22."
2. An amending clause, which follows the enacting clause, is used to identify what law is being amended. In this instance, it would read as follows: "Article X of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:".
3. "Section 22" should be in bold type and there should be a period after "22."
4. Acronyms are not usually used in the Colorado constitution.
5. Constitutional provisions are usually divided into component parts using the following structure: Subsection, or, for example, "(1)," followed by paragraphs, or, for example, "(a)," followed by subparagraphs, for example, "(I)," ending with sub-subparagraphs, or, for example, "(A)." Subsection (5) in particular deviates from this structure.
6. Subsections and paragraphs are not usually given headings, as is done in the proposed initiative.
7. It is standard drafting practice to use small capital letters to show the language being added to the Colorado constitution. For example, the first sentence would begin "THIS SECTION TAKES EFFECT...."
8. A comma should be placed after "2008" in subsection (1) of the proposed initiative.
9. In general, pronouns should be avoided as they might cause an ambiguity.
10. Colorado is generally referred to as "the state," and in any case it is unnecessary to capitalize "state" in the phrase "state of Colorado."
11. It would be more appropriate to refer to "this section" instead of "the measure" in subsection (1) of the proposed initiative.
12. It is unnecessary to follow a spelled-out number with the numeral in parenthesis.
13. The following is the standard drafting language used to introduce the definition subsection of a provision: "As used in this section, unless the context otherwise requires:". Furthermore, a defined term is preceded and followed by quotation marks instead of being italicized.

14. In paragraph (a) of subsection (3) of the proposed initiative:
 - a. The references should be to "the speaker of the house of representatives", "the governor", and "the state treasurer."
 - b. Use semi-colons instead of commas to separate the items in a series following the colon.
15. Referring to a "doctorate" instead of a "PhD" may be more appropriate.
16. The legislative branch of the state is referred to as the "general assembly" instead of "state legislature."
17. In paragraph (f) of subsection (3) of the proposed initiative, "can not" should be spelled as one word.
18. The term "shall" is usually used instead of "will" or "would" when directing a certain action. For example, paragraph (i) of subsection (3) of the proposed initiative would read "the previous year shall be limited to...."
19. In paragraph (a) of subsection (4) of the proposed initiative, place a comma before "including" to conform to standard drafting practice.
20. In paragraph (b) of subsection (4) of the proposed initiative, hyphenate "one-year period."
21. In subparagraph (I) of paragraph (b) of subsection (4) of the proposed initiative, place a comma after "customers."
22. Standard drafting practice is to use the word "fund" to refer to an account into which moneys or revenues are placed. Therefore, the word "fund" or "funds" is not typically used to refer to the moneys or revenues themselves. Moreover, money is usually "deposited in" or "credited to" a fund. Changes may therefore be appropriate for paragraph (d) of subsection (4) of the proposed initiative.
23. Commas are generally used after the last word before the conjunction in a series. For example, "producers, wholesalers, and distributors of fossil fuels."
24. The definition for "corporate average emissions per kilowatt hour" that is contained in subparagraph (I) of paragraph (b) of subsection (4) of the proposed initiative should be placed in subsection (2) with the other definitions used in the section.
25. In paragraph (b) of subsection (5) of the proposed initiative, "zero point one percent" would be written as "one-tenth of one percent."
26. Fractions are hyphenated. For instance, 2/7 would be written as "two-sevenths."
27. In paragraph (e) of subsection (5) of the proposed initiative, "capita" is misspelled.

28. Except for the "C" in "Colorado," the following terms do not need to be capitalized in the proposed initiative: any percentages or numbers; "Legislative Council"; "Speaker"; "The Colorado House of Representatives"; "Governor"; "State Treasurer"; "Clean Energy Fund"; "Department of Revenue"; "Public Employees' Retirement Association"; and "Colorado State Income Tax."

Substantive comments and questions

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?

