

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>JUN 12 2008</p> <p>OF THE STATE OF COLORADO SUSAN J. FESLER, CLERK</p> <p>COURT USE ONLY</p> <p>Case No.: 08SA198</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007)</p> <p>Appeal from Ballot Title Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #113 ("SEVERANCE TAX")</p> <p>HOWARD STANLEY DEMPSEY, OBJECTOR,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL A. BOWMAN AND DAVID THEOBALD, PROPONENTS; AND WILLIAM A. HOBBS, SHARON EUBANKS, AND DANIEL DOMENICO,</p> <p>Respondents.</p>	
<p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General*</p> <p>1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record</p>	
<p>OPENING BRIEF OF TITLE BOARD</p>	

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William A. Hobbs, Daniel Domenico and Sharon Eubanks, as members of the Title Board (hereinafter "Board"), hereby submit their Opening Brief.

STATEMENT OF THE ISSUES

The Board adopts the statement of issues set forth in the Petition for Review.

STATEMENT OF THE CASE

On May 9, 2008 the proponents submitted #113 to the Title Board ("Board"). On May 21, 2007, the Board determined that the content of #113 constituted a single subject and proceeded to set a title. On May 28, 2008, Objector filed a motion for rehearing. He contended that the measure contained more than one subject because it created a new tax and dedicated the revenues from the tax to programs unrelated to the tax. He also alleged that the titles did not accurately reflect the content of the measure. On May 29, 2007 the Board granted the motion in part and set the titles. Objector filed a timely appeal.

STATEMENT OF THE FACTS

#113 increases severance taxes on oil and gas. In particular, the measure would:

(1) increase to 5% the tax on the gross income from the sale of oil and gas severed from the ground when the annual gross income is at least \$300,000;

- (2) eliminate a credit against the severance tax for property taxes;
- (3) reduce the level of production that qualifies wells for an exemption from the tax;
- (4) exempt revenues from constitutional spending limits; and
- (5) credit tax revenues to the severance tax trust fund, the local government severance tax fund and a new severance tax stabilization trust fund.

SUMMARY OF THE ARGUMENT

1. #113 contains only one subject: An increase in the severance tax on gross income from oil and gas extraction. The allocation of revenues to specified funds and for specified programs is part and parcel of the imposition of the tax.

2. The titles accurately identify state colleges and universities as recipients of a portion of the revenue.

ARGUMENT

I. The measure contains only one subject: An increase in the severance tax on gross income for oil and gas extraction.

The opponent contends that the Board should not have set titles because #113 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ...[has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for 2005-2006* #55, 138 P.3d 273, 277 (Colo. 2006)(#55); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002* #21 and #22, 44 P.3d 213, 215 (Colo. 2002)(quoting *In re Proposed Initiative “Public Rights in Water II”*, 898 P.2d 1076, 1078-79 (Colo. 1995) (#21). A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000* #25, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02* #43, 46 P.3d 438, 442 (Colo. 2002) (#43).

The Court will not address the merits of a proposed initiative, interpret it or construe its future legal effects. #21, 44 P.3d at 215-16, #43, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. #55, 138 P.3d at 278. The single subject requirement must be liberally construed to avoid the imposition of undue restrictions on initiative proponents. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P. 2d 927, 929 (Colo. 1998).

Objector contends that #113 has two distinct and separate purposes which are not dependent or connected with each other: (1) the imposition of a tax on gross income from oil and gas extraction, and (2) the allocation of the revenues to specified funds and programs from the tax that are unrelated to the subject of the tax. The Court must reject this argument.

A. The revenues generated by an initiative raising taxes can be disbursed for any purpose.

It is important to first identify the nature of the severance tax. The severance tax is a special excise tax on nonrenewable natural resources removed from the land. Section 39-29-101(1), C.R.S. (2007). An excise tax is “imposed on the performance of some act, event, or occurrence, with the tax itself made a

condition precedent to the act, event, or occurrence. *Bloom v. City of Fort Collins*, 784 P.2d 304, 310 (Colo. 1989). “The object of an excise tax, like that of an ad valorem property tax, is to provide revenue for the general expenses of government.” *Id.* at 308.

The Court has long acknowledged the nexus between the general power to tax and the allocation of the revenues generated from that tax for any purpose. The State “has the unlimited power of taxation, not only as to the subjects of taxation, but also as to the rate, and may tax its own citizens for the prosecution of any particular business.” *Parsons v. People*, 32 Colo. 221, 76 P. 666, 670 (1904). Thus, a tax may be imposed upon an occupation or privilege for all state purposes. *Id.* 32 Colo. at 236, 76 P. at 671. A tax may be imposed on a narrow range of subjects for the purpose of raising money for the general fund. The fact that the source of the excise tax is not connected to the funds to which it is allocated does create multiple subjects.

