

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

February 8, 2008

TO: J. Thomas McKinnon and Samuel P. Weaver

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #65, concerning a fee on energy emissions

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 declare that the people of the state of Colorado recognize that it is in the interest of the health, safety, and welfare of its citizens to support the five interrelated goals of jobs creation, economic development, energy security, energy ratepayer relief, and global warming pollution reduction;
2. To create a funding mechanism for the governor's office to advance the development of jobs and economic development in the areas of renewable energy, energy efficiency, and the sequestration of carbon in agricultural soils in the state of Colorado;

3. To authorize the governor's office to spend the revenues on programs targeted to reduce energy bills within Colorado and to reduce global warming pollution;
4. To specify that all provisions of the new constitutional section are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions;
5. To impose a clean energy progress fee at a rate of three dollars per metric ton of carbon dioxide equivalent emitted to the atmosphere from electricity generation and natural gas combustion;
6. To make the entity providing the energy to the end user of energy responsible for computing the carbon intensity of the energy supplied and for collecting the revenues from the end user of energy and forwarding them quarterly to the clean energy progress fund;
7. To exclude all revenues from the clean energy progress fee from fiscal year spending, as defined in section 20 of article X of the Colorado constitution, and from the corresponding spending limits upon state government and all local governments receiving such revenues;
8. To require the revenues generated from the clean energy progress fee to be appropriated annually by the general assembly;
9. To require the governor's office to administer the clean energy progress fund in the best manner it sees fit to maximize the reduction in global warming pollution, subject to the following:
  - a. At least 20% of the revenues shall be used annually for energy efficiency of residences and businesses, and, of this amount, at least 25% be used annually for low-income residential energy-efficiency projects;
  - b. At least 5% of the revenues shall be used annually for workforce training and development programs at Colorado higher education and vocational education institutions for the purpose of creating and filling jobs in the renewable energy and energy efficiency industries;
  - c. At least 5% of the revenues shall be used annually for programs to sequester carbon in agricultural soils in Colorado;
  - d. At least 5% of the revenues shall be used annually for programs to reduce the total emissions of global warming pollution from the transportation sector;
  - e. At least 5% of the revenues shall be used annually for communications, outreach, and education of Colorado citizens on methods of reducing global warming pollution;
  - f. No more than 5% of the revenues shall be used annually for research and development on renewable energy, energy efficiency, and sequestration of carbon in agricultural soils, and requires all revenues used for research and development be spent at Colorado institutions of higher education.
10. To allow the general assembly to use no more than 30% of the revenues in the clean energy

progress fund for purposes not stated in the new constitutional section by declaring a statewide economic emergency, which shall require a two-thirds vote of both the Colorado house of representatives and the Colorado senate and which must be declared every year that the general assembly would like to use any portion of the revenues for purposes not stated in the new constitutional section;

11. To require the governor to deliver an annual report on the clean energy progress fund to the people of Colorado, which report shall indicate the total revenues collected and how the revenues were used, shall make a best effort estimate of the amount of global warming pollution that was avoided, and shall be delivered on the first anniversary of the creation of the clean energy progress fund and every subsequent year on that date;
12. To state the new constitutional section takes effect July 1, 2009, or as stated.

### Comments and Questions

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

#### Technical questions:

1. It is standard drafting practice to indent the first line of a section, subsection, paragraph, etc. Would the proponents add a "left tab" at the beginning of the following lines: On page 1, lines 3, 6, 22, 24, 31, and 45; on page 2, lines 1, 4, 8, 14, 18, 22, 25, 35, 40, and 46; and on page 3, lines 4, 9, 12, 16, 20, 25, 33, and 40?
2. To conform to standard drafting practice, would the proponents change the paragraph letters in subsections (2) and (5) of the proposed initiative to be lower case, not small capped? For example, "(A)" should be "(a)", "(B)" should be "(b)", etc.
3. With regard to the section heading on page 1, line 6, of the proposed initiative, it is standard drafting practice to not underline the section headings of the Colorado constitution, to place a period at the end of the heading, and to have the first line of the first subsection of the section immediately follow the heading, instead of on a separate line. Would the proponents make such changes to the proposed initiative, as shown below?

**Section 22. Clean energy progress fund.** (1) THE PEOPLE OF THE STATE  
OF COLORADO RECOGNIZE THAT IT IS IN THE INTEREST . . .

4. It is standard drafting practice to capitalize only the initial letter of words that are proper nouns or the first word of a sentence. To conform to this style, would the proponents change:
  - a. On page 1, line 6, "**Clean Energy Progress Fund**" to "**Clean energy progress fund.**"?
  - b. On page 1, lines 25 and 26, "INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE"

