

<p>SUPREME COURT, STATE OF COLORADO</p> <p>Court Address: Two East 14th Avenue Denver, Colorado 80203</p> <p>Phone Number: 303.861.1111</p>	<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>FILED IN THE SUPREME COURT</p> <div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p>MAY 12 2003</p> </div> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> </div> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>ORIGINAL PROCEEDING PURSUANT TO §1 -40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #83 ("Fees on Energy Emissions")</p> <p>Petitioner: TERRANCE G. ROSS Petitioner,</p> <p>v.</p> <p>Respondents: J. THOMAS MCKINNON and SAMUEL P. WEAVER</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS, SHARON EUBANKS, and DANIEL D. DOMENICO.</p>	<p>Case No. 08 SA 138</p>
<p>Attorneys for Petitioner:</p> <p style="padding-left: 40px;">Paul M. Seby (#27487) Marian C. Larsen (#36514) Moye White LLP 16 Market Square, 6th Floor 1400 16th Street Denver, CO 80202-1486</p> <p>Phone No.: 303-292-2900 Fax No.: 303-292-4510 E-Mail: paul.seby@moyewhite.com</p>	<p style="text-align: center;">PETITIONER'S OPENING BRIEF</p>

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On behalf of Terrance G. Ross, a registered elector of the State of Colorado, the undersigned hereby files this Opening Brief to appeal the Title Board's approval of the Title for Proposed Initiative 2007-2008 #83 ("Fees on Energy Emissions") (hereinafter referred to as the "Initiative"). The Initiative proposes more than one subject under the broad theme of global warming, failing to meet the single subject requirement. Because the Initiative violates the single subject requirement, the actions of the Title Board should be reversed, the Title stricken and the Initiative returned to its proponents.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- A. Whether the Initiative, violates the single subject requirement of Article V, Section 1 (5.5) of the Colorado Constitution?
- B. Whether the Title is misleading, confusing, unclear or inaccurate?

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case, Course of Proceedings, and Disposition before the Title Board.

On April 2, 2008, the Title Board conducted its public hearing on the Initiative pursuant to Colo. Rev. Stat. §1-40-106(1). At the public hearing, the Title Board designated and fixed a title, ballot title, and submission clause for the Initiative. Petitioner, a registered elector, timely filed a Motion for Rehearing (the "Motion"), pursuant to C.R.S. § 1-40-107(1), on April 9, 2008. The Motion for

Rehearing was heard at the next scheduled meeting of the Title Board on April 16, 2008. At the rehearing, the Title Board granted in part the Motion to the extent the Title Board amended the title, and denied the Motion in all other respects. Thereafter, Petitioner timely initiated this original proceeding of review for the Title Board's action, pursuant to Colo. Rev. Stat. § 1-40-107(2).

B. Statement of the Facts

The Initiative establishes the "Clean Energy Progress Fund", which shall be funded through the collection of a "consumer tax" on carbon dioxide emissions ("CO₂") referred to in the Initiative as the "Clean Energy Progress Fee" (the "Tax"). *See* Initiative § 24-75-1301(1) and (3)(a). The Title provides that the Tax will result in a \$209 million annual increase in state taxes. *See* Ballot Title and Submission Clause, 2007-2008 #83 at line 1. The Initiative states that the proceeds of the Tax shall be devoted to "the purpose of advancing the new energy economy." *See* Initiative § 24-75-1301(1). The "new energy economy" is defined as "creating an energy policy to create jobs, revitalize the economy, protect the environment, and help secure our nation's energy future." *See* Initiative § 24-75-1301(2)(k). However, as provided in Section 6, of the Initiative the revenues collected from the Tax shall be "administered by the Governor's Energy Office...to maximize the reduction of global warming pollution in Colorado."

Though the Initiative's stated purpose is to "advance the new energy economy", the proceeds of the Tax are dedicated exclusively to reducing global warming pollution. *See* Initiative § 24-75-1301(1).

In addition to imposing the new Tax on energy consumers, the Initiative will result in creating a new regulatory scheme through the implementation of a carbon sequestration program. "A minimum of five percent of the revenues shall be used annually to implement carbon sequestration in Colorado. No more than two percent of the revenues shall be used for geologic sequestration of carbon." *See* Initiative § 24-75-1301 (6)(c). "Geologic Sequestration of Carbon" is defined in the Initiative as "carbon storage for a period of at least one thousand years at a depth of at least one thousand feet below the surface of the earth." *See* Initiative § 24-75-1301(2)(g). The Initiative defines "carbon sequestration" as "the removal of carbon dioxide from the atmosphere. This term includes, **but is not limited to**, the use of natural carbon sinks, such as in soils or forests, in the form of increasing plant biomass." *emphasis added. See* Initiative § 24-75-1301(2)(c). The implementation of the carbon sequestration program shall be administered by the Governor's Energy Office (the "Energy Office") "after consultation with the Colorado Department of Agriculture and the Colorado Department of Natural Resources." *See* Initiative §24-75-1301(6)(c).

The Initiative's text also provides that "a minimum of five percent of the revenues shall be used annually for workforce training and development programs." *See* Initiative § 24-75-1301(6)(e). The Initiative provides that "[t]he fees imposed by this section shall be in addition to any other programs to support jobs creation, economic development, energy security, energy ratepayer relief, and global warming pollution reduction existing as of the effective date of this section. Such existing programs shall not be repealed or reduced by the General Assembly in consideration of this section." *See* Initiative § 24-75-1301(4).

SUMMARY OF THE ARGUMENT

Under the broad theme of global warming, the Initiative proposes multiple subjects that lack the necessary connection to the stated purpose of the Initiative, in violation of the single subject requirement set forth in C.R.S. § 1-40-106.5. The Proponents have cloaked the Initiative's true purpose, to reduce global warming pollution, under the initial stated purpose of advancing the new energy economy. The Initiative will 1) impose the Tax on consumers to fund the new energy economy; 2) reduce global warming pollution; 3) implement a carbon sequestration program; 4) make CO₂ a regulated pollutant; and 5) eliminate the longstanding legal doctrine that future legislatures shall not be prohibited from amending or repealing the acts of previous legislatures. Rather than merely

providing a dedicated revenue stream to promote job creation and technology development through the advancement of the new energy economy, the Initiative seeks to implement a massive new tax, a regulatory scheme, and amend a longstanding legal doctrine under the broad theme of global warming.

Through the Initiative's creation of a carbon sequestration program voters are unwittingly being asked to approve the regulation of CO₂ as a pollutant in Colorado. CO₂ is not a regulated pollutant under state or federal law. Regulating CO₂ as a regulated pollutant in Colorado would result in the necessary adoption of significant legal, regulatory and policy changes. Voters will be further surprised to discover that the Initiative transfers the authority to regulate carbon as a pollutant and promulgate regulations to implement a carbon sequestration program from the Colorado Air Quality Control Commission (the "Commission") to the Energy Office and the Departments of Agriculture and Natural Resources (the "Departments"). The Initiative further hides from voters that it seeks to repeal the established doctrine that future legislatures shall not be prohibited from acting to repeal or amend prior legislation.

Rather than proposing several initiatives that address these separate purposes, the Initiative groups these hidden and distinct purposes under the broad theme of global warming in attempt to satisfy the single subject requirement.

However, the connection among these separate purposes is too broad and general to comply with the same subject requirement.

The actions of the Title Board should also be reversed because the Title is unclear, inaccurate, incomplete, confusing, and misleading. The Title fails to inform voters that the Initiative would regulate CO₂, a currently unregulated pollutant in Colorado. The Title further fails to inform voters that, as a result of the regulation of CO₂, the Initiative will result in substantive legal, regulatory, and policy changes. Nor does the Title inform voters that the Initiative is seeking to repeal the longstanding doctrine that future legislatures shall not be prohibited from acting to repeal or amend legislation.

Additionally, the Title fails to define key terms contained within the Initiative. Voters are not told in the Title what “carbon sequestration” is, nor are they provided with the meaning of the term “geological sequestration.” Further adding to the inaccuracy of the Title, voters are not told what emissions are considered to be pollutants or how the Initiative intends to reduce these pollutants. Voter confusion over the nature of the Initiative is compounded through the failure of the Title to correctly identify the Clean Energy Progress Fee as a tax. While the Title asks voters “shall state taxes be increased \$209 million annually” it fails to refer thereafter to the “fee” as a “tax”. *See* Ballot Title and Submission Clause at

line 1. Finally, the Title includes the use of the terms “climate change” and “pollution”, each of which are catch phrases. *Id* at lines 3 and 13. These catch phrases fail to add to the voter’s understanding of the Initiative and result in evoking emotion over the subject of climate change.

ARGUMENT

I. THE INITIATIVE VIOLATES THE SINGLE SUBJECT REQUIREMENT.

A. Standard of Review.

An initiative which has more than one subject and contains more than one separate and individually distinct purpose, that are not necessarily related to or dependent upon the other, violates the single subject requirement. (“The text of the measure must “relate [] to more than one subject and [have] at least two distinct and separate purposes which are not dependant upon or connected with each other.”) *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1130 (Colo. 1996) Where an initiative attempts to incorporate two distinct subjects that are not "necessarily or properly connected", and are "disconnected or incongruous," it will fail to meet the single subject requirement. *In re Proposed Initiative “Public Rights in Water II”*, 898 P.2d 1076, 1079 (Colo. 1995), citing *In re House Bill No. 1353*, 738 P.2d 371, 374 (Colo. 1987).

While, on its face, an initiative may appear to meet the single subject requirement, “an initiative with multiple subjects may be improperly offered as a single subject by stating the subject in broad terms.” *In re 2007-2008 #17*, 172 P.3d 871, 873-874 (Colo. 2007) (citing *In re Title, Ballot Title & Submission Clause, & Summary 2005-2006 #55*, 138 P.3d 273, 274 (Colo. 2006)). “[C]onsistent with the goal of preventing the inadvertent passage of a surreptitious provision, an initiative may not hide purposes unrelated to the Initiative’s central theme.” *In re 2005-2006 #55*, 138 P.3d at 277.

Multiple and distinct purposes proposed under a broad theme do not satisfy the single subject requirement. *Id.* at 278. (“[A]n initiative grouping distinct purposes under a broad theme will not satisfy the single subject requirement.”) Prohibiting initiatives from proposing multiple subjects under a broad theme prevents “against fraud and surprise occasioned by the inadvertent passage of a surreptitious provisions “coiled up in the folds” of a complex [initiative].” *In re Proposed Initiative, 2001-02 #43*, 46 P.3d 438, 440 (Colo. 2002); *see also In re 2007-2008, #17*, 172 P.3d at 875. “[A] proponent’s attempt to characterize his initiative under some overarching theme will not save an initiative containing separate and unconnected purposes.” *In re 2001-02 #43*, 46 P.3d at 442. “Grouping the provisions of a proposed initiative under a broad concept that

potentially misleads voters will not satisfy the single subject requirement.” *In re Proposed Initiative, 1996-4*, 916 P.2d 528, 532 (Colo.1996) (citing *In re Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to the Constitution to the State of Colorado Adding Subsection (10) to Section 20 of Article X (Amend Tabor 25)*, 900 P.2d 121, 125 (Colo. 1995)).

To prevent the inclusion of multiple provisions under a broad theme, this Court must “examine sufficiently an initiative’s central theme, as expressed, to determine whether it contains incongruous or hidden purposes or bundles incongruous measures under a broad theme.” *In re 2005-2006 #55*, 138 P.3d at 279 (holding that denial of non-emergency government services to undocumented persons would result in restricting or denying access to other unrelated services, a violation of the single subject requirement.) While the Court will “not determine an initiative’s efficacy, construction, or future application, [it] must examine the proposal sufficiently to enable review of the Title Board’s action.” *In re 2001-02 #43*, 46 P.3d at 443. The Court “has repeatedly stated it will, when necessary, characterize a proposal sufficiently to enable review of the Board’s actions.” *In re 2005-2006 #55*, 138 P.3d at 278.

B. The Initiative Relies Upon the Broad Theme of Global Warming to Justify Separate and Distinct Programs and Subjects.

It is under the broad and ubiquitous banner of “global warming” that the Initiative joins multiple subjects which contain more than one distinct and separate purpose that are otherwise not dependant upon or connected to the other. Statements made by the Title Board and Proponents at the April 2, 2008 Title Board hearing confirm that the true intent of the Initiative is to reduce global warming pollution, not to merely advance a new energy economy. (*See* Attachment 1, Transcript of Hearing at 26: 5-14.)

Further, the text of the Initiative itself demonstrates that the Proponents are seeking to use the Initiative’s stated purpose to advance a new energy economy as a means to institute a new regulatory program that will reduce “global warming pollution.” *See* Initiative §§ 24-75-1301(6) and 24-75-1301(6)(c). The Initiative clearly provides that revenues collected from the Tax will be used to “maximize the reduction of global warming pollution in Colorado.” *See* Initiative § 24-75-1301(6).

By its very nature, the topic of global warming entails the intersection of economic, environmental, health, scientific, social, and legal issues across borders and continents. It is unlike virtually any other public policy issue of the day. “The global nature of the problem...implies that the full breadth of human social

structures is encompassed.” Intergovernmental Panel on Climate Change, Climate Change 2001: Mitigation (“IPCC 2001”), at 607, <http://www.ipcc.ch/>. The Initiative reflects the wide breadth of the issues and subjects that global warming entails by including several subjects, each of which is distinct and separate from the other, under the broad theme of global warming.