The following questions and comments relate to subsection (1) of the proposed initiative:

3. Section 1 (4) of article V of the Colorado constitution states that an initiative approved by a majority of voters shall "take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor." If the governor's proclamation is after December 31, 2008, the effective date may not be enforceable.
4. Why is the phrase "or as stated" used in the first sentence? What other effective dates are established in the proposed initiative?
5. The following questions and comments relate to the preferred interpretation as specified in the second sentence:
 - a. How will the interpretation of the proposed initiative result in a decline in the level of carbon dioxide emissions or rate of growth? What are some examples of how this preferred interpretation will apply?
 - b. What does "its rate of growth" refer to?
 - c. Does the broader "decline in the level of carbon dioxide emissions" include the "decline in its rate of growth"? If so, is it necessary to keep the latter phrase as part of the preferred interpretation?
6. What is your intention in making the proposed initiative "self-executing"? Insofar as the proposed initiative is self-executing, does it prohibit the general assembly from passing any other carbon dioxide emission taxes or fees?
7. Are you aware of any state constitutional, state statutory, charter, or other state or local provisions that are in conflict with the proposed initiative?
 - a. If so, what provisions?
 - b. To the extent that there is a constitutional conflict, you might consider clearly identifying how the proposed initiative will supercede the existing constitutional provision. If there is no conflict with existing constitutional provisions, why include language to supercede conflicting "state constitutional" provisions?

- c. What is an "other state . . . provision" as used in this context?
 - d. What is an "other . . . local provision" as used in this context?
8. The following questions relate to the fourth sentence of subsection (1) of the proposed initiative:
- a. What is the purpose of this sentence? Is this a restatement of requirements and limitations that are included elsewhere in the proposed initiative as a statement of intent, or does this sentence itself create new requirements or limitations?
 - b. As this is the first time that the term "fees" is used in the proposed initiative, what does "such fees" mean?
 - c. What is the "program"? Does it include any work related to either the fee collection or fee revenue distribution?
 - d. This sentence seems to contradict subsection (5) of the proposed initiative because that subsection does not include any distribution of moneys for the administration of the program. What is your intention with regard to a distribution of moneys for this purpose?
 - e. Only the earned income tax credit and sales tax rate reduction will reduce revenue based on the collection of the fee. Accordingly, will annual state revenues be increased by the amount that the state retains to administer the program, if any, and any revenues that are rebated to taxpayers?
 - f. Insofar as both the earned income tax credit and the sales tax rate reduction are both based on projections, isn't there a good chance that there could be an error in favor of the state -- based on an underestimation of the anticipated fee revenue -- that also leads to an increase in state revenue?
9. What does "other conversion of fossil fuels" mean? What are some examples?
10. The following questions and comments relate to the charge on each metric ton of carbon dioxide:
- a. Is there a reason this is called a fee?
 - b. Does "Shall charge a fee" mean that an initial fee must be put in place despite the language later that seems to leave discretion to the general assembly?
 - c. Will the election provisions of section 20 (4) of article X of the Colorado constitution (TABOR) apply to the fee? (It should be noted that, notwithstanding the use of the term "fee," a court could still find that the charge is a tax and therefore subject to the election provisions of TABOR as a new tax.)
 - d. If this fee was considered to be a tax and, accordingly, the TABOR election provisions do apply, what dollar amount to describe the tax increase would be used in the title? How would the legislative council staff prepare estimates for the blue book?
 - e. While the fee is on "each metric ton of carbon dioxide emissions," will the fee apply proportionally to emissions that are less than one ton?
 - f. If the proposed initiative creates a fee, why does the section headnote refer to a tax shift?

11. What is "net revenue"? (There is no mention of "net revenue" in the distribution required by subsection (5) of the proposed initiative.)
12. Does the last sentence of subsection (1) of the proposed initiative add anything substantive to subsection (5) of the proposed initiative? If not, what is the purpose of the sentence?

The following questions and comments relate to subsection (2) of the proposed initiative:

13. In the definition of "emissions," what is the "substance in question"?
14. What is "a substance" as used in the definition for "end user"?
15. The following questions and comments relate to the definition of "fossil fuels":
 - a. Is petroleum the same as "oil," which is defined in section 39-29-102 (6.5), Colorado Revised Statutes to mean "crude oil and condensate"?
 - b. As the phrase "other fuels" is used, it can be inferred that coal, petroleum, and natural gas are themselves fuels. Is this a correct assumption?
 - c. What are some "other carbon-based fuels obtained from geologic deposits"?