This Court has concluded that a tax imposed upon a narrow subject and allocated to a fund with a different purpose does not violate the single subject rule. *In re Hunter’s Estate*, 97 Colo. 279, 49 P.2d 1009 (1935). In that case, the General Assembly passed a bill entitled, “An Act to provide funds for the payment of old age pensions and for the assistance of aged, indigent persons.” The bill assessed a

surcharge on inheritance taxes, fees paid to the Secretary of State and motor vehicle registration fees, and allocated the surcharge to the old age pension fund. The Court found that the imposition of the three additional charges served one purpose and did not violate the single subject rule. It held:

The public nature of the tax is not changed because few directly benefit. Those who benefit from an inheritance and are required to pay the tax in turn benefit directly or indirectly, as the case may be, like other citizens, from the tax they have paid. The same authorities, who now have the right to adjudicate the same subject-matter, that of inheritance tax, are vested with the enforcement and collection of the tax imposed by the present act.

Reference to the title of the act discloses clearly, and without doubt, one distinct subject. That is to provide funds. Whatever means, if one or more, that may be resorted to for carrying out the object, other subjects are not thereby added. The ways designated are germane to the purpose, and are therefore incident to the and within the title.

Id. 97 Colo. at 287, 49 P.2d at 1012.

Although not binding, the structure of the initial bill establishing severance taxes on certain minerals is instructive. 1977 Colo. Sess. Laws, chap. 544, p. 1844. The bill was entitled, “Concerning mineral taxation, and relating to a severance tax on metallic minerals, coal, oil shale, and oil and gas and to the ad valorem taxation of certain minerals.” *Id.* The General Assembly declared: (1) “when nonrenewable

natural resources are removed from the earth, the value of such resources *to the state of Colorado* is irretrievably lost,” (2) “the severance of nonrenewable resources provide a potential source of revenue *to the state* and its political subdivisions,” and (3) it is “the intent of the general assembly that a portion of the revenues derived from such a severance tax be used *by the state for public purposes.*” (Emphasis added.) 1977 Colo. Sess. Law, Ch. 544, § 39-29-101, p. 1844. Consistent with this declaration, the bill allocated a portion of the revenues to the general fund, a newly created severance tax trust fund and a local government severance tax fund. *Id.* The income from the severance tax trust fund would be deposited in the state’s general fund. 1977 Colo. Sess. Laws, chap 544, § 39-29-109, p. 1848. Thus, under the severance tax bill, some of the funds generated from the severance tax were allocated to matters not directly related to the severance of minerals from the ground.

Referendum C, passed in November 2005, also provides guidance. Referendum C added § 24-77-103.6, C.R.S. (2007). The law removed constitutionally-imposed revenue and spending limits to pay for education, health care, roads, bridges, strategic transportation projects, and retirement plans for firefighters and police officers. Although the measure affected all taxpayers, the law allocated the money to specific funds and purposes.

When a law generates revenue from a tax, it can be used for general purposes. Because taxes can be raised for any and all purposes, they can also be allocated for specific purposes that may not relate specifically to the object or function which is being taxed. *Parsons, supra; Hunter's Estate, supra.*

B. A strong link exists between the tax and the money for which revenues are allocated.

A strong link exists between the imposition of the tax and the appropriation and distribution of the tax revenues in #113. As noted in the legislative declaration, § 39-29-101, C.R.S. (2007), both the state and its political subdivision lose the value of resources once they removed from the earth. The tax is imposed to “recapture a portion of that wealth,” and to use the revenues to pay for public purposes. Section 39-29-101(1), (3), C.R.S. (2007). The legislature historically has used severance taxes to fund many of the purposes listed in the measure, upon the theory that mining affects these purposes. Thus, the revenues presently are used to mitigate the impact of mining on the environment, § 39-29-109(1)(a)(IV), C.R.S. (2007); construction of a science and engineering laboratory and species mitigation, § 39-29-109(1)(l) C.R.S. (2007); enhancement of energy efficiency, § 39-29-109(1.5)(h), C.R.S. (2007), as well for the general provision of public services by local governments, § 39-29-110(b)(I), C.R.S. (2007). The reason for

these allocations is evident. Oil and gas production often entails additional costs. More workers often bring more children into schools, thereby increasing the costs of financing schools by both state and local governments. More people likely will require more police and fire protection. More people often results in greater usage of the county and state courts.