While the Initiative states that it is creating the Clean Energy Progress Fund for the “purpose of advancing the new energy economy”, it is in fact under the broad theme of global warming that the Initiative proposes to: 1) implement a consumption tax on carbon emissions; 2) implement a carbon sequestration program; 3) regulate carbon as a pollutant; 4) remove from the Commission the authority to regulate and oversee the implementation of a carbon sequestration program and transfer that authority to other agencies; and 5) repeal the longstanding principal that future general assemblies shall not be prohibited from repeal or revising previous legislation. *See* Initiative §§ 24-75-1301 (1); 24-75-1301 (3)(a); 24-75-1301 (6)(c); and 24-75-1301 (4).

1. The Initiative creates a new regulatory scheme through its imposition of a carbon sequestration program in the State.

The Initiative states that proceeds from the Tax “shall be used annually to implement carbon sequestration in Colorado.” *See* Initiative § 24-75-1301(6)(c). Carbon sequestration is defined in the Initiative to include geologic sequestration

which is the “carbon storage for a period of at least one thousand years at a depth of at least one thousand feet below the surface of the earth.” *See* Initiative § 24-75-1301(2)(g). The Initiative further directs that no more than two percent of the Tax revenues shall be used for geologic sequestration. The Initiative clearly provides that geologic sequestration shall be a component of a carbon sequestration plan. “[Carbon Sequestration] includes, **but is not limited to**, the use of natural carbon sinks...in the form of increasing plant biomass.” *emphasis added*. *See* Initiative § 24-75-1301(2)(c). By mandating the implementation of a carbon sequestration program that includes geological sequestration, the Initiative will result in implementing a new regulatory scheme upon CO2 emitters in Colorado.

2. Carbon Sequestration.

The sequestration of carbon is the placement of CO2 into a repository in which it will be permanently stored. The sequestration of carbon can be accomplished through injecting CO2 into geological formations, or utilizing terrestrial ecosystems to naturally absorb CO2 emissions as they are emitted into the atmosphere. By definition, the Initiative provides that the carbon sequestration program include the geological sequestration of CO2 in addition to terrestrial sequestration. *See* Initiative § 24-75-1301(6)(c). Before CO2 can be sequestered it must first be captured. Under a geological sequestration plan, emitters of CO2

Significant regulatory programs would naturally follow the implementation of a carbon sequestration program. To implement the geological sequestration of CO₂, the CO₂ emissions must be captured at its source which will require emitters to equip their facilities with certain technologies capable of capturing these emissions. Once captured, the CO₂ must be transported via pipelines to the point at which it will be injected into the earth and stored. Issues relating to monitoring to ensure that the CO₂ remains in the injection zone and do not seep into potable water supplies or migrate to other geological formations will have to be addressed as will issues concerning property rights, indemnification and subsurface trespass. These are but a few of the legal and regulatory issues that will have to be addressed under a carbon sequestration program. “[L]arge commercial carbon sequestration operations raise broad issues of site selection criteria, monitoring for subsurface migration, injection well design standards, conditions attaching to any abandonment of the site, and standards for halting CO₂ injection if a loss of containment should occur.” The National Energy Technology Laboratory, Carbon Sequestration, http://www.netl.doe.gov/technologies/carbon_seq/FAQs/carbon-seq.html. At each level of a geological sequestration program there is significant state and federal regulation required. “In short, as the need for carbon sequestration projects grows, comprehensive regulation will be required,

¹ See C.R.S. § 40-2-123, which provides that the Public Utilities Commission shall consider proposals from Colorado utility providers to construct integrated gasification combined cycle generation facilities which include the “demonstration of the capture and sequestration of a portion of the project’s carbon dioxide emissions.” C.R.S. § 40-2-123(2)(C).

must be fitted with the appropriate technology that will capture and secure the CO₂ from its emission source. Once the CO₂ has been captured, it must be delivered in a concentrated stream to its repository where it is sequestered. See http://www.netl.doe.gov/technologies/carbon_seg/FAQs/carbon-capture.html. The Proponents have already defined in the Initiative that all CO₂ sequestered geologically must be stored in a repository at a depth of 1,000 feet below the earth’s service for at least 1,000 years. See Initiative § 24-75-1301 (2)(g).

To date, there is no comprehensive federal framework in place for the storage of carbon since there is no federally mandated carbon sequestration program in place. Of the states, only Wyoming has adopted in the 2008 legislative session a carbon sequestration program. Several states, including Colorado,¹ and federal programs are supporting efforts to encourage carbon sequestration and providing research monies for its continued development. However, to date no formal program exists which mandates the implementation of a carbon sequestration program such as the Initiative does.

addressing access to pipeline networks, pricing of transportation and storage, policies regarding monopoly control, and the mix of federal and state authority over the safety aspects of transportation and storage facilities.” *Id.*

The Proponents of the Initiative have stated that their intent of the carbon sequestration program is that it will merely “fund planting trees.” (*See* Attachment 1, Transcript of Hearing at 25: 23-25, and at 26: 1-3.) Clearly, no carbon sequestration program which includes geological sequestration can be as simple as just planting a few trees. Nowhere does the Initiative limit carbon sequestration to just a terrestrial sequestration program, as the Proponents stated was their intent multiple times before the Title Board. (*See* Attachment 1, Transcript of Hearing at 25: 2-25, and at 26: 1-4; *See* Attachment 2, Transcript of Rehearing at 12: 11-25, and at 13: 1-10). Nor does the Initiative propose that funding shall be provided to only develop or research the implementation of a carbon sequestration program. The Initiative is clear in its intent: a carbon sequestration program shall be implemented that results in a new regulatory scheme in Colorado.

3. Through the implementation of a carbon sequestration program, CO2 will become a regulated pollutant under Colorado law.

Through the implementation of a carbon sequestration program, the Initiative succeeds in regulating CO₂, which is not currently a regulated pollutant under federal or Colorado law. *See* Initiative § 24-75-1301(6)(c). In light of the

2007 decision by the Supreme Court of the United States in *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007), EPA is now considering the complexities and ramifications of regulating greenhouse gas emissions (GHG) - including CO₂. In *Massachusetts v. EPA*, the Court found that 1) GHG emissions are “pollutants under the Clean Air Act;” but that EPA must first determine whether GHGs emitted from new motor vehicles do or do not endanger public health or welfare, or supply a reason for not making this determination; and 2) that, if EPA makes an “endangerment finding”, the agency must issue regulations.

Although the Supreme Court’s decision is technically limited to new motor vehicles, the precedent extends throughout the Clean Air Act². “[A]ny regulation of greenhouse gases – even from mobile sources – could automatically result in other regulations applying to stationary sources and extend to small sources including many not previously regulated under the Clean Air Act.” See March 27, 2008 Letter of EPA Administrator Johnson, at pg. 2 3. “If greenhouse gases were to become regulated...the number of Clean Air Act permits could increase significantly and the nature of the sources requiring permits could expand to include many smaller sources not previously regulated under the Clean Air Act.” *Id.* Clearly any regulation of a greenhouse gas, whether at the state or federal level

² 42 U.S.C. 7401

will have far reaching legal, social, economic, and policy consequences.

Through the Initiative's proposal to implement a carbon sequestration program, the voters of Colorado are being asked (but not being clearly told) whether or not carbon should be a regulated pollutant. To implement a carbon sequestration program requires the regulation of carbon. As we are seeing at the federal level, considerable thought and debate are underway regarding the regulation of carbon and the implementation of carbon sequestration programs. Currently, two major pieces of legislation are pending before the United States Congress which would regulate CO₂ and implement carbon sequestration programs.³ Other proposals are being considered at the state and federal levels which would implement carbon sequestration but not impose caps on CO₂ emissions. The extent of the regulation of CO₂ varies among the proposals being considered at the state and federal levels, but in each case a regulatory system will be adopted that a minimum regulates carbon as it relates to carbon sequestration. The proposals under consideration demonstrate the considerable legal, regulatory and policy considerations that are entailed in the implementation of carbon sequestration. A sequestration program which allows for geologic sequestration

³ See The Lieberman-Warner Climate Security Act of 2008, <http://lieberman.senate.gov/documents/lwcsa.pdf>, and the Bingaman-Specter "Low Carbon Economy Act" of 2007, <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:S.1766>.

cannot exist unless there are laws or regulations in place that require CO2 be sequestered. The question of whether carbon should be a legally regulated pollutant in Colorado is a subject completely separate from whether or not a consumption fee should be assessed on carbon emissions.

4. The Initiative transfers the authority of the Commission to promulgate emission control regulations consistent with the federal Clean Air Act to the Energy Office and the Departments.

Under its mandate to implement a carbon sequestration program, the Initiative reassigns authority granted to the Commission to promulgate certain emission control regulations in compliance with the federal Clean Air Act. *See* CRS §25-7-105(12) and (15) and §25-7-103(11). The authority of the Commission, an entity under the control of the Colorado Department of Public Health and Environment (the “CDPHE”), to regulate and promulgate emission control standards is not in doubt. As evidenced in the Governor’s recent Executive Order D 004 08, “Reducing Greenhouse Gas Emissions in Colorado”, it is the CDPHE, not the Departments or the Energy Office, that is directed to draft regulations which mandate the reporting of greenhouse gas emissions by major sources. “I hereby direct CDPHE to develop and propose regulations, by no later than 24 months from the date of this Executive Order, to the Air Quality Control

Commission mandating reporting of greenhouse gas emissions for all major sources.” *See* Executive Order D 004 08 (2008).

While the Executive Order mandates that all greenhouse gases emitted from major sources shall be reported, it does not require, as the Initiative does, that the Commission implement regulations or standards covering regulated sources that are contrary to or “otherwise more stringent than” the requirements of Part C, Part D or Title V of the Clean Air Act. *See* CRS §25-7-105.1. A regulated source under the Clean Air Act is one that emits or has the potential to emit regulated air pollutants, which include hazardous air pollutants. Under the Clean Air Act, regulated sources must obtain permits which, among other things, place restrictions on what air emission limits must be met. Under Parts C and D and Title V of the Clean Air Act, states and the federal government shall implement regulations that are designed to reduce or prevent the emissions of regulated air pollutants by regulated sources.

Regulated air pollutants are established under the Clean Air Act and through regulations adopted by the EPA. Under the authority granted to the Commission by the General Assembly, the Commission may adopt and enforce emission control regulations that cover regulated sources. These emission control regulations must be consistent with emission standards promulgated under Section

112 of the Clean Air Act. *See* CRS §§25-7-103(11) and 25-7-109.3. Section 112 of the Clean Air Act lists all regulated pollutants that have been determined to be hazardous air pollutants. CO₂ is not included in Section 112, nor has it been included in subsequent lists of regulated air pollutants promulgated by the EPA.

Through the implementation of a carbon sequestration program carbon will become a regulated pollutant in Colorado despite the fact that it is not a regulated pollutant under the federal Clean Air Act. It is the Commission, and not the Departments or the Energy Office that has the authority to promulgate regulations concerning regulated pollutants in Colorado. As currently provided under CRS §25-7-105.1 the Commission could not promulgate federally-enforceable regulations implementing a carbon sequestration program since it would “otherwise be more stringent” than the requirements of the Clean Air Act. However, to avoid this intersection of state and federal law, the Initiative stealthily delegates to the Departments and the Energy Office the authority to implement a carbon sequestration program, and consequently the authority to promulgate emission control standards concerning CO₂ emissions. *See* Initiative §24-75-1301(6)(c).

The Initiative is seeking to make a significant legal and policy change to the regulation of pollutants in Colorado. The Initiative will regulate carbon as a

pollutant and require the implementation of an emission control regulatory system that could not be adopted by the Commission since it is more stringent than the requirements of the Clean Air Act. The question of how and who shall regulate CO2 emissions is a significant legal, regulatory and public policy issue, one that is currently being addressed at the federal level through consideration of legislation that would impose federal greenhouse gas emission control standards applicable to major sources across the United States.

When considered in the context of the central theme of the Initiative, it is unclear as to how delegating a portion of the Commission's authority to the Departments and the Energy Office is directly tied to the imposition of a consumer tax on CO2. Considering that the Commission would be prohibited from promulgating regulations that regulate CO2 it becomes clear that the purpose behind reassigning authority from the Commission to the Departments and the Energy Office is to hide this fact from the voters. While undoubtedly a complex issue of federal and state law, the Initiative hides from voters the true and complete ramifications of Section 6(c).

5. The Initiative will repeal the longstanding principle that future legislatures shall not be prohibited from amending or repealing past legislative measures.

This Court has expressly recognized that “[t]he general rule is that one legislature cannot bind the hands of its successors.” *Hessick, et al. v. Moynihan, et al.* 262 P. 907, 915 (Colo. 1927); *See also People v. Hull*, 8 Colo. 485, 496 (Colo. 1885). The Initiative seeks to preempt this doctrine and forbid future Colorado legislatures from acting to repeal or reduce spending on “any other programs to support jobs creation, economic development, energy security, energy ratepayer relief, and global warming pollution reduction.” *See Initiative § 24-75-1301(4)*. The Initiative does not specify that the General Assembly shall be restricted from reducing spending for a certain period of time on the above programs, but instead clearly prohibits the General Assembly from ever reducing or repealing spending on these programs. “Such existing programs **shall not be** repealed or reduced by the General Assembly in consideration of this section.” (emphasis added.) *See Initiative § 24-75-1301(4)*. The plain meaning of Section 4 of the Initiative is to prohibit the General Assembly from taking any action to reduce or repeal funding to programs that support job creation, economic development, energy security, energy ratepayer relief, or global warming pollution reduction. Despite statements made by proponents at the Hearing that it is not their intent to restrict the

legislature, the Initiative clearly does just that. (Transcript of Hearing attached at 3: 16-25, at 4: 1-25, and at 5:1-6.

