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MEMORANDUM

June 20, 2007

TO: Matthew Garrington & Matt Baker

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #35, concerning carbon dioxide emissions from new facilities

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 the risks and impacts of global warming to Colorado's water supplies, farms and ranches, ski and recreation industry, wildlife, economy, and environment;
2. To protect Colorado's electricity ratepayers, businesses, and economy from the costs of complying with future carbon dioxide regulations by investing in low polluting electricity resources; and
3. To limit carbon dioxide pollution from power plants in Colorado and from the

production of electricity for Coloradans to help reduce the risks and impacts of global warming and the costs of future carbon dioxide regulation.

Comments and Questions

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

Technical questions:

1. To conform with standard drafting practices, would the proponents consider:
 - a. Starting subsection (1) directly after the word "**standard.**" in the section heading?
 - b. Showing all new language (other than the section heading and subheadings) in small capitals, e.g., "NEW ELECTRICITY GENERATING FACILITIES . . ." and not capitalizing the first few words of subsection (1)?
 - c. Putting the sub-headnote in subsection (6) in bold-faced type?
 - d. Deleting the period after the word "section" in subsections (3) and (5) (a)?
 - e. Deleting the phrase "and regulations," in subsection (4)?
2. There appears to be an extraneous "v" included after subsection (6).

Substantive questions:

1. Why did the proponents establish the emissions standard as 1100 pounds of CO₂ per megawatt-hour? Did the proponents consider other metrics, such as a concentration-based emission limit or one based upon the quantity of fuel consumed?
2. Would a new electricity generating facility that produces more than 1100 pounds of CO₂ pollution per megawatt-hour violate the proposed emissions standard if the facility sequestered enough CO₂ per megawatt-hour so that it emitted into the atmosphere less than 1100 pounds of CO₂ per megawatt-hour? If so, how would the efficacy of the sequestration be determined and who would make the determination? How long would the CO₂ have to remain sequestered for the sequestration to be considered effective? Would the efficacy of the sequestration be an enforceable permit requirement?
3. Subsection (5) (b) defines a "new" electricity generating facility as one that had not, as of May 1, 2007, obtained all required pre-construction permits. Because the proposed measure would not be voted on until the November 2008 election, the new requirement would probably not take effect until 2009. Have the proponents considered any unfairness that may

result from imposing such a retroactive requirement?

4. Subsection (3) of the proposal requires the department of public health and environment to certify that the electricity generating facility "will be operated" to comply with the CO₂ emissions standard. How can the department certify how third parties will operate a facility in the future?
5. If a long-term electricity purchase specifies that the electricity sold pursuant to the contract will not come from a new electricity generating facility, must the purchase contract still specify the generation source?
6. Subsection (4) requires the department to promulgate rules to implement the proposal. However, every other air quality rule promulgated pursuant to article 7 of title 25, C.R.S., is promulgated by the air quality control commission. Have the proponents considered giving rule-making authority to the commission?
7. Once a more stringent standard has been promulgated pursuant to subsection (4), may the standard be replaced with a less stringent standard so long as it is not less stringent than the original standard?
8. How would Colorado law apply to a new electricity generating facility located outside of Colorado as required by subsections (4) and (5) (b)?
9. Is there any limit to the penalties to which an entity that violates the measure would be subject? Would the rules have to specify how the penalties would be determined, including procedural safeguards?