The connection between mineral extraction and government costs has long been recognized by the federal government. Federal law allows private companies to lease federal lands and extract minerals. A portion of the revenue derived from extraction of minerals located on federal lands is distributed to each state in which the minerals are located. 30 U.S.C. 191 (2007 Supp.). Each state may use the funds “as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by the development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service.” *Id.*

Colorado receives the federal leasing money “for the benefit of public schools and political subdivisions of this state and for other purposes in accordance with provisions of sections 34-63-102 and 34-63-103.” Section 34-63-101, C.R.S. (2006). The money is placed into the mineral leasing and “for use by state agencies, public schools, and political subdivisions for planning, construction, and

maintenance of public facilities and for public services.” Section 34-63-102(1) (a), C.R.S. (2006). Priority must “be given to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased” under federal law. Section 34-63-102(1) (b), C.R.S. (2006). The money is distributed to counties from which federal leasing money is derived, the state public school fund, the local government mineral impact fund and the Colorado water conservation board construction fund. Section 34-63-102(3), C.R.S. (2006). Thus, the General Assembly has viewed collection of funds from mineral leasing to be closely related to distribution of such revenues for a broad range of purposes.

The revenues in this measure are dedicated to matters that are relevant to the impact of the extraction of oil and gas. The revenues go to political subdivisions socially and economically impacted by the extraction of oil and gas. The remainder goes to the state to offset future revenue lost by the extraction.

The North Dakota Supreme Court addressed a tax measure similar to #113. *Sunbehm Gas Co. v. Conrad*, 310 N.W.2d 766 (N.D. 1981). An initiated measure imposed an oil extraction tax. The revenues from the tax were placed in an oil extraction development fund. Forty-five percent of the revenues were allocated to the state school aid program. Ten percent was dedicated to a special trust fund.

The remaining forty-five percent was allocated to the state's general fund for general state purposes. (The formula was later amended to provide for a sixty-ten-thirty split.) The plaintiff argued that the establishment of the fund, the allocation of the money in the fund and the provision of certain tax credits constituted multiple subjects. The court rejected the claim, finding that these matters "related to or are in consequence of the imposition of the oil extraction tax." *Id.* at 773.

The allocation of money for college scholarships is also related to the imposition of the tax. As noted, the state loses value in general when resources are removed from the land. The value extends to the state as a whole, including state colleges and universities and students who wish to attend these institutions. Thus, it is appropriate to allocate some of the money for college scholarships.

Courts in other states addressing similar concerns have found an adequate nexus between a funding source and the allocation of funds for education. The Florida Supreme Court addressed a similar challenge in *Advisory Opinion to the Attorney General re Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So.2d 522, 524 (Fla. 2004). The proposal sought to permit county-wide referenda in certain counties for the purpose of authorizing slot machines in those counties. The measure also allowed the Florida legislature to tax slot machines, and any taxes from the slot machines

“must supplement public education statewide.” Opponents challenged the measure, arguing that authorization of slot machines and allocation of any taxes on them to support education constituted two subjects. The Florida Supreme Court rejected the argument, noting that “the fact that the proposed initiative includes both local authorization to approve slot machines and a mandate that such slot machines be licensed and taxed for a particular purpose is not problematic” *Id.* at 525 (quoting *Advisory Op. to the Att’y Gen. re Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Parimutuel Facilities*, 813 So.2d 98, 101 (Fla. 2002)).

In *Kennedy Wholesale, Inc. v. State Board of Equalization*, 806 P.2d 1360 (Cal. 1991), a distributor of tobacco products challenged the California Tobacco Tax and Health Protection Act on the ground that it violated the single subject rule. Under the Act, revenue generated by a tax increase on tobacco products was deposited in a cigarette surtax fund. The money in the fund could be used for tobacco-related education programs, tobacco-related disease research and payment for certain medical care. In addition, the money could be allocated to fire prevention, environmental conservation, protection of wildlife, and enhancement of parks and recreation. The distributor contended that the measure violated the single subject rule because it did not guarantee that every expenditure from the

fund would be related to tobacco use. The California Supreme Court rejected the challenge, noting that the expenditures for non-tobacco related items were merely collateral effects. *Id.* at 254.

Excise taxes imposed to fund general state functions can be allocated to all state functions or to specified functions. In this case, the funds are allocated to functions that are affected by the severance of minerals. For these reasons, the Court must conclude #113 has a single subject.