Further, it is not clear how a prohibition on repealing or reducing spending on all programs that support job creation or economic development can be tied to the Initiative's central focus of implementing a CO2 tax on consumers that will advance a new energy economy. Multiple programs across various departments and agencies of State government, promote job creation and economic development across all sectors of the economy, not just in what could be considered the new energy economy. Tying the hands of future General Assemblies by prohibiting them from reducing funding for or eliminating certain job creation or economic development programs in areas well outside the theme of the Initiative, is a separate and distinct subject that will considerably alter the longstanding doctrine that future legislatures cannot be bound by the hands of its predecessors or, by Initiative.

In addition to the Tax, the Initiative is proposing four subjects, each of which is distinct and separate from the others. "The prohibition against multiple subjects serves to defeat voter surprise by prohibiting proponents from hiding effects in the body of an initiative." *In 2005-2006 #55*, 138 P.3d at 282. "An initiative that joins multiple subjects poses the danger of voter surprise and fraud

occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In re 2007-2008, #17*, 172 P.3d at 875. The Initiative fails to meet one of the basic requirements under the single subject requirement which is to “apprise voters of the subject of each measure”. *Id.*

As the Court has found, merely because two or more purposes share a common characteristic, in this case global warming, if that common characteristic is too broad it will not constitute a single subject. *In re Public Rights in Water II*, 898 P.2d at 1080. (“The common characteristic that the paragraphs all involve “water” is too general and too broad to constitute a single subject”). Clearly, voters would be surprised to learn that by voting “yes” or “no” to the Initiative it will result in all of these subjects being passed or rejected.

II. THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE ARE CONFUSING, MISLEADING, UNCLEAR, AND HIDE THE PURPOSE AND EFFECT OF THE PROPOSED INITIATIVE.

The Board must set forth titles that are “sufficiently clear and brief for the voters to understand the principal features of what is being proposed; a material omission can create misleading titles.” *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). It is the duty of the Board to set a title that enables voter choice. *Id.* When setting title, the Board “shall consider public confusion that might be caused by misleading titles and shall, whenever practicable, avoid

titles for which the general understanding of the effect of a “yes” or “no” vote will be unclear.” CRS § 1-40-106(3)(b). Further, to eliminate a key feature of the initiative from the title will be considered a fatal defect if it results in voter confusion as to what the initiative actually proposes. *In 2001-02 #43*, 46 P.3d 442. The Initiative’s ballot title and submission clause fail to meet these standards.

A. The Purported Fee is in Fact a Tax.

As noted at the very beginning of the Title the “fee” proposed by the Initiative is in fact a tax. “State taxes shall be increased \$209 million annually.” However, throughout the rest of the Title, the term “tax” is not used, but rather the term “fee” is. “A fee is a charge imposed on persons or property to defray costs of a particular government service. A tax is a means of distributing the general burden of the cost of government, rather than an assessment of benefits.” *Bruce v. City of Colorado Springs*, 131 P.3d 1187, 1190 (Colo. 2005), citing *E-470 Pub. Highway Auth. 455 Co.*, 3 P.3d 18 (Colo. 2000), and *Thorpe v. State*, 107 P.3d 1064 (Colo. App. 2004). Nowhere in the Initiative is there a discussion of a government service or benefit that the voter is being asked to pay for in connection with the use of electricity or natural gas. The activity that is resulting in revenue generation under the Initiative is CO2 emissions produced from the consumption of electricity and natural gas. Every time a voter uses electricity and natural gas

the resulting CO2 emission is taxed. To term the “tax” as a “fee” misleads the voter to believe that in exchange for the fee a government service is to be received, but that is not the case. “The distinction between a fee and a tax depends on the nature and function of the charge, not on its label.” *Bruce* 131 P.3d at 1190, citing *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Failing to correctly identify that the Initiative will raise taxes on all consumers of electricity and natural gas, and creates confusion as to how the charges to consumers will operate. The Title does not clearly inform voters that the rate of the fee can be raised by the legislature. Terming the tax as a fee creates the impression within a voters mind that the rate charged is really for a service being used and not on the day-to-day consumption of electricity and natural gas. While the opening sentence of the Initiative states that taxes will be increased, the remaining text of the Title only makes reference to a fee and not a tax. This undoubtedly will create confusion in the minds of voters who are trying to determine whether their individual taxes are being raised or whether a service fee is to be imposed.

B. The Ballot Title Fails to Inform Voters of the Breadth of the Statutory and Policy Changes it will Result in.

The Title makes reference that the Initiative will devote revenues generated from the tax to carbon sequestration and work force training, and that “the fee is in

addition to certain existing programs.” However, it fails to explain to voters that each of these activities will result in substantial statutory and policy changes. As noted above, the Initiative will implement a carbon sequestration program. Currently CO2 emissions are not regulated under federal environmental law or by the State of Colorado. The Initiative seeks to regulate CO2 and, in so doing, the Initiative stealthily assigns to the Departments and the Energy Office the authority to implement an emission control program. These are separate subjects that are not in anyway addressed or explained to the voters in the Title.

As noted by this Court, definitions should be included in the title where there is an adoption of “a new or controversial legal standard.” *In re Ballot Title for 1999-2000 #255*, 4 P.3d 485, 497 (Colo. 2000). As discussed earlier, the Initiative will result in the implementation of a carbon sequestration program, a new legal standard that will be applied to emission sources in the State. However, nowhere in the Title are the definitions for “carbon sequestration” or “geological sequestration” provided. Yet, each of these concepts is defined within the Initiative.

Further, the Initiative seeks to prohibit the General Assembly from reducing funding to or repealing programs in connection with jobs creation, economic development, energy security, energy ratepayer relief, and global warming

pollution reduction. This is a radical limitation of the General Assembly's authority to legislate: one that is contrary to longstanding doctrine that future legislatures shall not be bound by the acts of their predecessors. The only vague reference to this concept is introduced in the Title where it states that "the fee is in addition to certain existing programs." This vague reference in no way alerts the voter to the concept that is being introduced by the Initiative.

The Initiative's Title fails to inform voters that it would change the substantive law of Colorado with respect to environmental statutes. The Title misleads voters by stating the purpose of the Initiative is to impose a fee on the consumption of electricity and natural gas with the revenues used, in part, for the purpose of carbon sequestration, without mentioning the substantive changes to current law and doctrine. The Title Board is not precluded from including language in the Title which explains how the Initiative relates to and changes existing law even if such specific language is not included in the text of the Initiative. *See In re Title Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 916, 921 (Colo. 1982)

C. The Title Fails to Inform Voters what Forms of Pollution will be Reduced and who will Oversee the Spending of the Monies Raised by the Tax.

The Title fails to provide voters with any specificity as to what forms of pollution are proposed to be reduced. The Title merely states that “revenues [] are to be spent on the following purposes: ...(4) pollution reduction.” Voters are not told what form or forms of pollution are to be reduced. The Initiative provides that a minimum of five percent of the revenues from the fee will be used to reduce emissions from global warming pollution in the transportation sector. *See* Initiative § 24-75-1301(6)(d). Seeking to reduce emissions from the transportation sector could entail significant policy and program initiatives that would affect a majority of voters. Despite its potential wide reaching effects on it, the Title fails to include any reference to the transportation sector.

Nor does the Title inform voters as to what entity will be in charge of spending the revenues collected from the fee. It is left to the voter to determine what entity will be spending the revenues. From the text of the Title, a voter’s most logical conclusion would be to assume that the newly created Clean Energy Task Force will determine how exactly the revenues are spent - but this assumption would be incorrect. Voters need to know who shall have the authority to spend the revenues generated. A voter may or may not want an official in the Office of the

Governor to be responsible for determining how these substantial revenues are spent. As the Title is currently drafted, the entity that has the authority to spend these revenues is left to the imagination of the voter.

D. The Title, Ballot and Submission Clause Contain the Impermissible Catch Phrases “Pollution” and “Climate Change.”

The Title includes the phrases “pollution” and “climate change”, each of which is a catch phrase that fails to convey to the voters what the Initiative’s imposition of a consumption tax on CO₂ will result in. “Catch phrases” are words that work to a proposal’s favor without contributing to voter understanding.” *In re 1999-2000 #258(A)*, 4 P.3d at 1100. “It is well established that the use of catch phrases or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board.” *Id.* (citing *In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo. 1995)). Catch phrases can be used to form a slogan by those who desire to campaign for or against an initiative, ultimately prejudicing further voters understanding of the issues contained in the initiative. *Id.* (citing *In re Ballot Title 1999-2000 §227 & 228*, 3 P.3d at 6-7).

Contemporary political debate is the basis for determining whether a catch phrase or slogan exists. *See In re Ballot Title 1999-2000 #227 & 228*, 3 P.3d 1, 7 (Colo. 2000). The phrase “climate change” is shorthand for the issue of global warming. This proceeding is not about the validity of the science behind global

warming, or the policy issues that global warming raise. The issue of global warming, though, is still a topic of heated political and social discussion. See *A Shift in the Debate Over Global Warming* by Andrew C. Revkin, April 6, 2008, The New York Times. Regardless of one's opinion on the subject of global warming, it is clear that the subject is emotional and contentious, one that "provokes political emotion". *In re 1999-2000 #258(A)*, 4 P.3d at 1100. The use of the phrase "climate change" in the Title is one that will "impede voter understanding", and will surely result in it being used as a slogan. *Id.*

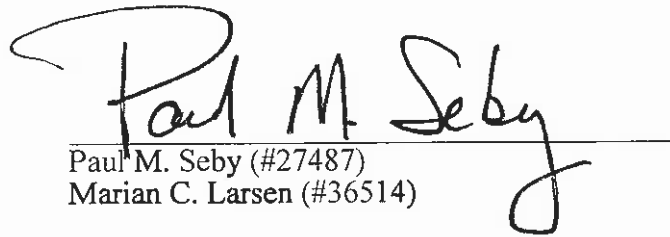
As with the catch phrase "climate change" the term "pollution" "provoke[s] political emotion". *Id.* Pollution is defined as "the action of polluting especially by environmental contamination with man-made waste." *Merriam-Webster's Collegiate Dictionary (Tenth Edition 1999)*. As the definition of pollution indicates, few voters would immediately view themselves as polluters. The term "pollution" will provoke incorrect assumptions that the Initiative seeks to impose a CO2 fee on emissions from businesses and industry. It will certainly result in impeding voter understanding as to the true meaning of the Initiative and its effect upon voters.

III. CONCLUSION

Petitioner respectfully requests that this Court reverse the State Title Board's action and to direct the Board to strike the Title and return the Initiative to its proponents.

DATED this 12th day of May, 2008.

Respectfully submitted,
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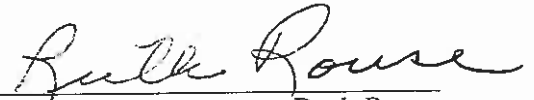
CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2008, a true and correct copy of the foregoing **PETITIONERS OPENING BRIEF** was placed in the United States mail, postage prepaid, to the following:

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Ruth Rouse

**CONSTITUTIONAL AND
STATUTORY PROVISIONS**

Section 1. General assembly - initiative and referendum.

(1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

(5.5) No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its 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. In such circumstance, however, the measure may be revised and resubmitted for

the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. The revision and resubmission of a measure in accordance with this subsection (5.5) shall not operate to alter or extend any filing deadline applicable to the measure.

(6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. In submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.

(7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least one time in at least one legal publication of general circulation in each county of the state and shall be made at least fifteen days prior to the final date of voter registration for the election. The form and manner of publication shall be as prescribed by law and shall ensure a reasonable opportunity for the voters statewide to become informed about the text and title of each measure.

(7.5) (a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:

(I) The text and title of each measure to be voted on;

(II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.

(b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.

(c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20 (3) (b) of article X, and the mailing of such information pursuant to section 20 (3) (b) of article X is not required.

(d) The general assembly shall provide sufficient appropriations for the preparation and distribution of the ballot information booklet pursuant to this subsection (7.5) at no charge to recipients.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

Source: Entire article added, effective August 1, 1876, see L. 1877, p. 37. L. 10, Ex. Sess.: Entire section amended, p. 11. L. 79: Entire section amended, p. 1672, effective upon proclamation of the Governor, L. 81, p. 2051, December 19, 1980. L. 93: (5.5) added, p. 2152, effective upon proclamation of the Governor, L. 95, p. 1428, January 19, 1995. L. 94: (7) amended and (7.3) and (7.5) added, p. 2850, effective upon proclamation of the Governor, L. 95, p. 1431, January 19, 1995.

Editor's note: The "legislative research and drafting offices" referred to in this section are the Legislative Council and Office of Legislative Legal Services, respectively.

Cross references: For statutory provisions regarding initiatives and referenda, see article 40 of title 1; for distribution of governmental powers, see article III of this constitution; for proposing constitutional amendments by convention or vote of the general assembly, see article XIX of this constitution; for the adoption of home rule charters, see §§ 4, 5, 6, and 9 of article XX of this constitution; for apportionment of members of the general assembly, see parts 1 and 2 of article 2 of title 2; for organization and operation of the general assembly, see part 3 of article 2 of title 2.

1-40-106. Title board - meetings - titles and submission clause.

