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MEMORANDUM

April 17, 2007

TO: Matt Samelson and Megan Ferland

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #14, concerning imposition and distribution of severance tax on oil and gas

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.

Proposed initiative 2007-2008 #14 was submitted with proposed initiatives 2007-2008 #13, #15, and #16, which were all substantially similar. Accordingly, the questions and comments set forth in the review and comment memorandum for proposed initiative 2007-2008 #13 also apply to this proposed initiative, unless the context otherwise requires, and are incorporated herein. Only new questions and comments are included in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To eliminate the current state severance tax on oil and gas and replace it with a new tax on the severance of oil and gas at a rate of at least five percent;

2. To exempt the first three hundred thousand dollars of gross income from the new tax on the severance of oil and gas;
3. To prohibit a tax credit against the new tax on the severance of oil and gas for ad valorem taxes assessed;
4. To exclude the revenues received from the new tax on the severance of oil and gas from definition of fiscal year spending and from all spending limits; and
5. To require the revenues from the new tax on the severance of oil and gas to be used as follows:
 - a. Twenty-three percent for supplemental assistance to districts or charter schools for capital expenditures;
 - b. Fifteen percent for the state education fund;
 - c. Fifteen percent for the capital construction fund;
 - d. Twenty-three percent for energy-impacted communities; and
 - e. Twenty-four percent as determined by the General Assembly.

Comments and Questions

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

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. In paragraphs (a) and (c) of subsection (5) of the proposed initiative, you refer to a "successor act". However, there was no act previously referenced. In paragraph (a), were you referring to a "successor reserve" and paragraph (c), were you referring to a "successor fund"?
2. On page 1, lines 38 and 39, the reference to the Colorado constitution should be written as follows: "Section 17 of article IX of this constitution."
3. It is standard practice to cite a statutory reference at the most easily identifiable level. For example, the capital construction fund would be section 24-75-302, Colorado Revised Statutes.

Substantive 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 amendment?
2. An appropriation is spending authority. Revenues are generally appropriated to a department in order that it has authorization to use them. In contrast revenues are usually deposited or transferred to a fund. In subsection (5) of the proposed initiative, was it your intention that the revenues received from the new tax should be transmitted to the state treasurer and he or she must then deposit the revenues in the funds that you list in the proportions that you list?
3. The following questions relate to paragraph (a) of subsection (5) of the proposed initiative:
 - a. Is the "capital construction expenditures reserve" referring to the reserve created in the state public school fund in section 22-54-117 (1.5), Colorado Revised Statutes?
 - b. Was it your intention to allow the state board of education to have the power to use this money?
 - c. How does paragraph (a) affect the General Assembly's ability to modify the capital construction expenditures reserve? For example, could it change how the money is to be used in the reserve, or how the state board of education distributes the money, or even repeal the section?
 - d. What would be a "successor act?" How similar would it have to be?
 - e. Could the General Assembly use the money deposited in the capital construction expenditures reserve pursuant to paragraph (a) to supplant existing money in the reserve?
4. Are the moneys deposited in the state education fund to be used for the purposes set forth in section 17 of article IX of the Colorado constitution?
5. The following questions refer to paragraph (c) of subsection (5) of the proposed initiative:
 - a. Are you referring to the capital construction fund created in section 24-75-302, Colorado Revised Statutes?
 - b. Are the moneys in the capital construction fund required to be used for the existing purposes of the fund? Is the General Assembly prohibited from transferring revenues out of the capital construction fund that are deposited pursuant to paragraph (c) into another fund to be used for another purpose?
 - c. How does paragraph (c) affect the General Assembly's ability to modify the capital construction fund? For example, could it change how the money is to be used in the fund or even repeal the section?

- d. What would be a "successor act?" How similar would it have to be?
 - e. Could the General Assembly use the money deposited in the capital construction fund pursuant to paragraph (c) to supplant existing money in the fund?
6. The uses set forth in paragraphs (d) and (e) of subsection (5) of the proposed initiative are the same as the uses set forth in proposed initiative 2007-2008 #13; except that the percentages are different. Notwithstanding the difference in the percentages, are your answers to the questions and comments from the memorandum for proposed initiative 2007-2008 #13 regarding the uses the same in this context?
7. Is there any other difference from this proposed initiative and proposed initiative 2007-2008 #13 that is not otherwise identified in this memorandum?