

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

May 8, 2008

TO: Michael Bowman and David Theobald

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #113, 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 2007-08 #113 is substantially similar to proposed initiative 2007-08 #88, previously filed by the proponents. Accordingly, the questions and comments set forth in the review and comment memorandum for proposed initiative 2007-08 #88 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 5.0% of total

gross income, and exempting all gross income below \$300,000;

- b. Changing the 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 severance taxes.

### Comments and Questions

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

#### Technical questions:

This proposed initiative is similar to proposed initiative 2007-2008 #88. Insofar as the technical questions from the review and comment memorandum on proposed initiative 2007-2008 #88 apply to this proposed initiative, those questions will not be repeated here. The following comments are additional technical changes that we would recommend you make in order to conform the proposed initiative to standard drafting practices:

1. There should be no comma after the word "SUBSECTION" (page 1, line 4).
2. The first word after a colon should be capitalized (page 1, line 11).
3. Consider referring to "the state" rather than "this state" (page 1, line 15).
4. The internal reference on page 1, line 20, does not need to refer to "C.R.S", since the reference appears in the same title of the Colorado Revised Statutes as the amended section.
5. Consider moving the words "per day" after "or less of oil" to closely mirror the language for the exemption for low-producing gas wells in that paragraph (page 1, lines 44 and 45).
6. Consider placing a comma after the words "gas per day" on page 1, line 46, so as to indicate that the phrase "for the average of all producing days" applies to the exemption for both oil wells and gas wells.
7. One page 2, line 12, the headnote for statutory section amended by section 3 of the proposed initiative is missing and should appear immediately before the new subsection (3) as follows:

**"39-29-105. Tax on severance of oil and gas. (3) THE PROCEEDS OF THIS . . ."**

8. The amending clause to section 4 of the proposed initiative should read as follows:

**"SECTION 4.** The introductory portion to 39-29-108 (1) and 39-29-108 (2), Colorado Revised Statutes, are amended, and the said 39-29-108 is amended BY THE ADDITION OF A NEW SUBSECTION, to read:"
9. There are extra hyphens on either side of the word "**creation**" on page 2, line 39, that should be removed.
10.
  - a. Subparagraphs (I) to (V) on pages 3 and 4 should be relettered as paragraphs (a) to (e), respectively.
  - b. Internal references to the relettered paragraphs should then be corrected as follows:
    - i. The reference to "(2) (III)" on page 4, line 36, should read "(2) (c)".
    - ii. The reference to "(2) (II)" on page 5, line 2, should read "(2) (b)".
11. In the strictest sense, "local district colleges" are not defined in section 23-72-121.5, Colorado Revised Statutes. Consider changing the word "defined" to "described" on page 3, line 32.
12. The phrase "promise scholarships" should not be capitalized (page 3, lines 33, 40, and 41). Also, consider moving the entire phrase "to be known as Colorado promise scholarships" on page 3, line 33, to line 30 of that page, immediately after the word "scholarships".
13. Consider changing the reference to "this provision" on page 3, line 37, to "this paragraph (a)".
14. A period should follow the section number in each section of the initiative, rather than a colon (page 4, lines 27 and 38).

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. The following questions relate to subsection (4) of section 39-29-101, Colorado Revised Statutes:
  - a. You specify that this proposal eliminates "the tax credit given to oil and gas producers for property taxes paid". However, section 39-29-105 (2) (b), Colorado Revised Statutes, specifies that the credit is available to more taxpayers than just the producers. Would you consider clarifying this language?
  - b. What do you mean by "changing the severance tax structure" on page 1, line 8?