(1) For ballot issues, beginning with the first submission of a draft after an election, the secretary of state shall convene a title board consisting of the secretary of state, the attorney general, and the director of the office of legislative legal services or the director's designee. The title board, by majority vote, shall proceed to designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause, at public meetings to be held at the hour determined by the title board on the first and third Wednesdays of each month in which a draft or a motion for reconsideration has been submitted to the secretary of state. To be considered at such meeting, a draft shall be submitted to the secretary of state no later than 3 p.m. on the twelfth day before the meeting at which the draft is to be considered by the title board. The first meeting of the title board shall be held no sooner than the first Wednesday in December after an election, and the last meeting shall be held no later than the third Wednesday in May in the year in which the measure is to be voted on.

(2) (Deleted by amendment, L. 95, p. 431, § 4, effective May 8, 1995.)

(3) (a) (Deleted by amendment, L. 2000, p. 1620, § 1, effective August 2, 2000.)

(b) In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the parties presenting it, keeping the copy with a record of the action taken thereon. Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

Source: L. 93: Entire article amended with relocations, p. 679, § 1, effective May 4. L. 95: (1), (2), and (3)(a) amended, p. 431, § 4, effective May 8. L. 2000: (3) amended, p. 1620, § 1, effective August 2. L. 2004: (1) amended, p. 756, § 1, effective May 12.

Editor's note: Subsections (1) and (3) were formerly numbered as section 1-40-101 (2), which was further amended by HB 93-1155, and subsection (2) is new. The former section 1-40-106 (1)(a) was relocated to section 1-40-110 (1), section 1-40-106 (1)(b) was relocated to section 1-40-110 (2), section 1-40-106 (2)(a) was relocated to section 1-40-111 (1), and section 1-40-106 (2)(b) was relocated to section 1-40-111 (2).

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) Section 1 (5.5) of article V and section 2 (3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1 (5.5) of article V and section 2 (3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1 (5.5) of article V and section 2 (3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1 (5.5) of article V and section 2 (3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1 (5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

Source: L. 94: Entire section added, p. 73, § 1, effective January 19, 1995.

Editor's note: Section 2 of chapter 22, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 93-004, enacted at the First Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 93-004 was January 19, 1995.

1-40-107. Rehearing - appeal - fees - signing.

(1) Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set. The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in May, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions.

(2) If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

(3) The secretary of state shall be allowed a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for certifying a record of any proceedings before the title board. The clerk of the supreme court shall receive one-half the ordinary docket fee for docketing any such cause, all of which shall be paid by the parties desiring a review of such proceedings.

(4) No petition for any initiative measure shall be circulated nor any signature thereto have any force or effect which has been signed before the titles and submission clause have been fixed and determined as provided in section 1-40-106 and this section.

(5) In the event a motion for rehearing is filed in accordance with this section, the period for filing a petition in accordance with section 1-40-108 shall not begin until a final decision concerning the motion is rendered by the title board or the Colorado supreme court; except that under no circumstances shall the period for filing a petition be extended beyond three months prior to the election at which the petition is to be voted upon.

(6) (Deleted by amendment, L. 2000, p. 1622, § 5, effective August 2, 2000.)

(7) (Deleted by amendment, L. 95, p. 432, § 5, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 680, § 1, effective May 4. L. 95: (1) and (7) amended, p. 432, § 5, effective May 8. L. 98: (2) amended, p. 635, § 9, effective May 6. L. 2000: (1), (2), (4), and (6) amended, pp. 1621, 1622, §§ 2, 5, effective August 2; (6) amended, p. 297, § 1, effective August 2. L. 2004: (1) amended, p. 756, § 2, effective May 12.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-101 (3), subsection (3) was formerly numbered as section 1-40-103 (1), subsection (4) was formerly numbered as section 1-40-103 (2),

subsection (5) was formerly numbered as section 1-40-102 (3)(b), subsection (6) was formerly numbered as section 1-40-101 (4), and subsection (7) is new. The former section 1-40-107 was relocated to section 1-40-113.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

25-7-103. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Administrator" means the administrator of the federal environmental protection agency.
- (1.3) "Adverse environmental effect", as a term used in the context of regulating hazardous air pollutants, means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.
- (1.5) "Air pollutant" means any fume, smoke, particulate matter, vapor, or gas or any combination thereof which is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter, but "air pollutant" does not include water vapor or steam condensate or any other emission exempted by the commission consistent with the federal act. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the United States environmental protection agency or the commission has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.
- (2) "Air pollution control authority" means the division, or any person or agency given authority by the division, or a local governmental unit duly authorized with respect to air pollution control.
- (3) "Air pollution source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air pollutant.
- (4) "Allowable emissions" means the emission rate calculated for a stationary source using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:
 - (a) The applicable standards promulgated pursuant to the federal act for new source performance or hazardous air pollutants;
 - (b) The applicable Colorado emission control regulation; or
 - (c) The emission rate specified as a permit condition.
- (5) "Ambient air" means that portion of the atmosphere, external to the sources, to which the general public has access.
- (5.5) "Appliance" means any device which contains and uses as a refrigerant a class I or class II ozone depleting compound as defined by the administrator and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.
- (5.7) "Approved motor vehicle refrigerant recycling equipment" means any equipment models certified by the administrator, or any independent standards testing organization approved by such administrator, to meet the standards established by the administrator which are applicable to equipment for the extraction of refrigerants from motor vehicle air conditioners. Equipment for such purpose purchased prior to the promulgation of regulations pursuant to section 25-7-105 (11) (c) shall be considered certified if it is substantially identical to equipment which is certified by the administrator.

(6) Repealed.

(6.5) "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, or CFC-502.

(6.7) "Colorado generally available control technology" or "Colorado GACT" means standards imposed pursuant to section 25-7-109.3 (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements utilizing generally available control technologies or management practices by area sources for the reduction of emissions of hazardous air pollutants considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(6.8) "Colorado maximum achievable control technology" or "Colorado MACT" means standards imposed pursuant to section 25-7-109.3 (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements which provide for the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(7) "Commission" means the air quality control commission created by section 25-7-104.

(8) "Construction" means fabrication, erection, installation, or modification of an air pollution source.

(9) "Division" means the division of administration of the department of public health and environment.

(9.5) "Effects on public welfare" means all language referring to effects on public welfare, which includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(10) "Emission" means the discharge or release into the atmosphere of one or more air pollutants.

(11) "Emission control regulation" means and includes any standard promulgated by regulation which is applicable to all air pollution sources within a specified area and which prohibits or establishes permissible limits for specific types of emissions in such area, and also any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity, any regulation adopted for the purpose of preventing or minimizing emission of any air pollutant in potentially dangerous quantities, and also any regulation that adopts any design, equipment, work practice, or operational standard. Emission control regulations shall not include standards which describe maximum ambient air concentrations of specifically identified pollutants or which describe varying degrees of pollution of ambient air. Emission control regulations pertaining to hazardous air pollutants, as defined in subsection (13) of this section, shall be consistent with the emission standards promulgated under section 112 of the federal act or section 25-7-109.3 in reducing or preventing emissions of hazardous air pollutants, and may include application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

- (b) Enclose systems or processes to eliminate emissions;
- (c) Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
- (d) Are design, equipment, or work practice standards (including requirements for operator training or certification); or
- (e) Are a combination of the provisions of paragraphs (a) to (d) of this subsection (11).

(11.5) "Emission data" means, with reference to any source of emission of any substance into the air:

- (a) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been, or will be, emitted by the source (or of any pollutant resulting from any emission by the source), or any combination thereof;
- (b) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emission which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source), or any combination thereof;
- (c) A general description of the location or nature, or both, of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(12) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as the same is in effect on November 15, 1990.

(12.1) "Generally available control technology" or "GACT" means standards promulgated pursuant to section 112 of the federal act which provide for the use of generally available control technologies or management practices for the control of hazardous air pollutants for area sources, as defined in section 112 of the federal act, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(13) "Hazardous air pollutant" means an air pollutant which presents through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise and which has been listed pursuant to section 112 of the federal act or section 25-7-109.3.

(14) "Indirect air pollution source" means any facility, building, structure, or installation, or any combination thereof, excluding dwellings, which can reasonably be expected to cause or induce substantial mobile source activity which results in emissions of air pollutants which might reasonably be expected to interfere with the attainment and maintenance of national ambient air standards.

(15) "Issue" or "issuance" means the mailing of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(16) "Local air pollution law" means any law, ordinance, resolution, code, rule, or regulation adopted by the governing body of any city, town, county, or city and county, pertaining to the prevention, control, and abatement of air pollution.

(16.5) "Maximum achievable control technology" or "MACT" means emission standards promulgated under section 112 of the federal act requiring the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(17) "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or unintended failure of a process to operate in a normal or usual manner. Failures that are primarily caused by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(18) "Motor vehicle" means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(18.3) "Motor vehicle air conditioner" means any air conditioner designed for installation in a motor vehicle which uses as a refrigerant any class I or class II ozone depleting compound as defined by the administrator.

(18.4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(18.5) "Ozone depleting compound" means any substance on the list of class I and class II ozone depleting compounds as defined by the administrator and as referenced in section 602 of the "Federal Clean Air Act of 1990".

(19) "Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the United States or the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(19.5) "Refrigeration system" includes refrigerators, freezers, cold storage warehouse refrigeration systems, and air conditioners, any of which hold more than one hundred pounds of refrigerant or more than one hundred pounds total if more than one refrigeration unit or system exists at the same location.

(20) "Shutdown" means the cessation of operation of any air pollution source for any purpose.

(21) "Start-up" means the setting in operation of any air pollution source for any purpose.

(22) "State implementation plan" means the plan required by and described in section 110(a) of the federal act.

(23) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

Source: L. 79: Entire article R&RE, p. 1018, § 1, effective June 20. L. 84: (6) repealed, p. 768, § 1, effective July 1. L. 89: (6.5) and (19.5) added, p. 1156, § 2, effective January 1, 1990. L. 92: (1), (11), (12), (13), and (19) amended and (1.3), (1.5), (5.5), (5.7), (6.7), (6.8), (9.5), (11.5), (12.1), (16.5), (18.3), (18.4), and (18.5) added, pp. 1166, 1291, §§ 5, 1, effective July 1. L. 94: (9) amended, p. 2780, § 494, effective July 1. L. 2006: IP added, p. 1504, § 46, effective June 1.

Editor's note: (1) Amendments to subsection (1.5) by Senate Bill 92-105 and House Bill 92-1178 were harmonized.

(2) Subsection (18.4) was enacted as subsection (18.3) by Senate Bill 92-105, Session Laws of Colorado 1992, chapter 179, section 5, but has been renumbered on revision for ease of location.

25-7-105. Duties of commission.

(1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article, including but not limited to:

(a) (I) A comprehensive state implementation plan which will assure attainment and maintenance of national ambient air quality standards and which will prevent significant deterioration of air quality, all in conformity with the provisions of this article. The comprehensive plan shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate.

(II) The comprehensive state implementation plan of the commission shall, wherever feasible, include local or regional air pollution plans and programs adopted or enforceable by municipal or county governments. Before making any changes to those portions of the state implementation plan which include such air pollution plans and programs or to such plans and programs which are suggested for inclusion in the state implementation plan, the commission shall give thirty days' notice of the proposed changes to the affected municipal or county government to allow a reasonable opportunity to prepare comments on the proposed changes. The commission shall consider such comments in its action on the state implementation plan and shall document in the record of the hearing its reasons for any changes to such plans and programs. Any such plans and programs which are approved by the commission and formally submitted as a part of the state implementation plan shall be deemed a part of the comprehensive program of the commission and shall be enforced as such.

(III) The revisions to the Denver element of the PM-10 state implementation plan adopted by the commission on February 16, 1995, which contain a sixty tons-per-day PM-10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan and shall only apply as a regulation adopted exclusively under reserved state authority pursuant to the provisions of section 25-7-105.1. The sixty tons-per-day emissions budget shall, unless modified by the commission through rule-making, apply for federal transportation conformity and is included in the state implementation plan only as required by the federal act. Any entity with authority to adopt a transportation plan required under section 43-1-1103, C.R.S., shall consider any mobile source emissions budgets in effect under this article in the development of transportation improvement programs for federal purposes.

(IV) Notwithstanding the provisions of section 25-7-133, the expiration of the state implementation plan for ozone maintenance and related rules of the air quality control commission, and the amendments to commission regulations number 3 and 7, which state implementation plan and rules, and amendments to regulations number 3 and 7, were adopted or amended by the commission on March 21, 1996, and which are therefore scheduled for expiration May 15, 1997, is postponed until December 31, 2005, and the provisions of section 24-4-108, C.R.S., shall apply.

(b) Emission control regulations in conformity with section 25-7-109;

(c) A prevention of significant deterioration program in conformity with part 2 of this article and federal requirements; except that definitions used in the program shall not differ from any definitions pertaining to the prevention of significant deterioration program which appear in section 169 of the federal act or in federal regulations promulgated thereunder, and an attainment program in conformity with part 3 of this article;

(d) A satisfactory process of consultation with general purpose local governments and any federal land

manager having authority over federal land to which the state implementation plan applies, effective with respect to measures adopted after August 7, 1978, pertaining to transportation controls, air quality maintenance plan requirements, preconstruction review of stationary sources of air pollution, or any measure referred to in the prevention of significant deterioration program established pursuant to part 2 of this article or the attainment program established pursuant to part 3 of this article, or granting delayed compliance orders pursuant to section 25-7-118.