II. The Titles Are Not Misleading.

Objector asserts that the titles are misleading because they state that the scholarships are for colleges and universities when the measure excludes certain colleges but includes occupation educational programs. The substance of Objector's argument is that the term "state institutions of higher education" is not synonymous with the term "state universities and colleges" used in the titles. This claim must be rejected.


The measure states that persons who attend state institutions of higher education and local district colleges may receive scholarships. Section 23-18-102(10)(a), C.R.S. (2007) lists the nine universities and colleges which fall within the definition of "state institution of higher education". The listing includes the state board of community colleges and occupational education. Local community

colleges include Aims College and Colorado Mountain College. Section 23-72-121.5, C.R.S. (2007). Occupational education programs are conducted in the two-year college system. Section 23-60-102(3), C.R.S. (2007). The phrase “state colleges and universities” used in the titles covers occupational education programs. Moreover, it adequately describes the institutions for which scholarships will be available.

CONCLUSION

For the reasons stated in this brief, the Court must affirm the Board’s action.

JOHN W. SUTHERS
Attorney General

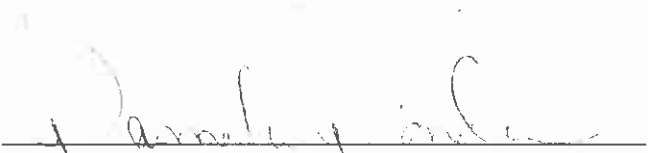

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by DHL at Denver, Colorado, this 12th day of June 2008 addressed as follows:

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A handwritten signature in cursive script, appearing to read "Edward Ramey", is written over a horizontal line.

RECEIVED
MAY 09 2008 11:00am #113
C# Final
ELECTIONS KM
SECRETARY OF STATE

Be it Enacted by the People of the State of Colorado:

SECTION 1. 39-29-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS AND INTEREST OWNERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE AS APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION SHALL SUPPLEMENT, RATHER THAN SUPPLANT, CURRENT APPROPRIATIONS TO THE FOLLOWING ENUMERATED PURPOSES AND SHALL BE USED TO PROVIDE FUNDING FOR THE FOLLOWING PUBLIC PURPOSES: SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; THE PRESERVATION OF WILDLIFE HABITAT; RENEWABLE AND CLEAN ENERGY PROJECTS; TRANSPORTATION PROJECTS IN COMMUNITIES IMPACTED BY OIL AND GAS PRODUCTION; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. IT IS THE FURTHER INTENT OF THE PEOPLE OF THE STATE THAT THE PROGRAMS CURRENTLY FUNDED BY THE SEVERANCE TAX NOT BE ADVERSELY IMPACTED BY THE DISTRIBUTION OF THE ADDITIONAL REVENUE GENERATED BY THE CHANGES TO THE SEVERANCE TAX APPROVED BY A VOTE OF THE PEOPLE AT THE 2008 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3).

SECTION 2. 39-29-105 (1) (b), Colorado Revised Statutes, is amended, and the said 39-29-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2009, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2009, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE; EXCEPT THAT OIL PRODUCED FROM ANY WELLS THAT PRODUCE SEVEN AND ONE HALF BARRELS OR LESS OF OIL PER DAY AND GAS PRODUCED FROM WELLS THAT PRODUCE FORTY-FIVE THOUSAND CUBIC FEET OR LESS OF GAS PER DAY, FOR THE AVERAGE OF ALL PRODUCING DAYS FOR SUCH OIL

AND GAS PRODUCTION DURING THE TAXABLE YEAR SHALL BE EXEMPT FROM THE TAX. NOTHING IN THIS PARAGRAPH (c) SHALL EXEMPT A PRODUCER OF OIL AND GAS FROM SUBMITTING A PRODUCTION EMPLOYEE REPORT AS REQUIRED BY SECTION 39-29-110 (1) (d) (I). THE TAX FOR OIL AND GAS PROVIDED FOR IN THIS PARAGRAPH (c) SHALL BE AT THE FOLLOWING RATE OF GROSS INCOME:

\$300,000 AND OVER

5% OF TOTAL GROSS INCOME

SECTION 3. 39-29-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-105. Tax on severance of oil and gas. (3) THE PROCEEDS OF THIS TAX RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AND INVESTMENT INCOME THEREON SHALL BE COLLECTED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING LIMITATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, OR ANY OTHER LAW, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE STATE OR ANY DISTRICT.