The following questions and comments relate to subsection (3) of the proposed initiative:

16. The first sentence of paragraph (a) of subsection (3) of the proposed initiative states that "[t]he amount of the fee ... shall be determined annually by a non-partisan committee" In light of the fact that the general assembly may reject the fee, does the committee really "determine" the fee?
17. Who will appoint the legislative council staff to the committee?
18. Who would serve on the committee if the statute that creates the legislative council staff was repealed or the economists were put in a separate office? Would these two committee members automatically come from a successor office?
19. Is "a Colorado state university" limited to public institutions of higher education in the state? Was the use of the term "university" intended to restrict an economist from a four-year college, such as Mesa State College, from being selected?
20. As the governor and the treasurer are elected partisan positions, how would appointments from the staff of those offices be non-partisan? The speaker of the house of representatives is also elected to office. Accordingly, won't the speaker's appointment potentially be partisan?
21. The following questions relate to the emissions target mentioned in paragraph (e) of subsection (3) of the proposed initiative:
 - a. What is an emissions target?
 - b. Is the emissions target intended to be expressed as a level or a percent change?

- c. Is there anything in existing law that requires the governor to establish an emissions target? Was it your intention that the proposed initiative require the governor to adopt an emissions target? Are there any standards or other criteria upon which the governor is to establish the target?
 - d. Will the governor's administrative costs in setting the emissions target administration be paid from fee revenue?
 - e. What does it mean for the general assembly to confirm the emissions target chosen by the governor? Moreover, while paragraph (e) of subsection (3) requires the emissions target to be "confirmed," paragraph (f) of subsection (3) requires the general assembly to "adopt" the target. Are these actions the same? Would the proponents consider clarifying the role of the general assembly?
 - f. As a practical matter, would the emissions targets adopted in California make sense here? Did you intend to use the California emissions target on a per capita basis? (For example, if California adopted an emission target for all of the carbon emissions statewide, it would be a huge number for Colorado given our relatively small population.)
 - g. What happens if California does not have an emissions target? If there are no emissions targets available, how would the committee calculate the fee?
22. As written, it is not entirely clear how the committee will set the fee. The following questions relate to that process:
- a. Will the committee have the expertise and the information it needs to establish the fee?
 - b. Subsection (3) of the proposed initiative describes both an "economic model used to calculate the fee" and also mentions "the calculation" and "such calculation." Are the model and the calculation the same? Is the fee calculated using a model?
 - c. Paragraph (c) of subsection (3) of the proposed initiative requires legislative council staff to "post the economic model used to calculate the fee on the internet." The following questions relate to the economic model:
 - i. While the model is required to be posted on the internet, the proposed initiative doesn't actually require the committee to use an economic model to calculate the fee. Was it your intention that the committee be required to do so? Is legislative council staff supposed to use the model?
 - ii. What type of economic modeling will be needed to create the fee?
 - iii. Does this model exist or will it need to be created by the committee?
 - iv. Who will choose the model?
 - v. What data will be used for the economic model and where will it come from?
 - vi. If a model is used, is the committee authorized to depart from the number ascertained through the model? If not, then is the committee really determining or making a recommendation regarding the fee or are they being charged to choose a model and run data through it?
 - vii. How will the emissions target be used in the model?
 - viii. Are the expenses of the committee for personnel, data, and software or hardware included in the definition of administering the program?
 - d. The proposed initiative does not clearly indicate how the emissions target will be