(2) The commission shall provide forms of application and shall receive all such applications for review of the classification of any attainment, nonattainment, or unclassifiable area within the state made pursuant to section 25-7-106 (1) or 25-7-107 (2), all applications for designation or redesignation made pursuant to section 25-7-208, and all applications for any revision of general application of the state implementation plan and shall set such applications for hearing and determination by the commission in accordance with the provisions of section 25-7-119.

(3) The commission shall employ a technical secretary and shall delegate to such secretary such duties and responsibilities as it may deem necessary; except that no authority shall be delegated to such secretary to adopt, promulgate, amend, or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such secretary shall have appropriate practical, educational, and administrative experience related to air pollution control and shall be employed pursuant to the state personnel system laws.

(4) (a) The commission and the state board of health shall hold a joint public hearing during the month of October of each year in order to hear public comment on air pollution problems within the state, alleged sources of air pollution within the state, and the availability of practical remedies therefor; and at such hearing the technical secretary shall answer reasonable questions from the public concerning administration and enforcement of the various provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(b) On or before September 30, 1993, the commission shall publish and revise from time to time thereafter, as is necessary, a regulatory agenda which includes its schedule for future rule-making and its schedule for implementing section 25-7-109.3 and other air quality programs.

(5) Prior to the hearing required under subsection (4) of this section, the commission shall prepare and make available to the public a report which shall contain the following specific information:

(a) A description of the pollution problem in each of the polluted areas of the state, described separately for each such area;

(b) To the extent possible, the identification of the sources of air pollution in each separate area of the state, such as motor vehicles, industrial sources, and power-generating facilities;

(c) A list of all alleged violations of emission control regulations which shows the status of control procedures in effect with respect to each such alleged violation.

(6) and (7) Repealed.

(8) (Deleted by amendment, L. 92, p. 1170, § 7, effective July 1, 1992.)

(9) The commission shall adopt exhaust emissions standards for motor vehicles purchased for state use and shall assist the executive director of the department of personnel in determining those vehicles which meet or exceed such standards.

(10) The commission shall promulgate such rules and regulations as are necessary to implement the

provisions of part 5 of this article concerning asbestos control.

(11) The commission shall promulgate regulations concerning CFC's and ozone depleting compounds as follows:

(a) Regulations requiring the recycling or reuse of any refrigerant containing CFC which is removed from the refrigeration system of a retail store, cold storage warehouse, or commercial or industrial building by any person who installs, services, repairs, or disposes of such system as a result of service to or disposal of such system;

(b) Regulations prohibiting the intentional venting or disposal of any refrigerant containing CFC by the owner or operator of a retail store, cold storage warehouse, or commercial or industrial building and requiring the recycling or reuse of such refrigerant;

(c) Regulations requiring the use of approved motor vehicle refrigerant recycling equipment during the repair or servicing of a motor vehicle air conditioner, requiring that such repair or servicing be done by a person certified in accordance with federal regulations, and including requirements for reclamation of refrigerants during the disposal of a vehicle;

(d) Repealed.

(e) Regulations which establish requirements for recycling;

(f) Regulations which conform with the requirements of section 608 of the "Federal Clean Air Act of 1990" to establish standards and requirements regarding the use and disposal of class I and class II ozone depleting compounds during the service, repair, or disposal of appliances and industrial process refrigeration. If federal training and certification requirements are adopted under section 609 of the "Federal Clean Air Act of 1990" as of January 1, 1993, no state training and certification requirements shall be adopted. If the federal regulations are not adopted, then such state regulations shall contain training and certification requirements substantially similar to those required under section 609 of the "Federal Clean Air Act of 1990". Such regulations shall also include provisions for the imposition and collection of a certification fee sufficient to implement the training, certification, and enforcement requirements of this paragraph (f).

(g) Repealed.

(h) Regulations which are necessary for the imposition and collection of a fee for registering as stationary sources refrigeration systems and other appliances which contain a minimum of one hundred pounds or use a drive system of one hundred horsepower or more and use ozone depleting compounds. The fee set by the commission shall reflect the direct and indirect costs of registering refrigeration systems and appliances; however, such fee shall not exceed twenty-five dollars per unit and shall not exceed a maximum of two hundred dollars per facility.

(12) The commission shall promulgate such rules and regulations as are necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of a permit program provided in Title V of the federal act.

(13) (a) The commission shall promulgate rules and regulations requiring motor vehicles which have manufacturer-installed diagnostic systems for emission controls to have such diagnostic systems inspected and maintained consistent with section 202 of the federal act as part of the periodic inspection of vehicle emission control systems required pursuant to this article.

(b) This subsection (13) shall take effect July 1, 1994.

(14) The commission shall repeal the clean vehicle fleet program mandated by section 246 of the federal act and shall replace such program if required by federal law. Nothing in this subsection (14) shall be deemed to impair the availability of the income tax credit established pursuant to section 39-22-516, C.R.S., or the rebate established pursuant to article 33 of title 39, C.R.S.

(15) The commission shall promulgate rules and regulations as are necessary to provide an emission reduction incentive permit fee credit program which provides for a permit fee reduction in the year following the year in which a permittee achieves an early reduction in emissions of hazardous air pollutants, consistent with the provisions of section 112 of the federal act and section 25-7-114.3.

(16) The commission shall give priority to and take expeditious action upon consideration of the following:

(a) A request by a unit of local government to investigate and resolve air quality problems associated with a source;

(b) A request by a unit of local government for inclusion of a locally developed air pollution control measure in a state implementation plan;

(c) A request by a unit of local government that the commission consider local concerns respecting environmental and economic effects in the context of a proceeding where the state is targeting a source for imposition of additional air pollution controls.

(17) (a) Not later than December 31, 2002, and no less frequently than every five years thereafter, the commission shall conduct rule-making hearings to approve an update to the emission inventories from state and federal public land management agency activities on public lands resulting in emissions of any criteria pollutant, including surrogates or precursors for that pollutant, that affect any mandatory class I federal areas in Colorado by reducing visibility in such areas. At a minimum, such inventories shall report on emissions from the sources set forth in paragraph (d) of this subsection (17).

(b) The commission shall ensure that the division prepares inventories for all state land management agencies with jurisdiction over state lands, including, without limitation, the state land board, the department of agriculture, and the department of natural resources, to provide an inventory of emissions from land management activities that are sources of pollutant emissions that may affect any mandatory class I federal area in Colorado by reducing visibility in such areas; except that the commission shall exempt from the inventory requirement any sources or categories of sources that it determines to be of minor significance.

(c) The commission shall use the emission inventories provided under this subsection (17) to develop control strategies for reducing emissions within the state as a component of the visibility long-term strategies for inclusion in the state implementation plan and for inclusion in any environmental impact statement or environmental assessment required to be performed under the federal "National Environmental Policy Act of 1969", 42 U.S.C. secs. 4321 to 4347.

(d) The rule-making hearing held to approve the inventories provided under this subsection (17) shall require public participation and shall require the reporting of both current emissions and projected future emissions, over at least a five-year period, from the following sources on public land that affect any mandatory class I federal areas in Colorado:

(I) Stationary source emissions, based on existing air pollution emission notices filed with the division;

(II) Mobile sources utilizing state lands, excluding state and federal highways;

(III) Paved and unpaved roads;

(IV) Fires on public lands from all sources;

(V) Biogenic sources, including emissions from flora and fauna.

(e) Each inventory provided under this subsection (17) shall state the basis and methodology used to accumulate the data and shall be based upon data that are:

(I) Developed no later than three years prior to the submittal; and

(II) No more than five years old.

(18) Upon petition by any person or on its own motion, for good cause shown, the commission may determine that the emission inventory of any criteria pollutant, including a surrogate or precursor for that pollutant, for a region of the state is inadequate for purposes of commission rule-making or adjudications in connection with development of the state implementation plan, selection of pollution control strategies, attribution of emissions to sources or categories of sources, or findings of adverse impacts. If, after conducting a public hearing in accordance with the rule-making provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commission finds that the emission inventory should be revised to take into consideration existing credible studies or scientific data in order to reasonably attribute emissions to source categories, it shall direct that such revision be performed prior to a final rule-making or adjudication.

(19) The commission may coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop air quality management plans consistent with this article for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712.

Source: L. 79: Entire article R&RE, p. 1021, § 1, effective June 20; (9) added, p. 1551, § 14, effective June 20. L. 81: (9) amended, p. 1296, § 35, effective January 1, 1982. L. 84: (2) and (8) amended and (7) repealed, p. 768, §§ 3, 1, effective July 1. L. 87: (10) added, p. 1151, § 2, effective July 1. L. 89: (11) added, p. 1156, § 3, effective January 1, 1990. L. 92: (1)(c), (4), (8), and IP(11) amended and (11)(c) to (11)(g) and (12) to (16) added, pp. 1170, 1292, §§ 7, 2, effective July 1. L. 93: (11)(h) added, p. 958, § 1, effective May 28. L. 95: (1)(a)(III) added, p. 1149, § 1, effective May 31. L. 96: (1)(a)(IV) added, p. 1038, § 2, effective May 23; (9) amended, p. 1541, § 130, effective June 1; (6) repealed, p. 1257, § 149, effective August 7. L. 99: (17) and (18) added, p. 1246, § 1, effective June 2. L. 2002: (14) R&RE, p. 1066, § 1, effective August 7. L. 2003: (19) added, p. 1035, § 6, effective April 17; (11)(d) repealed, p. 724, § 3, effective July 1. L. 2005: (11)(g) repealed, p. 282, § 18, effective August 8.

Cross references: For the legislative declaration contained in the 1996 act enacting subsection (1)(a)(IV), see section 1 of chapter 210, Session Laws of Colorado 1996. For the legislative declaration contained in the 1996 act repealing subsection (6), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2003 act enacting subsection (19), see section 1 of chapter 145, Session Laws of Colorado 2003.

25-7-105.1. Federal enforceability.

(1) To the extent that any provision of this article or any standard or regulation promulgated pursuant thereto is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such provision, standard, or regulation is hereby declared to be adopted under powers reserved to the state of Colorado pursuant to section 116 of the federal act. Any such provision, standard, or regulation adopted exclusively under state authority shall not constitute part of the state implementation plan.

(2) Whenever the division or commission grants relief to an owner or operator of a new or modified stationary source from that part of a state standard or regulation which is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or which is otherwise more stringent than other requirements of the federal act and is not included as part of the state implementation plan, such relief shall be governed exclusively by the laws of this state and the regulations of the commission.

(3) To the extent any term or condition contained in any permit issued pursuant to this article is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such term or condition shall be subject to enforcement exclusively under the laws of this state and the regulations of the commission.

Source: L. 92: Entire section added, p. 1172, § 8, effective July 1.

25-7-109.3. Colorado hazardous air pollutant control and reduction program.

(1) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants as defined in section 25-7-103 (13) which are consistent with this section and the requirements of and emission standards promulgated pursuant to section 112 of the federal act, including any standard required to be imposed under section 112(r) of the federal act. The commission shall monitor the progress and results of the risk studies performed under section 112 of the federal act to show that Colorado's hazardous air pollutant control and reduction program is consistent with the national strategy.

(2) The commission may only promulgate regulations pertaining to hazardous air pollutants as defined in section 25-7-103 (13) in accordance with this section. In order to minimize additional regulatory and compliance costs to the state's economy, any program created by the commission pursuant to this section shall contain a provision which exempts those sources or categories of sources which it determines to be of minor significance from the requirements of the program. Consistent with the provisions of section 25-7-105.1, the commission shall authorize synthetic minor sources of hazardous air pollutants by the issuance of construction permits or prohibitory rules or other regulations. Such permits, rules, or regulations shall only be as stringent as necessary to establish synthetic minor status. The commission shall expeditiously implement this subsection (2) to assure that all sources may be able to timely qualify as a synthetic minor source, thereby avoiding the costs of the operating permit program.

(3) (a) (I) As soon as adequate scientific, technological, and hazardous air pollutant emissions information is available, the commission may promulgate regulations for the control of hazardous air pollutants utilizing Colorado GACT or Colorado MACT technology-based emission reduction requirements, as defined in section 25-7-103 (6.7) and (6.8).

(II) The division may establish schedules of compliance of up to five years leading to final compliance for any such regulation, which shall be enforced through regulations or conditions in construction permits issued pursuant to section 25-7-114.2 or 25-7-114.5. In determining any schedule of compliance, the division shall consider the current availability of technology, costs of compliance, and the consequence of delay to the public health or environment or economy.

(III) The division shall issue its determination of Colorado GACT or Colorado MACT and the compliance schedule in writing.

(IV) Within thirty calendar days after receipt of a determination by the division requiring installation of Colorado GACT or Colorado MACT and the compliance schedule, pursuant to this subsection (3), a source may appeal such a determination or compliance schedule by filing with the commission a written petition requesting a hearing to review the determination on a de novo basis.

(V) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(b) This section shall only apply to sources emitting a hazardous air pollutant identified in the list established or amended pursuant to subsection (5) of this section which:

(I) Are not included in categories or subcategories of sources listed or proposed to be listed by the environmental protection agency under section 112 of the federal act and thus will not be required to comply with GACT or MACT under the federal act, as defined in section 25-7-103 (12.1) and (16.5); or

(II) Are included in categories or subcategories of sources listed or proposed to be listed under section

112 of the federal act and which have:

(A) Levels of emissions of hazardous air pollutants listed under section 112 (b) of the federal act which are below thresholds established under the federal act and thus will not be required to comply with GACT and MACT under the federal act and as defined in section 25-7-103 (12.1) and (16.5); except that this section shall not apply to a source included in a category or subcategory for which a lesser quantity emission rate has been proposed or adopted under section 112 of the federal act; or

(B) Hazardous air pollutant emissions above a threshold level of the substance listed under subparagraph (II) of paragraph (a) and paragraph (b) of subsection (5) of this section.