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:

39-29-108. Allocation of severance tax revenues—definitions—repeal. (1) Except as provided in ~~subsections (2) and (3)~~ SUBSECTIONS (2), (2.3), AND (3) of this section, the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article shall be credited as follows:

(2) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 1981, EXCEPTING THOSE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), fifty percent shall be credited to the ~~state~~ severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (c), TWENTY-TWO PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX TRUST FUND CREATED BY SECTION 39-29-109, TWENTY-TWO PERCENT SHALL BE CREDITED TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED BY SECTION 39-29-110, AND THE REMAINING FIFTY-SIX PERCENT SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND CREATED BY SECTION 39-29-110.5.

SECTION 5. Article 29 of Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-29-110.5. Severance tax stabilization trust fund—creation—administration. (1) (a) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER THE SEVERANCE TAX

STABILIZATION TRUST FUND. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL MONEYS IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED BY THE GENERAL ASSEMBLY FOR THE PURPOSES AND IN THE PROPORTION SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(b) THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE HELD IN TWO ACCOUNTS, AS FOLLOWS:

(I) **The perpetual base account.** TEN PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED THEREON SHALL BE RETAINED IN THE PERPETUAL BASE ACCOUNT. THE MAXIMUM BALANCE IN THE PERPETUAL BASE ACCOUNT SHALL BE ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND PURSUANT TO SECTION 39-29-108 (2.3). IN ANY YEAR IN WHICH THE BALANCE OF THE PERPETUAL BASE ACCOUNT EXCEEDS ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND, THE INTEREST GENERATED BY THE PERPETUAL BASE ACCOUNT AND MONEYS IN EXCESS OF ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(II) **The operational account.** NINETY PERCENT OF THE SEVERANCE TAX RECEIPTS CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND, PLUS ANY MONEYS REQUIRED TO BE TRANSFERRED TO THE OPERATIONAL ACCOUNT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE CREDITED TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND.

(2) EACH YEAR THE MONEYS IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED AS FOLLOWS:

(a) SIXTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF SCHOLARSHIPS, TO BE KNOWN AS COLORADO PROMISE SCHOLARSHIPS, FOR COLORADO RESIDENTS ATTENDING STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., AND LOCAL DISTRICT COLLEGES AS DESCRIBED BY SECTION 23-72-121.5, C.R.S., AND SHALL BE DIRECTED TOWARDS MAKING HIGHER EDUCATION AFFORDABLE FOR COLORADO RESIDENTS FROM LOWER AND MIDDLE INCOME FAMILIES. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL ESTABLISH GUIDELINES AND POLICIES SETTING FORTH THE ELIGIBILITY CRITERIA FOR SCHOLARSHIPS FUNDED BY THIS PARAGRAPH (a), TO INCLUDE CONSIDERATION OF SUCH FACTORS AS HOUSEHOLD INCOME, FAMILY SIZE, ELIGIBILITY FOR OTHER SOURCES OF FINANCIAL ASSISTANCE, AND THE INSTITUTION THE STUDENT ATTENDS. THE COMMISSION SHALL ESTABLISH ACADEMIC PERFORMANCE CRITERIA FOR OBTAINING AND MAINTAINING A COLORADO PROMISE SCHOLARSHIP.

(b) FIFTEEN PERCENT SHALL BE DEDICATED FOR THE EXCLUSIVE PURPOSE OF MAKING COMPETITIVE GRANTS TO COUNTIES, MUNICIPALITIES, OTHER POLITICAL SUBDIVISIONS OF THE STATE, THE COLORADO DIVISION OF WILDLIFE, THE COLORADO DIVISION OF PARKS AND OUTDOOR RECREATION, AND NONPROFIT CONSERVATION ORGANIZATIONS, FOR ACQUISITION OF REAL PROPERTY OR INTERESTS THEREIN THAT WILL PRESERVE NATIVE WILDLIFE HABITAT ASSOCIATED WITH NATURAL AREAS, WORKING FARMS OR RANCHES, AND RIVERS AND STREAMS; AND TO THE EXTENT ACQUIRED WITH SUCH MONEYS, TO ASSIST WITH STEWARDSHIP OF REAL PROPERTY OR INTERESTS THEREIN. SUCH MONEYS SHALL BE ADMINISTERED AND OVERSEEN BY THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND CREATED PURSUANT TO SECTION 6 OF ARTICLE XXVII OF THE STATE CONSTITUTION, BUT SUCH MONEYS SHALL NOT BE SUBJECT TO THE LIMITATIONS AND RESTRICTIONS MADE APPLICABLE TO THE GREAT OUTDOORS COLORADO TRUST FUND BY ARTICLE XXVII OF THE STATE CONSTITUTION. FURTHER, IN ADMINISTERING AND OVERSEEING THESE MONEYS, THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE USED FOR EXPENSES OF ADMINISTERING THESE MONEYS OR REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