- used in determining the amount of the fee. Does the proposed initiative assume that the amount of an emission fee can affect consumption of fossil fuels, so that setting a fee at a certain amount would lead to a corresponding estimate of carbon dioxide emissions? If so, it might be helpful to clarify these assumptions or any others that the committee would need to make when using the model to calculate the fee.
- e. Are there any limitations on the amount of the fee created by the committee? Could the committee recommend a fee of \$100,000 per metric ton of carbon dioxide emissions?
 - f. Does the preferred interpretation established in subsection (1) of the proposed initiative apply to the committee as it establishes the fee and the assumptions the committee should make when calculating the fee or running an economic model?
 - g. Is the committee expected to attempt to generate a certain amount of revenue from the fee?
 - h. What type of information would the department of revenue have that the committee could use in the calculation of the fee? Would any other state agencies or departments have any information that the committee may need, and, if so, will the committee have access to that information as well?
 - i. Are all carbon dioxide emissions the same? Could the fee vary based on the type of fossil fuel or the use of the fossil fuel that results in emissions?
23. Is there a new fee each year or is it the same fee on carbon dioxide emissions that may be increased or decreased each calendar year?
 24. The following questions relate to paragraph (c) of subsection (3) of the proposed initiative:
 - a. Does the phrase "where it will be available for public review" add any type of duty for the legislative council staff? Does this language add anything to the requirement that the model be posted on the internet?
 - b. Is there a requirement for the length of time that the model must be posted on the internet?
 - c. Is the legislative council staff expected to decide who "qualified PhD economists working in the field" are? What does "qualified" mean? What "field"?
 - d. Does the phrase "for the public to read" add any information to the second sentence of paragraph (c) of subsection (3) of the proposed initiative?
 25. The following questions relate to paragraph (g) of subsection (3) of the proposed initiative:
 - a. Is the four-year projection of fees that legislative council staff is required to post on the internet done by the committee?
 - b. Does this provision require the committee to always establish the next five years of fees?
 - c. Will there be emissions targets available for the future years? If not, how could an emissions fee be calculated?
 - d. Is the general assembly able to reject the projected fees?
 26. The following questions relate to paragraph (h) of subsection (3) of the propose initiative:
 - a. In order for the general assembly to be able to reject a fee recommended by the

- committee, it would seem that the committee must make a recommendation before the end of the regular legislative session. Was this your intention?
- b. The general assembly is permitted to reject the fee, but what if the general assembly takes no action related to the recommendation? Would the fee recommended by the committee automatically be charged for the next calendar year?
 - c. How does the general assembly accept or reject the fee? Is it by bill? Is it by confirmation hearing like a governor's appointee? Is there some other way?
 - d. What does the second sentence in paragraph (h) mean? If the general assembly rejects the fee, is it required to attempt to reach an agreement with the committee? What type of agreement? Moreover, is the committee, which is non-partisan, in a position to reach an agreement? Presumably, the committee simply recommends a fee amount based on its data, which it then publishes online, and an agreement to change that amount would be based on something other than the economic model used by the committee.
 - e. Is the "projected fee" the same as the "non-binding projected fee" described in paragraph (g) of subsection (3)? If so, when the general assembly confirms or adopts a recommendation by the committee, is it automatically confirming or adopting the projected fee for the subsequent four years?
 - f. What happens if the general assembly rejects the initial fee recommended by the committee? (In the prior year, the fee was zero.)
 - g. Does the governor have any role in accepting the fee?
27. Since the fee from the year before will have been zero, does paragraph (i) of subsection (3) of the proposed initiative limit the amount of the fee to \$25 in the first year that it may be charged?
28. Does paragraph (i) of subsection (3) of the proposed initiative trump other paragraphs in subsection (3)? For example:
- a. Does paragraph (i) limit paragraph (e) of subsection (3)? What if in year one the fee is \$20, and in year two the fee derived from the target emissions level would be \$50?
 - b. Does the limit apply to the projected fees, insofar as those fees may be adopted pursuant to the language of paragraph (h)?
29. What will be the timing of the process for determining the amount of the fee described in subsection (3)? Will there be a deadline for the committee to make its recommendation? Will there be a deadline for the general assembly to consider the recommendation? (If not, the general assembly could theoretically call a special session on December 31 and reject the fee that is to be collected in the next year.) When will the fee be finalized so that the affected administrative agencies have an opportunity to update forms and collection practices?
30. What is the first year in which the fee will be collected? If passed, the proposed initiative will take effect on December 31, 2008, or upon the proclamation of the Governor, but it would be impossible to begin collection on January 1, 2009, since it will take time for the committee to establish a recommendation for the fee, for the general assembly to consider the fee, and for the agencies required to collect the fee to establish an administration process.