(b.1) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission in making a determination about the need for such regulation under this subsection (3). The commission and the science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(c) The commission shall designate by regulation those classes of minor or insignificant sources of emissions of hazardous air pollutants which are exempt from the requirements of this section because their emissions of hazardous air pollutants will result in an inconsequential risk to public health.

(d) (I) A source subject to the requirements of this section may be exempt from installation of Colorado MACT or Colorado GACT or any Colorado health-based requirement if the division makes a determination that an alternative level of control, including no emission controls, will result in an inconsequential risk to public health.

(II) The division shall issue its determination of a source's request for exemption under this paragraph (d) in writing within sixty days of receipt of a complete application for an exemption and shall publish notice of its determination by at least one publication in a newspaper of general distribution in the area of the source requesting the exemption.

(III) Within thirty calendar days after receipt of a determination by the division of a request for exemption by a source under this paragraph (d), the source or any person may appeal such determination by filing with the commission a written petition requesting a hearing to review the exemption request on a de novo basis. Such request shall be referred to the air quality science advisory board for an advisory opinion which shall be considered by the commission.

(IV) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(e) Any source as defined in section 112(i) of the federal act, and regulations promulgated thereunder, that participates in the early reduction program pursuant to section 112(i) of the federal act, or this article, shall be exempt from the requirements of this section for the same period of time exemptions from federal requirements or requirements under this article are allowed under the early reduction program.

(f) This section shall not apply to sources subject to national emission standards for hazardous air pollutants (NESHAP) established by the administrator pursuant to the federal act, but only for those emissions for which a NESHAP is established.

(g) This section shall not impose requirements on sources included in categories or subcategories of sources which are listed in section 112(n) of the federal act which are inconsistent with the timing of

studies or assessments conducted under or definitions set forth in section 112(n) of the federal act.

(4) (a) (I) On or after the risk-based studies required under sections 112(k)(3), 112(o), and 112(f) of the federal act are completed and received by the commission, the commission may adopt regulations pertaining to those sources identified as emitting hazardous air pollutants regulated under this section which may include additional emission reduction requirements to address any residual risk of health effects with respect to actual persons living in the vicinity of sources after installation of technology-based controls. Imposition of such requirements may be made upon a determination by the commission that operation of sources without health-based controls does not or will not represent an inconsequential threat to public health. Regulations as finally adopted pursuant to this subsection (4) may apply on a source-specific basis.

(II) However, if in 1996 the commission determines that the studies referred to in subparagraph (I) of this paragraph (a) and national strategy will not be timely or completed, then the commission shall direct the science advisory board to evaluate or complete similar studies and issue an advisory report to the commission and the commission may then act pursuant to this subsection (4).

(b) In issuing the advisory report, the air quality science advisory board shall take into consideration any studies or reports on health-based assessments which are scientifically sound, including any developed under section 112(k)(3), 112(o), and 112(f) of the federal act.

(c) Subject to paragraph (a) of this subsection (4), for existing sources not subject to regulation under section 25-7-114.3, or not subject to regulation as a modified source, the commission may promulgate health-based regulations on a source-by-source basis, with the exceptions specified in paragraph (d) of this subsection (4).

(d) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission pursuant to paragraph (a) of this subsection (4) in making a determination about the need for such regulation under this subsection (4). The commission and the air quality science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(e) The commission may establish schedules of compliance leading to final compliance for any regulation promulgated pursuant to this subsection (4).

(f) A hearing conducted by the commission under this subsection (4) shall be conducted in accordance with section 25-7-110 or 25-7-119 or article 4 of title 24, C.R.S., as applicable.

(g) In reaching a determination under this subsection (4), the commission shall give consideration to the technical availability of methods of compliance, the costs of compliance, and the consequences of delay. The commission shall also consider cost-benefit analysis and risk-benefit analysis pursuant to section 24-4-103 (4.5), C.R.S.

(h) **Temporary exceptional authority.** (I) (A) This subparagraph (I) shall apply until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4). If the executive director of the department of public health and environment finds that a source in a category or subcategory of sources listed or proposed to be listed under section 112 of the federal act for which MACT or GACT is not scheduled for proposal until after 1997 and presents an unacceptable threat of actual health effects, then the executive director may direct the commission to evaluate and, as necessary, study such actual health effects. The commission may request the air quality science advisory board to evaluate and, as necessary, study whether the impacts of waiting to regulate the emissions of hazardous air pollutants from this source present an unacceptable threat of actual health effects. If, after considering an advisory

opinion issued by the board and other available information, the commission finds by a preponderance of the evidence that waiting until the source would be required to install GACT or MACT under section 112 of the federal act will cause an unacceptable incremental threat of actual health effects to persons living in the vicinity of such source, the commission may promulgate regulations for the control of hazardous air pollutants for the source. The control regulations may include the least restrictive control that will adequately protect the public, including but not limited to: Chemical substitution, pollution prevention, work process modifications, additional control technologies, or Colorado MACT or GACT. In promulgating Colorado GACT or MACT for the source, the commission shall consider and be as consistent as possible with GACT or MACT under section 112 of the federal act, minimization of duplicative capital expenditures and minimization of substantial reconstruction time. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(B) Any source which is required to install Colorado MACT or GACT under regulations promulgated pursuant to sub-subparagraph (A) of this subparagraph (I) only and which subsequently is required to install federal MACT or GACT that is significantly different than Colorado MACT or GACT and imposes a significant capital cost on the source, then the general assembly shall study and consider whether an operating permit fee credit or a state tax credit for the capital costs, or a percentage of the costs, is appropriate.

(II) Until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4) and upon the recommendation of the executive director of the department of public health and environment, the governor may find, as expressed in an executive order, that after an existing source has installed Colorado or federal MACT or GACT, or Colorado MACT or GACT has been proposed for a new source or a modification of an existing source, the source presents an unacceptable threat of actual health effects. The governor may then direct the commission to evaluate and, as necessary, conduct studies on actual health effects. The commission shall then direct the air quality science advisory board to render an advisory opinion on such information and on whether, after technology-based controls have been installed, emissions of hazardous air pollutants from this source will cause actual health effects to persons in the vicinity of such source. If the commission, after reviewing the advisory opinion, determines by a preponderance of the evidence that emissions of hazardous air pollutants by the source will cause an unacceptable threat of actual health effects to persons living in the vicinity of such source, the commission may then promulgate additional technology-based control regulations, pollution prevention, or health-based measures to protect the public health. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(III) This paragraph (h) shall remain effective only until such time as the commission acts pursuant to its authority under paragraph (a) of this subsection (4).

(5) (a) The substances listed in or pursuant to section 112(b) of the federal act, and the following substances, are declared to be hazardous air pollutants and are subject to regulation by the commission under this section:

Chemical Abstract Service Number	Chemical
(I) 50-18-0	Cyclophosphamide
(II) 50-32-8	Benzo(a)pyrene
(III) 52-24-4	Tris(aziridinyl)-phosphine sulfide
(IV) 52-24-4	Thio-tepa
(V) 53-70-3	Dibenz[a,h]anthracene
(VI) 55-98-1	1,4-butanediol dimethanesulphonate
(VII) 56-53-1	Dirthylstulresterol

(VIII)	56-55-3	Benz[<i>a</i>]anthracene
(IX)	70-25-7	N-methyl-n-nitro-n-nitrosoguanidine
(X)	78-98-8	Methylglyoxol
(XI)	115-28-6	Chlorendic acid
(XII)	117-10-2	Chrysazin
(XIII)	122-60-1	Phenyl glycidyl ether
(XIV)	132-27-4	2-biphenylol sodium salt
(XV)	154-93-8	Bischloroethyl nitrosourea
(XVI)	298-81-7	8-methoxypsoralen
(XVII)	299-75-2	Treosulphan
(XVIII)	305-03-3	Clorambucil
(XIX)	370-67-2	Azactidine
(XX)	366-70-1	Procarbazine hydrochloride
(XXI)	446-86-6	Azathioprine
(XXII)	484-20-8	5-methoxypsoralen
(XXIII)	494-03-1	Chlornaphazine
(XXIV)	590-96-5	Methanol, (methyl-onn-azoxy)
(XXV)	607-57-8	2-nitrofluorene
(XXVI)	615-53-2	N-nitroso-n-methylurethane
(XXVII)	817-09-4	Trichlormethine
(XXVIII)	1188-47-2	Nitrilotriacetic acid, copper(2+) salt(1:1)
(XXIX)	1188-48-3	Nitrilotriacetic acid, magnesium salt(1:1)
(XXX)	1309-64-4	Antimony oxide
(XXXI)	1317-98-2	Valentinite
(XXXII)	1402-68-2	Aflatoxins
(XXXIII)	2399-81-7	Nitrilotriacetic acid, beryllium salt(1:1)
(XXXIV)	2399-83-9	Nitrilotriacetic acid, barium salt(1:1)
(XXXV)	2399-85-1	Nitrilotriacetic acid, tripotassium salt
(XXXVI)	2399-86-2	Nitrilotriacetic acid, dipotassium salt
(XXXVII)	2399-87-3	Nitrilotriacetic acid, beryllium potassium salt(1:1)
(XXXVIII)	2399-88-4	Nitrilotriacetic acid, potassium magnesium salt(1:1:1)
(XXXIX)	2399-89-5	Nitrilotriacetic acid, potassium strontium salt(1:1:1)
(XL)	2399-94-2	Nitrilotriacetic acid, calcium salt(1:1)
(XLI)	2455-08-5	Nitrilotriacetic acid, calcium potassium salt(1:1:1)
(XLII)	2475-45-8	Disperse blue 1
(XLIII)	2646-17-5	Cl solvent orange2
(XLIV)	3130-95-8	Nitrilotriacetic acid, scandium (3+) salt (1:1)
(XLV)	3438-06-0	Nitrilotriacetic acid, neodymium (3+) salt (1:1)
(XLVI)	5064-31-3	Nitrilotriacetic acid, trisodium salt
(XLVII)	5522-43-0	1-nitropyrene
(XLVIII)	5798-43-6	Nitrilotriacetic acid, disodium salt, compound with oxo (dihydrogen nit)
(XLIX)	7496-02-8	6-nitrochrysene
(L)	10042-84-9	Nitrilotriacetic acid, sodium salt (unspecified)
(LI)	10043-92-2	Radon decay products
(LII)	10413-71-5	Nitrilotriacetic acid, erbium(3+) salt (3:1)
(LIII)	12412-52-1	Senarmonite
(LIV)	12510-42-8	Erionite
(LV)	13010-47-4	1-(2-chloroethyl)-3-cyclohexyl-1-nitrosourea
(LVI)	13909-09-6	1, (2-chloroethyl)-3-(4 methyl-cyclohexyl)-1 nitrosourea
(LVII)	14695-88-6	Nitrilotriacetic acid, compound with iron chloride, as /fecl3/
(LVIII)	14807-96-6	Talc (containing asbestos fibers)

- (LIX) 14981-08-9 Nitriлотriacetic acid, calcium salt
- (LX) 15414-25-2 Nitriлотriacetic acid, yttrium (3+) salt (1:1)
- (LXI) 15467-20-6 Nitriлотriacetic acid, disodium salt
- (LXII) 15663-27-1 Cisplatin
- (LXIII) 15844-52-7 Nitriлотriacetic acid, copper (2+) complex
- (LXIV) 15934-02-8 Nitriлотriacetic acid, monoammonium salt
- (LXV) 16448-54-7 Nitriлотriacetic acid, iron (3+) complex
- (LXVI) 16568-02-8 Gyromitrin
- (LXVII) 18105-03-8 Nitriлотriacetic acid, mercury (2+) salt (2:3)
- (LXVIII) 18432-54-7 Nitriлотriacetic acid, cadmium (2+) complex
- (LXIX) 18540-29-9 Chromium compounds, hexavalent
- (LXX) 18662-53-8 Nitriлотriacetic acid, trisodium salt monohydrate
- (LXXI) 18946-94-6 Nitriлотriacetic acid, neodymium (3+) salt (1:1)
- (LXXII) 18983-72-7 Nitriлотriacetic acid, beryllium potassium salt (1:1)
- (LXXIII) 18994-66-6 Nitriлотriacetic acid, monosodium salt
- (LXXIV) 19010-73-2 Nitriлотriacetic acid, aluminium (3+) complex