(c) TEN PERCENT SHALL BE CREDITED TO THE CLEAN ENERGY FUND CREATED IN SECTION 24-75-1201, C.R.S.;

(d) TEN PERCENT SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF TRANSPORTATION TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES OF THE STATE THAT ARE IMPACTED BY THE DEVELOPMENT, PROCESSING, OR ENERGY CONVERSION OF OIL AND GAS SUBJECT TO TAXATION UNDER THIS ARTICLE, WHICH FUNDING INCLUDES MAKING GRANTS FOR TRANSPORTATION PURPOSES TO THOSE IMPACTED COMMUNITIES; AND

(e) FIVE PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION, FOR THE EXCLUSIVE PURPOSE OF MAKING SMALL COMMUNITY DRINKING WATER GRANTS AND DOMESTIC WASTEWATER TREATMENT GRANTS. THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL HAVE THE DISCRETION TO DIRECT THAT ANY PORTION OF THE AVAILABLE REVENUES BE REINVESTED AND NOT EXPENDED IN ANY PARTICULAR YEAR.

SECTION 6. 24-75-1201(1) (a), Colorado Revised Statutes, is amended to read:

24-75-1201. Clean energy fund – creation – use of fund – definitions. (1) (a) The clean energy fund is hereby created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund at the end of the 2006-07 state fiscal year and at the end of each succeeding state fiscal year from the limited gaming fund created in section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701 (5), C.R.S., ~~and~~ from moneys received by the governor's energy office pursuant to section 39-29-109 (1.5), C.R.S., in accordance with section 39-29-109 (1.5) (h) (VII), C.R.S., AND FROM MONEYS RECEIVED PURSUANT TO SECTION 39-29-110.5 (2) (c), C.R.S. Interest and income earned on the deposit and investment of moneys in the clean energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund.

SECTION 7. 33-60-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

33-60-107. State board of the great outdoors Colorado trust fund. (4) IN ADDITION TO ITS OTHER POWERS UNDER ARTICLE XXVII OF THE COLORADO CONSTITUTION AND THIS ARTICLE, THE TRUST FUND BOARD SHALL HAVE THE POWER TO ADMINISTER AND OVERSEE MONEYS APPROPRIATED PURSUANT TO SECTION 39-29-110.5 (2) (b), C.R.S.

Ballot Title Setting Board

Proposed Initiative 2007-2008 #113¹

The title as designated and fixed by the Board is as follows:

STATE TAXES SHALL BE INCREASED \$321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST \$300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND 5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS.

The ballot title and submission clause as designated and fixed by the Board is as follows:

SHALL STATE TAXES BE INCREASED \$321.4 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES CONCERNING THE SEVERANCE TAX ON OIL AND GAS EXTRACTED IN THE STATE, AND, IN CONNECTION THEREWITH, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, CHANGING THE TAX TO 5% OF TOTAL GROSS INCOME FROM THE SALE OF OIL AND GAS EXTRACTED IN THE STATE WHEN THE AMOUNT OF ANNUAL GROSS INCOME IS AT LEAST \$300,000; ELIMINATING A CREDIT AGAINST THE SEVERANCE TAX FOR PROPERTY TAXES PAID BY OIL AND GAS PRODUCERS AND INTEREST OWNERS; REDUCING THE LEVEL OF PRODUCTION THAT QUALIFIES WELLS FOR AN EXEMPTION FROM THE TAX; EXEMPTING REVENUES FROM THE TAX AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED AS FOLLOWS: (A) 22% TO THE SEVERANCE TAX TRUST FUND, (B) 22% TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (C) 56% TO A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 60% IS USED TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 15% TO FUND THE PRESERVATION OF NATIVE WILDLIFE HABITAT, 10% TO FUND RENEWABLE ENERGY AND ENERGY EFFICIENCY PROGRAMS, 10% TO FUND TRANSPORTATION

¹ Unofficially captioned "Severance Tax" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

PROJECTS IN COUNTIES AND MUNICIPALITIES IMPACTED BY THE SEVERANCE OF OIL AND GAS, AND 5% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS?

Hearing May 21, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 5:20 p.m.

Hearing May 29, 2008:

Motions for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 7:47 p.m.