In addition, at least some of the distributions are required to be made in the same year that the fee revenue is received, but those distributions are required to be determined in the prior year based on estimated revenues. Accordingly, is it your intention that 2010 be the first calendar year that the fee can be collected? Furthermore, is it your intention that the committee and the general assembly always establish the fee in the year prior to the calendar year in which it is collected? If so, you might consider clarifying these points.

31. To the extent that the emissions fee is actually a tax, would the prior voter approval requirement of TABOR apply to any increase in the charge? Or would that TABOR provision not apply because it would be considered a conflicting constitutional provision?

The following questions and comments relate to subsection (4) of the proposed initiative:

32. Can the emissions fee be summarized as a fee that is charged on both the amount of carbon dioxide emissions incurred in the process of preparing the fossil fuel for use and a fee that is charged related to the actual use of the fossil fuel that emits carbon dioxide?
33. It appears that subsection (4) of the proposed initiative creates four classes of persons who must pay the carbon dioxide emissions fee: (1) end users, excluding utilities; (2) producers, wholesalers, and distributors of fossil fuels; (3) electric utility customers; and (4) building owners whose buildings have carbon dioxide emissions resulting from HVAC, lighting, and building mechanical systems. Is this accurate?
34. Who will be responsible for converting the fee, which is "charged for each metric ton of carbon dioxide emissions," to a usable unit for the fee collection on the sale of a fossil fuel to end users? For example, if the fee is \$150 per metric ton of carbon dioxide emissions, who determines the fee that should be collected on the sale of a gallon of gasoline?
35. Will the amount of the fee paid by an end user be based on the estimated amount of carbon dioxide emissions that will result from the use of that fossil fuel? Will individual differences in the carbon dioxide emissions be considered? For example, would the owner of a Toyota Prius pay the same fee on a gallon of gasoline as the owner of a Hummer? Is gas that is purchased for a lawn mower charged a different fee than gas purchased for an automobile, or is it all averaged somehow?
36. Does the term "fuels" in the phrase "fuels sold for uses that do not release carbon dioxide" in the first sentence of paragraph (a) of subsection (4) of the proposed initiative mean "fossil fuels"? If so, what are some examples of fossil fuel uses that do not release carbon dioxide?
37. Would an electric utility be considered an "end user" that would otherwise have to pay the tax if not exempted? Is a customer of an electric utility an "end user," and, if so, what "substance" does the customer receive, as the term "substance" is used in the definition of "end user"?
38. An end user would pay the emissions fee on the fossil fuels received, but a producer,

- wholesaler, and distributor must pay the fee on the amount of its carbon dioxide emissions, correct? If so:
- a. Who will determine the amount of each producer's, wholesaler's, and distributor's emissions?
 - b. What are examples of carbon dioxide emissions released by a producer? By a wholesaler? By a distributor?
 - c. What is a "fossil fuel derivative" as that term is used in paragraph (a) of subsection (4) of the proposed initiative?
 - d. Are the emissions for which a fee is charged limited to those that occur in Colorado?
 - e. Would a producer, wholesaler, and distributor be required to pay a fee for carbon dioxide emissions related to transporting a fossil fuel to the marketplace? If so, would a fee be paid on the actual emissions of the tanker truck that transports gasoline, plus an "end user" fee paid on the gasoline used in the truck?
39. What is the electric utility supposed to do with the fee it collects from its customers? Is this specified anywhere in the proposed initiative?
40. Is the calculation required by subparagraph (I) of paragraph (b) of subsection (4) of the proposed initiative a method of determining how efficient a particular utility's operation is?
41. The following questions and comments relate to the calculation in subparagraph (II) of paragraph (b) of subsection (4) of the proposed initiative:
- a. Is the calculation required by subparagraph (II) a method of determining the amount of carbon dioxide emissions that were required to generate a kilowatt hour of energy, so that the fee, which is levied on each ton of emissions, may be converted to and collected on each kilowatt of energy?
 - b. Why are kilowatt hours purchased from any utility outside Colorado multiplied by eight metric tons carbon dioxide per kilowatt hour?
 - c. The calculation required by this subparagraph (II) seems open to more than one interpretation, depending on how the algebraic instructions are read. For example, does the phrase "times the sum of the number of kilowatt hours ..." apply to the ratio of the emission fee per metric ton of carbon dioxide for the current year to the total number of kilowatt hours of electricity delivered to Colorado customers, or does the phrase simply apply to the total number of kilowatt hours of electricity delivered to Colorado customers?
 - d. Because it is unclear how the calculation should work, there are no other substantive questions related to the manner in which the fee is charged on the consumption of electricity at this time. How did you intend for this calculation to work?
42. The following questions and comments relate to paragraph (c) of subsection (4) of the proposed initiative:
- a. In paragraph (b) of subsection (4) of the proposed initiative you refer to "electric utilities," but in paragraph (c) you refer to "utilities." Are they the same?
 - b. Is the fee in paragraph (c) limited to carbon dioxide emissions resulting from the burning or conversion of fossil fuels?

