

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 17, 2008

TO: James Udall and Tony Lewis

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #79, concerning severance tax

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 #79 was submitted along with proposal 2007-2008 #78, and the two proposed initiatives are substantially similar. Accordingly, the questions and comments set forth in the review and comment memorandum for proposed initiative 2007-2008 #78 also apply to this proposed initiative, unless the context otherwise requires, and are incorporated herein.

### Purposes

The major purposes of the proposed amendment appear to be:

1. To modify the state severance tax on oil and gas that is collected on and after January 1, 2009, as follows:

- a. Eliminating the graduated rate of taxation, establishing a tax rate of 4.85 percent, and exempting all gross income below \$300,000;
  - b. Eliminating an exemption for oil and gas wells that have minimal production; and
  - c. Eliminating a credit against the tax that is based on property taxes paid;
2. To permit the state to retain and spend all the revenues received from the modified tax on the severance of oil and gas notwithstanding the constitutional limitation on fiscal year spending or any other spending limit; and
  3. To modify the distribution of oil and gas tax revenues.

### Comments and Questions

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

#### Technical questions:

Each of the technical questions set forth in the review and comment memorandum on proposed initiative 2007-2008 #78 is applicable to proposed initiative 2007-2008 #79 and, as such, will not be repeated.

#### Substantive questions:

1. It appears that the only difference between this proposed initiative and proposed initiative 2007-2008 #78 is the creation of the higher education capital construction trust fund. Is that correct?
2. What does it mean for the state treasurer to administer the fund?
3. What would the general assembly's role be?
4. Is it your intention that the treasurer administer this fund without any direction from the general assembly? Our current budget process provides that the departments in the executive branch provide information to the general assembly as to their needs, the general assembly, through the joint budget committee, reviews those needs and makes recommendations to the appropriations committees of both houses of the general assembly; the appropriations committee then reviews those recommendations, makes changes, if necessary, and then a general appropriation bill is introduced in the general assembly. How does the treasurer's role fit into this?
5. Is it your intention that the passage of the proposed initiative would direct the general

assembly to create the higher education capital construction trust fund? If so, would you specify your intent?

6. Are you aware of any authority by which the general assembly can credit moneys to a fund that has not yet been created?