- (LXXV) 19456-58-7 Nitriлотriacetic acid, indium (3+) complex
- (LXXVI) 22965-60-2 Nitriлотriacetic acid, nickel (3+) complex
- (LXXVII) 23214-92-8 Adriamycin
- (LXXVIII) 23255-03-0 Nitriлотriacetic acid, disodium salt, monohydrate
- (LXXIX) 23319-51-9 Nitriлотriacetic acid, cobalt (3+) complex
- (LXXX) 23555-96-6 Nitriлотriacetic acid, potassium strontium salt (2:4:1)
- (LXXXI) 23555-98-8 Nitriлотriacetic acid, calcium potassium salt (2:1:4)
- (LXXXII) 25817-24-7 Nitriлотriacetic acid, potassium salt
- (LXXXIII) 28444-53-3 Nitriлотriacetic acid, monopotassium salt
- (LXXXIV) 28027-38-0 Nitriлотriacetic acid, holmium salt
- (LXXXV) 29027-90-5 Nitriлотriacetic acid, cerium salt
- (LXXXVI) 29507-58-2 Nitriлотriacetic acid, zinc (3+) complex sodium salt
- (LXXXVII) 32685-17-9 Nitriлотriacetic acid, triammonium salt
- (LXXXVIII) 34831-02-2 Nitriлотriacetic acid, copper (2+) hydrogen complex
- (LXXXIX) 34831-03-3 Nitriлотriacetic acid, nickel (2+) hydrogen complex
- (XC) 36711-58-7 Nitriлотriacetic acid, manganese salt
- (XCI) 42397-64-8 1,6-dinitropyrene
- (XCII) 42397-65-9 1,8-dinitropyrene
- (XCIII) 46242-44-8 Nitriлотriacetic acid, antimony (3+) complex
- (XCIV) 50618-02-7 Nitriлотriacetic acid, tricadium (2+) complex
- (XCV) 53108-47-7 Nitriлотriacetic acid, copper (2+) complex sodium salt
- (XCVI) 53108-50-2 Nitriлотriacetic acid, cobalt (3+) hydrogen

	complex	
(XCVII)	53818-84-1	Nitrilotriacetic acid, tin (2+) salt
(XCVIII)	54749-90-5	Chlorozotocin
(XCIX)	57835-92-4	4-nitropyrene
(C)	59865-13-3	Cyclosporin A
(CI)	60634-45-9	Nitrilotriacetic acid, calcium sodium salt (1:1:1)
(CII)	60153-49-3	3-(n-nitrosomethylamino) propionitrile
(CIII)	61017-62-7	Nitrilotriacetic acid, iron (2+) complex sodium salt (1:1:1)
(CIV)	62450-06-0	trp-p-1
(CV)	62450-07-1	trp-p-2
(CVI)	64091-91-4	Ketone, 3-pyridyl3- (n-methyl-n-nitrosoamino) propyl
(CVII)	67730-10-3	2-aminodipyrido[1,2-a3,2- d]imidazole
(CVIII)	66730-11-4	2-amino-6- methyldipyrido[1,2-a32- d]imidazole
(CIX)	68006-83-7	2-amino-3-methyl- 9h-pyrido[2,3-b]indole
(CX)	69679-89-6	Nitrilotriacetic acid, calcium salt (2:3)
(CXI)	71484-80-5	Nitrilotriacetic acid, copper (2+) complex ammonium salt
(CXII)	72629-49-3	Nitrilotriacetic acid, dilithium salt
(CXIII)	73772-91-5	Nitrilotriacetic acid, magnesium salt
(CXIV)	76180-96-6	2-amino-3- methylimidazo[4,5- f]quinoline
(CXV)	79217-60-0	Cyclosporine
(CXVI)	79849-02-8	Nitrilotriacetic acid, lead (2+) salt (1:1)
(CXVII)	79915-08-5	Nitrilotriacetic acid, lead (2+) potassium salt (1:1:1)
(CXVIII)	79915-09-6	Nitrilotriacetic acid, lead (2+) salt (2:3)
(CXIX)	80508-23-2	N-nitrosornornicotine
(CXX)	86892-89-9	Nitrilotriacetic acid, disodium ammonium salt
(CXXI)	92474-39-0	Nitrilotriacetic acid, trisilver salt
(CXXII)	92988-11-9	Nitrilotriacetic acid, strontium sodium salt
(CXXIII)	108171-26-2	Chlorinated paraffins (c12, 60% chlorine)
(CXXIV)	309-00-2	Aldrin
(CXXV)	60-57-1	Dieldrin
(CXXVI)	55-18-5	N-nitrosodiethylamine
(CXXVII)	319-84-6	L-hexachlorocyclohexane
(CXXVIII)	608-73-1	Hexachlorocyclohexane-tech
(CXXIX)	7644-41-0	1,4 dichloro-2-butene
(CXXX)	924-16-3	N-nitroso-d-n-butyl-amine

(b) The commission may promulgate a regulation which amends by adding to, or deleting from, the list of hazardous air pollutants subject to regulation under this section within the state which are not listed as hazardous air pollutants under the federal act. In amending the list of hazardous air pollutants in paragraph (a) of this subsection (5), the commission shall utilize the same standards and criteria which section 112 of the federal act requires the administrator to utilize in amending the list of hazardous air pollutants under the federal act. The commission shall refer any such proposed amendment to the air

quality science advisory board for an advisory opinion prior to conducting a proceeding under this paragraph (b).

(c) The commission shall by regulation establish de minimis emission levels for each hazardous air pollutant beneath which levels emissions are considered to be of minor significance.

(d) The rule-making authorized under paragraphs (b) and (c) of this subsection (5) shall include a hearing to allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(e) Proceedings of the commission to amend the list of hazardous air pollutants under paragraph (b) of this subsection (5) shall be conducted on a substance-by-substance basis and there shall not be a consolidation of proceedings wherein more than five substances are considered for listing as a hazardous air pollutant in one proceeding.

Source: L. 92: Entire section added, p. 1180, § 13, effective July 1. L. 94: (2) amended, p. 1419, § 2, effective May 25; (4)(h)(I)(A) and (4)(h)(II) amended, p. 2782, § 499, effective July 1. L. 96: (1) amended, p. 1257, § 150, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

40-2-123. New energy technologies - consideration by commission - incentives - demonstration projects.

(1) The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases. The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys.

(2) (a) The commission shall consider proposals by Colorado electric utilities to propose, fund, and construct integrated gasification combined cycle generation facilities to demonstrate the feasibility of this clean coal technology with the use of western coal and with carbon dioxide capture and sequestration.

(b) As used in this subsection (2):

(I) "IGCC project" means an IGCC facility that:

(A) Demonstrates the use of IGCC technology to generate electricity using Colorado or other western coal;

(B) Does not exceed three hundred fifty megawatts nameplate capacity; except that it may exceed this capacity if the commission determines that a larger size is necessary to obtain the benefits of federal cost-sharing, financial grants or tax benefits, or other financial opportunities or arrangements benefitting the project, including opportunities to jointly develop the project with other electric utilities;

(C) Demonstrates the capture and sequestration of a portion of the project's carbon dioxide emissions;

(D) Includes methods and procedures to monitor the fate of the carbon dioxide captured and sequestered from the facility; and

(E) Is located in Colorado.

(II) "Integrated gasification combined cycle generation facility" or "IGCC facility" means a facility that converts coal to a gaseous fuel from which impurities are removed prior to combustion, uses the gaseous fuel in a combustion turbine to produce electricity, and captures the waste heat from the combustion turbine to drive a steam turbine to produce more electricity. An IGCC facility may also use natural gas, in addition to gasified coal, as a fuel in the combustion turbine.

(c) A public utility may apply under this subsection (2) to the commission for a certificate of public convenience and necessity and for cost recovery for one IGCC project. The utility's application shall demonstrate why the utility should be granted a waiver of the commission's rules requiring competitive resource acquisition. In addition, in its application, the utility shall set forth information concerning:

(I) The proposed IGCC project's economic and technical feasibility;

(II) Its near-term and future commercial development potential;

(III) Its projected efficiency;

(IV) The projected cost of the project, the projected incremental average rate impact expected from the project, and the form of rate recovery requested by the utility; and

(V) Other relevant information as the commission may require.

(d) In its application, the public utility seeking to build an IGCC project shall also provide information concerning the following environmental matters:

(I) The IGCC project's projected water savings, emission rates, and other environmental benefits;

(II) Any environmental and public safety impacts of the project;

(III) The capture and sequestration of a portion of the project's carbon dioxide emissions and the proposed level of carbon dioxide to be captured and sequestered from the IGCC project;

(IV) An analysis of the economic implications and technical feasibility of different levels of carbon capture and sequestration; and

(V) Other relevant information as may be required by the commission.

(e) (I) The commission shall provide an opportunity for public comment and evidentiary hearing on the public utility's application. The commission shall determine whether the purposes of this section and the public interest are served by waiving the commission's rules to grant the utility a certificate of public convenience and necessity to construct the IGCC project instead of requiring the utility to acquire resources in accordance with the commission's rules requiring competitive resource acquisition. If the commission grants the utility a certificate of public convenience and necessity for the proposed IGCC project, the commission shall issue a declaratory order for cost recovery in accordance with paragraphs (f) and (g) of this subsection (2). In making its determination, the commission shall consider whether the project can be constructed for reasonable cost and rate impact, taking into account the breakthrough nature of the project.

(II) In evaluating a project under this section, in addition to the considerations set forth in subsection (1) of this section, the commission shall consider the factors set forth in paragraphs (c) and (d) of this subsection (2) and the amount of federal, state, or other moneys available for the project. Nothing in this section shall be construed to require the commission to monetize the potential environmental benefits associated with a proposed IGCC project.

(f) (I) A public utility shall be entitled to fully recover, through a separate rate adjustment clause from its Colorado retail customers, the costs that it prudently incurs in planning, developing, constructing, and operating an approved IGCC project, net of any federal or state funds received for such IGCC project. The rate adjustment clause may be terminated by the commission if all of the planning, development, construction, and operating costs of the IGCC project have been included in the public utility's base rates as a result of a rate case filed after the IGCC plant commences operation. Capital investments made by a utility in connection with an approved IGCC project shall be recoverable over the useful life of the project. To provide additional encouragement to utilities to pursue the development of an IGCC project, the commission shall approve current recovery by the utility through the rate adjustment clause of the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, for expenditures on an IGCC project during the construction, startup, and implementation phases of the IGCC project.

(II) If a public utility's wholesale sales are subject to regulation by the federal energy regulatory commission, and if the public utility sells power on the wholesale market from an IGCC project developed pursuant to paragraph (a) of this subsection (2), the commission shall determine whether to assign a portion of the IGCC project's cost of service to be recovered from the public utility's wholesale customers. The commission may make such assignment to the extent that it does not conflict with the

public utility's wholesale contracts entered into before April 1, 2006.

(III) If the commission makes an assignment of costs pursuant to subparagraph (II) of this paragraph (f), the public utility may apply to the federal energy regulatory commission for recovery, effective on the date of filing of the application, of the portion of the IGCC project's costs assigned to the public utility's wholesale customers. During the pendency of such application, the commission shall permit the public utility to recover the portion of costs assigned to the public utility's wholesale customers from its retail customers.

(IV) Notwithstanding subparagraph (III) of this paragraph (f), if the public utility fails to apply to the federal energy regulatory commission within six months after the commission's final order assigning a portion of the IGCC project's costs to the public utility's wholesale customers, or if the public utility fails to make a diligent, good faith effort to persuade the federal energy regulatory commission to approve the cost recovery from the public utility's wholesale customers, the public utility shall not be entitled to recover the assigned portion of the IGCC project costs from its retail customers.

(V) All revenues that a public utility receives from its wholesale customers for the IGCC project's costs shall be credited as an offset to the IGCC project's costs charged to the public utility's retail customers.

(g) If the commission approves the utility's application, the utility shall be entitled to recover the full life-cycle capital and operating costs associated with an IGCC project unless the commission finds such costs to be imprudent after fully taking into account the technical and financial challenges and uncertainties associated with the project. During the initial startup and testing period, to be determined by the commission as part of the application for a certificate of public convenience and necessity, the utility shall be entitled to recover through an adjustment clause any additional costs for electricity purchased as a result of planned and unplanned outages of an IGCC project. In structuring the adjustment clause, the utility's return on investment in an IGCC project from time to time shall be limited to the utility's most recent commission-approved return on investment in other utility generation facilities.

(h) Following the initial startup and testing period, the public utility shall be entitled to recover through an adjustment clause any additional costs for electricity purchased as a result of planned and unplanned outages of an IGCC project in the same manner, and under the same terms and conditions, as are applicable to non-IGCC projects. After the IGCC project achieves commercial operation, the public utility shall report on the cost and performance of the IGCC project. After investigation and public hearing, the commission may, on its own motion, order shutdown, decommissioning, or repowering of the IGCC project if it finds that continued operation would be contrary to the public interest. The public utility shall be entitled to full recovery of the prudently incurred costs associated with the shutdown, decommissioning, or repowering of the IGCC project.

(i) If the commission determines that the public utility should be granted a waiver of the commission's rules requiring competitive resource acquisition and that the incremental cost and rate impact of the IGCC facility to be reasonable, taking into account the breakthrough nature of the project, the factors set forth in paragraphs (c) and (d) of this subsection (2), and the amount of federal, state, or other moneys available for the project, the commission shall authorize the project as an appropriate component of a utility's resource plan.

(j) In order to reduce the cost to Colorado consumers of an IGCC project, the department of public health and environment, the governor's office of economic development, and the governor's office of energy management and conservation may provide public utilities with reasonable assistance in seeking and obtaining financial and other support and sponsorship for a project from the United States congress, the United States department of energy, and other appropriate federal and state agencies and institutions.

To obtain this assistance, the utility may provide to these state agencies copies of its IGCC project proposal. The governor's office of energy management and conservation shall manage and distribute to the utility some or all of any funds provided by the state of Colorado or by the United States government to the state of Colorado for purposes of study or development of an IGCC project.

(k) To encourage advanced coal technology, which should lead to lower emissions and other environmental benefits compared to conventional coal-fired generation, financial support for the study, engineering, and development of an IGCC facility shall be appropriated from the clean energy development fund created in section 24-22-118, C.R.S. The utility shall report to the commission the results of its study, irrespective of whether the utility files an application with the commission under paragraph (c) of this subsection (2).

