

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

May 6, 2008

TO: Josh Penry and Frank McNulty

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #120, concerning severance tax - transportation

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 #120 was submitted along with proposal 2007-2008 #119, and the two proposed initiatives are substantially similar. The proponents for the two initiatives are different and, therefore, many of the questions and comments set forth in the review and comment memorandum for proposed initiative 2007-2008 #119 are repeated.

#### Purposes

The major purposes of the proposed amendment appear to be:

1. To require that certain state severance tax revenues continue to be credited to the local government severance tax fund and the severance tax trust fund;

2. To cap the amount of revenues that are credited to the severance tax trust fund and to credit revenues above that cap to the newly created Colorado transportation trust fund; and
3. To specify uses for revenue and interest earned from the investment of the moneys in the fund.

### 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. The enacting clause should not be written in bold type. It should be italicized.
2. With the exception of the enacting clause, all new paragraphs should be indented, including the amending clause and section headnote.
3. Subsection (1) of the proposed initiative should directly follow the headnote.
4. In the first sentence of subsection (1) of the proposed initiative, "article" and "title" do not need to be capitalized.
5. Subsection headnotes are not generally used. The headnote after subsection (2) of the proposed initiative should be included in the section headnote and separated by a dash. Alternatively, subsection headnotes should be used for both subsections, not just subsection (2).
6. Any reference to a statutory section should be preceded by the word "section." Additionally, because this language will appear outside of the Colorado Revised Statutes, any reference to "C.R.S." should be written "Colorado Revised Statutes" and should be set off with commas. For example, ". . . pursuant to section 39-29-107, Colorado Revised Statutes, after June . . ."
7. Section 39-29-109, Colorado Revised Statutes, creates the "severance tax trust fund," not the "state severance tax trust fund." Therefore, this fund should be referred to as the "severance tax trust fund."
8. Subsection numbers should always be placed in parentheses. For example, "subsection (2) of this section."
9. Internal references in the state constitution should be written as follows: "section 18 of article X of this constitution."

10. "I-70" should be written "Interstate 70."

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 and comments relate to subsection (1) of the proposed initiative:
  - a. What is meant by the term "total gross receipts realized from the severance taxes imposed on minerals and mineral fuels"? Does it have the same meaning as in section 39-29-108, Colorado Revised Statutes?
  - b. With the exception of oil shale severance tax revenue, are the receipts from all taxes set forth in article 29 of title 39, Colorado Revised Statutes, to be credited to the specified funds?
  - c. What is meant by the term "successor section" to article 29 of title 39, Colorado Revised Statutes?
    - i. Does it only include sections that replace the existing sections of article 29 of title 39, Colorado Revised Statutes?
    - ii. Does it matter if the "successor section" is added to article 29 of title 39, Colorado Revised Statutes?
    - iii. Would the term include any new severance tax? For example, if a new severance tax was created in addition to the taxes set forth in article 29 of title 39, Colorado Revised Statutes, would it be subject to the distribution set forth in the proposed initiative?
  - d. What is a "successor section" to section 39-29-109 or 39-29-110, Colorado Revised Statutes? Does it have the same meaning as a "successor fund?" Could the general assembly establish a successor section that has an entirely different purpose?
  - e. Why is oil shale severance tax revenue excluded from the proposed allocation of severance tax revenue? If it is ever collected, what will happen to oil shale severance tax revenue?
  - f. Does the phrase "after June 30, 2008," relate to the oil shale exclusion, or does it establish a beginning point for the required distribution?
  - g. Is there any limitation on the general assembly's ability to change the permissible uses set forth in section 39-29-109 or 39-29-110, Colorado Revised Statutes? For example, could the general assembly establish that half of the moneys in the local government severance tax fund shall be used for higher education?

- h. Does the proposed initiative prohibit the general assembly from transferring to another fund moneys that are required to be deposited in the local government severance tax fund or the severance tax trust fund?
  - i. Was it your intention to create an annual state fiscal year cap on the amount of money that may be deposited in the state severance tax trust fund? As written, the proposed initiative simply states that "[b]eginning July 1, 2008 . . . any moneys credited to the . . . fund . . . shall not exceed the amount in the prior fiscal year," but it does not expressly say that the cap applies to the fiscal year commencing on July 1, 2008, and each succeeding fiscal year.
  - j. As written, the cap equals the amount credited in the prior fiscal year plus an adjustment for a percentage change in inflation. So, for example, if the amount deposited in the fund was ten million dollars in fiscal year and the applicable inflation was three percent, the cap in the proposed initiative would literally be as follows: ten million dollars plus three percent. Three percent of what amount? Also, if there is deflation, would it be "minus an adjustment"?
  - k. Why is inflation used as the growth factor for the cap?
  - l. Inflation from what year is to be used to determine the cap on the amount of money that may be deposited in the severance tax trust fund?
  - m. What is the purpose of limiting the growth of the state severance tax trust fund to the rate of inflation? If state mineral fuels production increases significantly, would the fund have adequate resources to address the effect of these increases?
  - n. Is it your intent that the cap ratchet down when there is a decline in severance tax revenue? For example, if severance tax revenue to the severance tax trust fund dropped from \$100 million to \$50 million, would the cap in the subsequent fiscal year equal \$50 million plus an adjustment for inflation, even if revenue were to increase back up to the higher level of \$100 million?
3. The following questions and comments relate to subsection (2) of the proposed initiative:
- a. For what purpose, if any, is the principal in the Colorado transportation trust fund (fund) to be appropriated or used? Do the proponents intend for all money credited to the Colorado transportation trust fund to be available for appropriation, or just interest and income earned on the money in the fund?
  - b. Does "derived from the deposit and investment of the fund" mean "derived from the deposit and investment of moneys in the fund?"
  - c. Is the general assembly required to appropriate any interest or income from the fund?
  - d. How much interest and income would be available to be used from the fund in the

future?

- e. Would it be permissible for the general assembly to transfer interest and income from the fund to another cash fund?
- f. What happens to interest and income derived from the deposit and investment of moneys in the fund that is not appropriated in the fiscal year that it is earned?
- g. The interest and income earned from the moneys in the fund are required to be used "for the purposes allowed under section 18 of article X of the Colorado constitution". The uses identified in section 18 of article X of the Colorado constitution are as follows: Administration; the construction, maintenance, and supervision of the public highways of this state; and aviation purposes. Are these all acceptable uses of the interest and income from the fund?
- h. What does the phrase "giving first priority" mean? Must all money be used for relieving congestion on the Interstate 70 corridor? Does the proposed initiative require money to be used for relieving congestion on the Interstate 70 corridor before any other uses are permissible?
- i. Does the Interstate 70 corridor include the entire roadway between the Utah and Kansas borders, or something more limited?
- j. What are examples of measures to relieve congestion that would be permissible?
- k. What happens with this provision if congestion on the I-70 corridor is relieved at some point in the future?
- l. Under current law, cash funds that are spent on highway construction, maintenance, and operations are allocated by the state transportation commission and are not subject to appropriation by the general assembly, though the general assembly does establish the total amount of transportation spending that is permissible. In contrast, the proposed initiative requires the general assembly to make an appropriation for the use of the interest and income from the fund. To the extent that moneys in the fund are used for the same uses that require allocations by the state transportation commission, was this difference intentional?
- m. Would the money in the fund supplement or supplant existing spending on transportation?