- c. How does the fee in paragraph (c) work with the fees required by paragraph (a) of subsection (4)?
 - d. How does the emissions fee charged per kilowatt hour that is described in paragraph (b) of subsection (4) apply to paragraph (c)? If it is not the same fee, how is this fee to be calculated?
 - e. How will a utility know what the carbon dioxide emissions are for the described systems that cannot be tracked by a kilowatt hour?
 - f. In the first sentence of paragraph (c), you use the phrase "building mechanical systems," but in the second sentence you use "mechanical systems." Was the second phrase a shorthand for the first? What does this phrase mean?
 - g. Does paragraph (c) only apply to leased buildings or will the owner of any building be billed separately for emissions resulting from heating, ventilation, air conditioning, lighting, and mechanical systems? Is it intended to apply in both residential and commercial lease situations?
 - h. Is the measure prospective only, or is it meant to affect the contractual rights currently existing between building owners and tenants throughout the state? If, for example, a tenant has agreed to pay utility costs and any related taxes and fees, would the provisions of the proposed initiative affect this arrangement? If so, would this constitute an unconstitutional impairment of their contractual rights?
 - i. Although the fees cannot be passed "directly" to tenants, may they be passed indirectly, for example, through increased lease costs? How will you enforce the prohibition against building owners passing on the fees to tenants?
 - j. What will the utility do with the fee that is collected? Is this specified anywhere in the proposed initiative?
43. As used in paragraph (d) of subsection (4) of the proposed initiative, what are "electricity sellers"? How is an electricity seller different from an "electric utility" or a "utility"? What are "highway taxes"?
44. Will the sales tax and highway tax cover all instances in which the fee will be collected? If not, how will the tax be collected? Does the phrase "except as otherwise noted" as used in paragraph (d) of subsection (4) of the proposed initiative refer to the collection methods established in paragraphs (b) and (c) of subsection (4)?
45. In paragraph (d) of subsection (4), what does the phrase "as the state shall adopt" mean? As written, it seems to require the state to adopt mechanisms for collecting sales or highway taxes.
46. How will the fee on a producer, wholesaler, and distributor of fossil fuels and fossil fuel derivatives be collected?
47. Do you intend that revenues from the fee collected be placed into the clean energy fund that is created in the state treasury pursuant to section 24-75-1201, Colorado Revised Statutes, or did you intend to create a new fund? If you intend to create a new fund in which to place the fee revenues, you might consider using a different name for the new fund.

48. The proposed initiative requires all fee revenues to be deposited in the "Clean Energy Fund" and then sets forth the required distributions in subsection (5) of the proposed initiative. Subsection (5) does not appear to authorize the state to use money in the fund for the administration of the proposed initiative. Accordingly, how would the state be able to use fee revenue for administration expenses, as appears to be authorized by subsection (1) of the proposed initiative?