- c. What do you mean by "not be adversely impacted by the distribution of the additional revenue" on page 1, line 17?
3. The following questions relate to the addition of paragraph (c) to subsection (1) of section 39-29-105, Colorado Revised Statutes:
  - a. Was it your intention, in changing the exemption for marginal wells from this new tax commencing on and after January 1, 2009, to define marginal wells as producing seven and one-half barrels or less of oil (versus the current definition of wells producing fifteen barrels or less) and forty-five thousand cubic feet or less of gas (versus the current definition of wells producing ninety thousand cubic feet or less), for the average of all producing days for such oil or gas production during the taxable year?
  - b. Would you consider changing the word "and" on page 2, line 1, to "or" to comport with the language for the marginal well exemption in paragraph (b) to subsection (1) of this section?
4. The following questions relate to the changes made to section 39-29-108, Colorado Revised Statutes:
  - a. It appears that the only difference in this section from proposed initiative #88 is the increase of percentages credited to the severance tax trust fund and the local government severance tax fund and the subsequent reduction of the percentage credited to the severance tax stabilization trust fund. Is this correct?
5. The following questions relate to the section creating the severance tax stabilization trust fund, section 39-29-110.5, Colorado Revised Statutes:
  - a. You specify in section 39-29-110.5 (1) (a), Colorado Revised Statutes, that the moneys in the operational account of the severance tax stabilization trust fund "shall be distributed by the general assembly". How is the general assembly to distribute such moneys? Is it your intention that the general assembly appropriate such moneys?
  - b. It appears that the only changes to section 39-29-110.5 (1) (b) (I), Colorado Revised Statutes, from proposed initiative #88 is the percentage of severance tax receipts credited to the severance tax stabilization trust fund that is retained in the perpetual base account of the severance tax trust fund, as well as the percentage of the previous fiscal year's revenue credited to the severance tax stabilization trust fund that is established as the maximum balance of the perpetual base account. Is this correct?
  - c. With regard to section 39-29-110.5 (1) (b) (I), Colorado Revised Statutes, is it your intention that money distributed to the perpetual base account of the severance tax stabilization trust fund would be subject to a ratchet-down in years when severance

tax revenues decline? For example, if oil and gas severance tax revenues dropped from \$400 million to \$200 million, the amount distributed to the perpetual base account would drop from \$22.4 million to \$11.2 million. In the subsequent fiscal year, the distribution would then be capped at 125% of \$11.2 million, or \$14 million.

- d. It appears that the only change to section 39-29-110.5 (1) (b) (II), Colorado Revised Statutes, is the percentage of severance tax receipts credited to the severance tax stabilization trust fund that is credited to the operational account. Is this correct?
- e. The following questions relate to subparagraph (I) of subsection (2) of section 39-29-110.5, Colorado Revised Statutes:
  - i. You specify that sixty percent shall be appropriated for a particular purpose but you do not specify where that money is to be appropriated to. Do you intend for the general assembly to appropriate the moneys to the Colorado commission on higher education, to collegeinvest, or to some other entity?
  - ii. You do not define Colorado residents. Do you intend for the definition specified in section 23-3.3-601 (5), Colorado Revised Statutes, to apply or do you have a different definition?
  - iii. Do you have an estimate of how much each Colorado Promise Scholarship would amount to and how many students may be able to receive the scholarship each year?
  - iv. What does "lower and middle income" mean? Would you care to define that term, or is it your intention to let the Colorado commission on higher education establish those levels?
  - v. What type of scholarships are you intending to be funded? For example, full-ride, 4-year, 2-year?
  - vi. Do you intend for the academic performance criteria to include performance in high school, whether a student attended high school, or is the academic performance limited to the student's performance in an institution of higher education?
  - vii. Is it your intention that this funding be in addition to or in lieu of existing financial aid that the state already provides to students in institutions of higher education?
- f. The following questions relate to subparagraph (II) of subsection (2) of section 39-29-110.5, Colorado Revised Statutes:
  - i. You specify that fifteen percent of the operational account shall be "dedicated for" a specific purpose, and later you specify that the state board of the great

outdoors Colorado trust fund is to administer and oversee the moneys; however, you do not specify how the state board of the great outdoors Colorado trust fund actually receives that money. Is the money to be appropriated to the state board of the great outdoors Colorado trust fund? Is the money to be transferred to a fund and then appropriated to the state board of the great outdoors Colorado trust fund?

- ii. The only other change to this section from proposed initiative #88 is the added language that revenues "be used for expenses of administering these moneys". You do not specify a maximum that the board may use for administering these moneys. Is this your intention?
  - g. With regard to subparagraph (III) to subsection (2) of section 39-29-110.5, Colorado Revised Statutes, you do not specify the purpose for which those particular moneys are to be used. Is it your intention that the uses of the fund specified in section 24-75-1201, Colorado Revised Statutes, apply to the additional moneys credited to the fund by your proposed initiative?
  - h. The following questions relate to subparagraph (IV) of subsection (2) of section 39-29-110.5, Colorado Revised Statutes:
    - i. Is it your intention that the department of transportation determine what transportation projects need to be funded in counties and municipalities of the state that are impacted by the development, processing, or energy conversion of oil and gas?
    - ii. For the sake of clarity, would you consider changing the phrase "including by" to "which funding includes" on page 4, line 19.
    - iii. Is it your intention that the department of transportation determine the criteria for the grants specified in this subparagraph?
  - i. With regard to section 39-29-110.5 (2) (V), Colorado Revised Statutes, what do you mean by "small community drinking water grants" and "domestic wastewater treatment grants"?
6. How much severance tax revenue is estimated to be generated under the proposed initiative in comparison to current revenues? How was this estimate derived?