- to "INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE"?
- c. On page 1, line 26, "WORLD METEOROLOGICAL ORGANIZATION" to "WORLD METEOROLOGICAL ORGANIZATION"?
  - d. On page 1, line 27, "UNITED NATIONS ENVIRONMENT PROGRAMME" to "UNITED NATIONS ENVIRONMENT PROGRAMME"?
  - e. On page 2, line 20, "ANNEX A OF THE KYOTO PROTOCOL" to "ANNEX A OF THE KYOTO PROTOCOL"?
5. It is standard drafting practice to place a comma before the last item in a series of three or more. It is suggested that the proponents add a comma:
    - a. On page 1, line 9, after the word "SAFETY";
    - b. On page 2, line 10, after the word "ENERGY".
  6. For correct spelling, on page 1, line 9, of the proposed initiative, would the proponents change "INTER-RELATED" to "INTERRELATED"?
  7. With regard to subsection (2) of the proposed initiative, to harmonize this subsection with other definitions sections in the Colorado constitution:
    - a. It is standard drafting format to place defined terms in alphabetical order. Would the proponents modify subsection (2) to follow this standard drafting practice?
    - b. The standard drafting language used to introduce the definition subsection of a provision is "AS USED IN THIS SECTION:", rather than "TERM DEFINITIONS. WITHIN THIS SECTION:". Would the proponents modify the introductory language of subsection (2) to follow this standard drafting practice?
    - c. Additionally, when a term is defined, the standard drafting language is to use quotation marks around the defined term, as it appears in the initiative, followed by the term "means". For example, standard drafting practice would be as follows: "GLOBAL WARMING" MEANS THE HUMAN-INDUCED . . . ." Would the proponents modify the language in the terms being defined in subsection (2) to follow this standard drafting practice?
  8. On page 1, line 18, of the proposed initiative, is it the proponents' intent that all provisions **of the new section 22** of the Colorado constitution be self-executing, etc.? If so, would the proponents add "OF THIS SECTION" after the word "PROVISIONS" for clarity?
  9. Would the proponents add "OF THIS SECTION" in the following places of the proposed initiative for proper citation format and to indicate that the subsections referred to are within the new section 22 of the Colorado constitution:
    - a. On page 1, line 18, after "SUBSECTION (5)"?
    - b. On page 2, line 35, after "SUBSECTION (3)"?
    - c. On page 2, line 40, after "SUBSECTION (3)"?
    - d. On page 3, line 26, after "SUBSECTION (5)"?
    - e. On page 3, line 31, after "SUBSECTION (5)"?

10. It is standard drafting practice to use the term "SHALL" instead of "WILL" when directing a certain action or issuing a command. Would the proponents change "WILL" to "SHALL", where appropriate, in the proposed initiative? For example, in subsection (3) of the proposed initiative, the second sentence, in part, should read "THE FEE SHALL BE COMPUTED AT A RATE . . ."; and the third sentence, in part, should read "THE ENTITY PROVIDING THE ENERGY . . . SHALL BE RESPONSIBLE FOR COMPUTING THE CARBON INTENSITY OF THE ENERGY SUPPLIED, AND SHALL ALSO BE RESPONSIBLE FOR COLLECTING . . . ."
11. Regarding the clean energy progress fund, typically laws specify whether a fund is created in the state treasury or is created, for instance, in a private bank or other financial institution. Would the proponents consider amending the proposal to specify where this fund is created?
12. Page 3, line 40, of the proposed initiative states "THIS SECTION TAKES EFFECT JULY 1, 2009, OR AS STATED." Presumably, since the language is in small capitals, indicating it is new constitutional language, the proponents intend the language to be part of the new constitutional section. If so, would the proponents add "(8)" at the beginning of the line?

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Regarding the definition of "global warming pollution", because the proponents specifically list the six gases, what is the proponents' intent in referring to the intergovernmental panel on climate change?
3. The clean energy progress fee applies only to emissions from electricity generation and natural gas combustion. What is the proponents' intent in not regulating emissions from other significant sources of global warming pollution, such as the combustion of transportation fuels, particularly as paragraph (d) of subsection (5) authorizes the expenditure of fee revenues to reduce global warming pollution from the transportation sector?
4. Paragraph (c) of subsection (5) requires that at least five percent of the revenues be used for programs to sequester carbon in agricultural soils in Colorado. What is an "agricultural soil"? How long must the carbon remain sequestered in the soil for it to comply with this provision? Would the proponents consider adding language to clarify these issues?
5. The following questions pertain to subsection (6) that allows the general assembly to use revenue in the clean energy progress fund for purposes not stated in the new constitutional section by declaring a statewide economic emergency:
  - a. What is a statewide economic emergency? Would the proponents consider adding language to clarify what constitutes an economic emergency?
  - b. For what purposes may clean energy progress fund moneys be used during a

statewide economic emergency? Must these moneys be used only for programs that seek to resolve the economic emergency or may moneys be used to pay state programs not related to the economic emergency?

- c. According to section 24-32-2104, Colorado Revised Statutes, the governor is responsible for addressing dangers caused by natural and human-caused disasters. Would the governor be allowed to use moneys in the clean energy progress fund to respond to a statewide economic emergency? If so, would the proponents consider adding language to clarify the role of the governor in responding to a statewide economic emergency?
6. Subsection (7) requires the governor to deliver an annual report on the use of moneys in the clean energy progress fund to the people of Colorado. How must this report be delivered? Must a paper copy be mailed to every resident of the state? Would the proponents consider adding language clarifying who must receive the report and in what form (paper or electronic) it should be?
7. Page 3, line 40, of the proposed initiative states "THIS SECTION TAKES EFFECT JULY 1, 2009, OR AS STATED." What do the proponents means by "OR AS STATED"? Does the measure state a different effective date elsewhere?