The following questions and comments relate to subsection (5) of the proposed initiative:

49. Was it your intention that in all cases the distributions set forth in subsection (5) of the proposed initiative be made in the same year that the fee revenue is collected?
50. Who will be required to determine the "projection of total emissions"?
51. The proposed initiative requires the department of revenue to allocate the anticipated revenue from the fee using a projection of tax revenue based on certain percentages for certain uses.
- a. Was the purpose of this allocation to establish how much money would go for each of the designated uses, which in turn would allow for the calculation of the amount of the earned income tax credit and the sales tax reduction? (The state could then in turn make adjustments in the collection and administration of the taxes to reflect these changes, such as new forms.)
 - b. Was it your intention that the percentages for estimated allocation for the three types of rebates should be different from the actual distribution required in paragraphs (c) to (e) of subsection (5)? Moreover, why include an estimation for the proposed rebates, as those rebates are based on actual revenue that is remaining after the earned income tax credit and sales tax rate reduction?
 - c. The estimation process does not include any revenue being used for the administration of the proposed initiative. Was this intentional?
 - d. What is a "conservative estimation process"? Are the people estimating the revenue intended to deliberately underestimate refunds and overestimate revenue or does this just mean that the most conservative estimates within a range of probability should be used? Also, who is doing the estimating? If it is a group that does not currently forecast revenue, for example the department of revenue, are they supposed to forecast revenue or use other forecasts and, if so, which ones?
 - e. What is a "small amount of revenue"?
 - f. With respect to the sentence that reads "This revenue will remain in the clean energy fund to be returned to the people of Colorado in the next year," what is "this revenue"? Is it the "small amount of revenue remaining in the Clean Energy Fund"?
 - g. The "conservative estimation process" requires "a small amount of revenue" to remain in the fund, but the actual distribution appears to require all of the moneys in the fund to be distributed, as the specified fractions for the rebates are based on "the amount remaining after the earned income tax credit and the sales tax reduction are satisfied" as specified in paragraphs (c) to (e) of subsection (5). Was this intentional?
 - h. Assuming that a small amount of revenue was not distributed, will such amount really be "returned to the people of Colorado in the next year," if in the next year

there is the same requirement that a small amount remain in the fund?

52. Insofar as some of the distributions may require transfers to the general fund, was it your intention that the department of revenue make these transfers? (In statute, the state treasurer is usually required to make transfers.)
53. Are the distributions made from the "Clean Energy Fund"? (While it says as much in subsection (4), it doesn't actually state the source of the distribution in subsection (5).)
54. As the earned income credit and the sales tax reduction are based on estimates of the fee revenue, it is possible that the actual amount of revenue will not be enough to reimburse the general fund for lost revenue from such income tax credit or sales tax reduction. Is this statement accurate?
55. The following questions and comments relate to the earned income tax credit funding in paragraph (a) of subsection (5) of the proposed initiative:
 - a. What is "the Colorado supplement to the earned income tax credit"? (Currently, there is an earned income tax credit that is a TABOR refund mechanism.)
 - b. Paragraph (a) requires the earned income tax credit to be funded at a certain level, as does subsection (1) of the proposed initiative. However, there is no language that expressly requires the earned income tax credit to be extended to taxpayers. (In contrast, the change to the sales tax, expressly refers to a rate reduction, and the rebate language specifically requires money to be refunded.) Was it your intention to create a permanent earned income tax credit through the proposed initiative that is in effect for any year that the state collects the fee on carbon dioxide emissions?
 - c. How will the earned income credit be funded? Will an amount equal to the revenue lost to the state from the credit be transferred from the "Clean Energy Fund" to the state general fund? (Currently, the language in paragraph (a) of subsection (5) says that the funding will be "subtracted from the total anticipated emission fee revenue," but does not specify how it will be used.)
 - d. What happens if there is not enough fee revenue to fund the credit at 20% of the federal amount?
 - e. If the amount of the credit is greater than the taxpayer's income tax liability, would the taxpayer be entitled to a refund? Could the credit be carried forward for future years?
 - f. This refund method is dependant upon a federal earned income tax credit. What would happen if the federal government eliminated the credit?
 - g. The amount of the expense for this credit is based solely "on the anticipated expense of funding the Colorado supplement." As actual revenues may vary from anticipated revenues, the distribution required by paragraph (a) of subsection (5) may mean that the general fund will end up with more or less revenues, depending on whether there was an overestimation or underestimation. Is this statement correct?
56. The following questions and comments relate to paragraph (b) of subsection (5) of the proposed initiative:

- a. Is it your intention that the words "original sales tax rate" in subparagraph (I) of paragraph (b) refer to the sales tax rate that existed at the time of passage of the proposed measure rather than the most recent tax rate? If so, would you consider clarifying that?
 - b. Is it your intention that the amount of actual uncollected sales tax equal the amount of the sales tax that the state lost as a result of the reduction in the state sales tax rate? If so, it does not appear that the formula to determine the amount of the uncollected sales tax in subparagraph (IV) of paragraph (b) works as intended.
 - c. Sales tax revenue is distributed pursuant to section 39-26-123, Colorado Revised Statutes, and a portion of the money is allocated to the highway user's tax fund, among other funds. If all of the sales tax revenue is transferred to the general fund, then the general fund will end up with more money than it would have otherwise received. Was that your intention?
 - d. While the tax rate reduction is based on anticipated revenue, the amount that is transferred to the general fund is based on actual sales tax revenue collected, correct?
 - e. TABOR requires prior voter approval before a tax rate increase. If the sales tax rate as calculated in paragraph (b) of subsection (5) was an increase from the prior year, would the TABOR prior voter approval requirement apply?
 - f. Was it your intention that the rate reduction not apply to the use tax?
57. The following questions relate to paragraph (c) of subsection (5) of the proposed initiative:
- a. How will the business personal property tax be refunded?
 - b. Who will make the rebate payment? (The state has the money, but the property tax is collected at the local level.)
 - c. When will the rebate be made?
 - d. Is the "amount remaining after the earned income tax credit and the sales tax reduction are satisfied" to be based on a projection or is it the actual amount? Insofar as the aforementioned phrase is not preceded by the term "anticipated," it appears that the actual amount should be used.
 - e. The phrase "anticipated business personal property payments" as used in subparagraph (I) of paragraph (c) of subsection (5) seems to mean that the amount of tax payments are being estimated prospectively. If the rebate is made in the year after the tax is collected, then why couldn't be actual property tax payments be used, assuming that such value is knowable?
 - f. In the calculation, is anticipated business personal property multiplied by 100 or is the ratio of the specified fee revenue to anticipated business personal property multiplied by 100?
58. All of the questions from question 57 likewise apply to paragraph (d) of subsection (5) of the proposed initiative. In addition, the following questions apply:
- a. What are payroll taxes? You might consider adding a definition to specify exactly what you intend.
 - b. Is the amount of the anticipated statewide payroll and public employees' retirement association (PERA) tax a known amount? Who will make this calculation?
 - c. Is PERA a tax?

59. The following questions relate to paragraph (e) of subsection (5) of the proposed initiative:
- a. How will this rebate be made?
 - b. Who will make the rebate?
 - c. When would the refund be made?
 - d. To the extent the rebate otherwise reduces the amount of revenue that goes to the general fund, will the rebate be funded by making payments to the general fund?
 - e. By using the phrase "per capita," is it the proponents' intent that the payments be equal for all individuals? Can there be any adjustment to the amount based on income, age, or any other circumstance?
60. The following questions relate to how the fee revenue will apply to the fiscal year spending limit set forth in TABOR:
- a. Will the fee revenue collected by the state fall within the definition of "fiscal year spending"?
 - b. If the fee revenue is included within the definition of fiscal year spending:
 - i. To the extent that not all of the fee revenue will be offset, such as the state revenue used to administer the program and the revenue that is used to rebate business personal property taxes collected at the local level, the fee will increase the amount of the state's fiscal year spending. This may cause the state to make a refund or increase the amount of revenue that the state is required to refund to taxpayers under the provisions of TABOR. Was this your intention?
 - ii. Unless the rebates are considered a TABOR refund method, then each dollar of fee that is collected when the state is above its allowable TABOR spending limit will have to be refunded twice: once under the provisions of TABOR and once under the provisions of the proposed initiative. Was this your intention?