(l) To facilitate financing of an IGCC project, one or more public utilities may develop, construct, or own an IGCC facility through a special purpose entity or other affiliated partnership or corporation. If such an ownership structure is employed, the utility or utilities may apply to the commission for a waiver of the commission's rules requiring competitive resource acquisition. If the commission determines that the purposes of this section and the public interest are served by granting the waiver, the utility or utilities may enter into a power purchase agreement with the owner of the IGCC facility that provides compensation to the facility owner for its costs and provides a reasonable return on investment. Public utility payments made under such a power purchase agreement shall be recoverable through a rate adjustment clause on a timely basis.

(m) (I) Nothing in this subsection (2) shall be construed to prohibit a utility from proposing to acquire, through the commission-approved resource planning and acquisition processes, power and energy derived from an IGCC facility developed by the utility or by contract from an affiliate of the utility or from an owner of an IGCC facility not affiliated with the utility. Nothing in this section shall prevent a utility from applying for a certificate of public convenience and necessity to construct more than one IGCC facility.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (m), a utility may request a waiver of the commission's rules requiring competitive resource acquisition pursuant to this subsection (2) for only one IGCC project.

Source: L. 2001: Entire section added, p. 1524, § 4, effective August 8. L. 2006: Entire section amended, p. 1413, § 2, effective June 1.

Editor's note: Subsection (2)(k) contains a reference to the clean energy development fund in section 24- 22- 118, C.R.S.; however, the fund does not exist. The fund was originally created in the introduced version of House Bill 06-1281 but was taken out before it was enacted.

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 300, Session Laws of Colorado 2006.

ATTACHMENT 1

Initiative Title Setting Review Board

Wednesday, April 2, 2008

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

Proposed Initiative 2007-2008 #83

Fees on Energy Emissions

TRANSCRIPT FROM AUDIO CD

Board Members:

William A. Hobbs
Daniel D. Domenico
Sharon Hubanks

Also Present:

Cesi Gomez

Diane M. Overstreet
Registered Professional Reporter
Certified Realtime Reporter

A P P E A R A N C E S

For Clean Energy Progress:

J. THOMAS MCKINNON
SAMUEL P. WEAVER
JERRY TODD

For the Opponents:

MARIAN C. (MIMI) LARSEN

SCOTT GESSLER
SUE RADFORD

P R O C E E D I N G S

MR. HOBBS: So with that, I'd like to turn to the first agenda item, 2007-2008, No. 83, Fees on Energy Emissions. And if we could hear from the proponents first. Whoever is representing the proponents, if somebody could come forward, and we'll see if we have any questions from the board.

If you'll introduce yourself for the record, please, sir.

MR. MCKINNON: Yes, sir. My name is J. Thomas McKinnon with Clean Energy Progress.

MR. HOBBS: Let me find out first, do the board members have any questions about the measure? Ms. Hubanks?

MS. HUBANKS: If you could, in terms of the provision in Subsection 4 of your measure, which has a reference to sort of existing funding levels for the types of programs and activities that this measure focuses on, it makes a statement about "Existing programs shall not be repealed or reduced in consideration of this measure." And I'm -- in trying to get an idea of what you intend by that language, does that mean that the general assembly can never change those programs or change

any funding levels for those types of programs, or could you just give me a little bit more detail on the meaning of that provision?

MR. MCKINNON: Okay. Well, our intent was that existing programs had to do with renewable energy and energy efficiency would not be eliminated with the new revenues from the Clean Energy Progress fund. Would it be never? I guess because it's a statute, it could be later. But at least at year one, it was the additional revenues for these.

MS. HUBANKS: Would it be possible that the general assembly could change funding levels based on other considerations such as -- I mean, not necessarily because there's this new revenue source that would be provided by your measure but because, let's say, there's a general economic downturn and a shortage of state revenues? I mean, in terms of sort of the normal budgetary decisions that the general assembly makes on a year-to-year basis? I'm just curious of whether you're sort of trying to freeze the funding level for those programs.

MR. MCKINNON: That was not the intent. So the sort of existing budget would be

1 dealt with as it would normally be dealt with. Our
2 intent was because there would be new revenue
3 coming in for renewable energy, energy efficiency
4 and so on, that other existing budget items would
5 not be reduced. (Inaudible) what we're trying to
6 do.

7 MS. SUBANKS: And then my other
8 question is sort of me just getting a better idea
9 of sort of the bottom line of this measure. I
10 mean, understanding that the fee is imposed sort of
11 on a very large scale, I mean, in terms of the
12 consumption of natural gas or the generation of
13 electricity. But could you, just to give me a
14 better picture, bringing it down to sort of an
15 individual user or the end user concept? I mean,
16 when you take that fee and bring it down to, say, a
17 utility bill for an average household, you know,
18 residential household, can you bring it down to
19 sort of that level just to give me an idea of what
20 we're talking about?

21 MR. MCKINNON: Yeah. We've worked
22 those numbers using Department of Energy figures
23 and Xcel Energy and different sources of an average
24 household use in Colorado. And it works out to
25 about \$2.50 per month. And I think the breakdown

1 advance a new energy economy and reduce global
2 warming in Colorado. In fact, Initiative 83
3 proposes more than one subject and has at least two
4 distinct and separate purposes which are not
5 dependent upon or connected with each other.
6 Initiative 83 will impose a fee on consumers for
7 carbon emissions, usurp the authority granted to
8 the Colorado Public Utilities Commission by the
9 Colorado constitution, usurp the authority granted
10 to the Colorado Department of Health and
11 Environment by the general assembly, and impose a
12 new regulatory mechanism on the carbon emitters in
13 the state.

14 Initiative 83 has the effect of
15 impermissibly repealing portions of the Colorado
16 constitution by statute without specifically
17 identifying those provision that will be actively
18 repealed. Article 25 of the Colorado constitution
19 confers upon the PUC the authority to regulate --
20 to, quote, regulate the facilities, service and
21 rates and charges therefore, including facilities
22 and service rates and charges therefore within home
23 rule cities and home rule towns, end quote.

24 Further, under the Colorado
25 constitution, the general assembly is the only

1 was about two-thirds on electricity and one-third
2 on gas.

3 MS. SUBANKS: Thank you.

4 MR. HOBBS: Are there any other
5 questions for Mr. McKinnon? If not, then let's
6 turn to consideration of whether the measure
7 complies with the single subject requirement.

8 Mr. McKinnon, I'm assuming the
9 proponents think it does. So maybe it would be
10 good to hear if there's -- I have other people
11 signed up, to find out if there's anybody else who
12 wishes to oppose the measure on the grounds of
13 single subject. Okay. If you'll come forward and
14 identify yourself and give us your comments,
15 please. And then, Mr. McKinnon, I will give you an
16 opportunity, and others, to respond.

17 MS. LARSEN: Thank you. My name is
18 Mimi Larsen, and I'm here today on behalf of a
19 registered elector who is unable to be in
20 attendance at the hearing. And I'm presenting
21 their statement which strongly urges the board to
22 find that the initiative fails to meet the single
23 subject requirement. On its face Initiative 83
24 claims to only impose a fee on consumers for carbon
25 emissions, the proceeds of which would be used to

1 entity that may have altered the designation of the
2 PUC as the agency charged with such regulation.
3 Nowhere in such regulation is the PUC granted with
4 any authority to regulate the proposed carbon fee.
5 The amount of the carbon fee is set forth in the
6 proposed statute, and the governor's office is
7 granted the authority to administer the funds to
8 reduce global warming. Under Initiative 83, the
9 PUC is merely the entity that energy providers will
10 remit to these two for deposit with the state
11 treasury.

12 As it proposes to do to the PUC, the
13 initiative would usurp the authority granted to the
14 Colorado Department of Health and Environment to
15 promulgate emission control regulations pertaining
16 to carbon oxides and reassign that authority to the
17 departments of agriculture and natural resources.
18 The initiative, at Section 16, mandates that a
19 carbon sequestration program be implemented after
20 the consultation with the departments of
21 agriculture and natural resources. Further, the
22 implementation of the carbon sequestration program
23 is a separate and distinct policy and a regulatory
24 proposal from the proposal to impose a fee on
25 consumers to reduce global warming pollution and to

1 fund the new energy economy. And this is a very
 2 important point in that to implement a new
 3 regulatory mechanism of carbon sequestration will
 4 involve a whole host of issues that would have to
 5 be considered, including who would be liable, how
 6 the carbon emitters would actually sequester the
 7 carbon, where it would be placed, what reservoir.
 8 There are a whole host of issues that will come
 9 forth from this proposal that cannot be adequately
 10 addressed in just this one proposal.

11 As the Colorado Supreme Court has
 12 stated, "Any initiative that joins multiple
 13 subjects poses the danger of voter surprise and
 14 fraud occasioned by the inadvertent passage of
 15 surreptitious provision coiled up in the folds of
 16 the flex initiative."

17 And that was a quote from the ballot
 18 and submission clause and summary for the 2001-2002
 19 Initiative No. 43.

20 The initiative succeeds in joining
 21 multiple subjects. It will reassign the authority
 22 granted to the PUC and the Department of Health and
 23 Environment by the state's constitution and the
 24 general assembly to other entities. And it results
 25 in promulgating a new regulatory compliance

1 impose a new regulatory mechanism on carbon
 2 emitters in the state.

3 MR. HOBBS: Could you just tie --
 4 picking one of those, usurping the authority of the
 5 PUC, for example, can you point me to the language
 6 in the measure that that relates to?

7 MS. LARSEN: Yes. By -- let's see.
 8 There, the proponents have proposed that the fee of
 9 the rate of \$3 per metric ton will be imposed upon
 10 energy consumers. Currently, the Colorado PUC is
 11 the entity that would regulate which fees and
 12 charges will be passed on to energy consumers. So
 13 in section 3(A) and 3(B), where the initiative
 14 provides that this rate will be implemented and
 15 passed on to the energy consumers of Colorado, and
 16 3(C), where it provides that the entity providing
 17 the energy to the end user will be responsible for
 18 collecting those emissions -- or that fee and then
 19 remitting it back to the state.

20 At some point, the PUC, under the
 21 Colorado constitution, would have the authority to
 22 determine whether or not this fee will, in fact, be
 23 passed on and assessed to energy users. The
 24 initiative as it's stated currently does not allow
 25 for that to happen. It does not allow for the

1 program.

2 It is not clear from the stated
 3 intent of the initiative that the carbon fee will
 4 result in any of these actions. The initiative, at
 5 this point, is essentially something to propose
 6 that it takes one minor issue, almost like one
 7 little mouse in the room but, in fact, you have
 8 three elephants that are there that are
 9 overwhelming this one issue that they're attempting
 10 to propose.

11 For these reasons, the board is
 12 respectfully requested to find that Initiative 83
 13 violates the single subject requirement.

14 MR. HOBBS: Questions for
 15 Ms. Larsen?

16 Could you list again the separate
 17 subjects that you're identifying in this measure?

18 MS. LARSEN: Yes. The first one is
 19 it will impose a fee on consumers for carbon
 20 emissions. The second subject is usurps the
 21 authority granted to the Colorado Public Utilities
 22 Commission by the Colorado constitution and also
 23 the general authority. It usurps the authority
 24 granted to the Colorado Department of Health and
 25 Environment by the general assembly. And it will

1 PUC . . .

2 MR. HOBBS: Mr. Domenico?

3 MR. DOMENICO: I'm happy to say I'm
 4 not an expert in PUC's authorities and practices.
 5 But is it your position that the legislature,
 6 because of the PUC, has the constitutional
 7 authority to set utility rates, the legislature
 8 can't -- or the people, through statute, can't set
 9 any taxes or fees for electric use or utility use?
 10 I mean, doesn't the legislature already impose a
 11 tax on utility use, or am I imagining that?

12 MS. LARSEN: Well, as provided in
 13 the constitution, the PUC is the entity that has
 14 the right to regulate and determine what fees and
 15 charges will be assessed on energy users. And the
 16 statute fails to take into consideration the role
 17 of the PUC with that measure.

18 MR. DOMENICO: Is it -- I understand
 19 that the PUC sets rates and some fees, but does it
 20 -- I guess my question is, are there already taxes
 21 or fees imposed outside of that on electricity and
 22 other energy use?

23 MS. LARSEN: I can't answer that
 24 directly. I haven't done an exhaustive review of
 25 what additional fees and charges are also assessed

1 on energy users. However, FUC is the entity, the
2 regulating entity, that would determine -- be able
3 to assess those fees and charges on energy
4 consumers.

5 MR. DOMENICO: Does it make a
6 difference for that analysis, for your analysis of
7 that, that this is couched as a fee rather than a
8 tax?

9 MS. LARSEN: Certainly there's a
10 question as to whether or not this is a fee and, in
11 fact, not really a tax.

12 MR. DOMENICO: I understand that.
13 But assuming it's a fee, is there a difference in
14 terms of what you've been saying is the FUC has the
15 authority to set rates and fees for energy use?
16 And then my question is, if that were true, could
17 still the legislature or the people, through an
18 initiative, set a tax but not a fee? Or is it your
19 position that the only -- that unless you're going
20 to amend the constitution, only the FUC has the
21 authority to do anything that affects your
22 electricity and natural gas bill?

23 MS. LARSEN: As the constitution
24 provides, it is only the FUC at this point that can
25 regulate those fees and services that are passed on

1 unconstitutional because of its effect on the
2 constitutional powers of the FUC -- maybe I'll just
3 focus on that one for now. Why is that necessarily
4 a separate subject? In other words, why is that a
5 separate and distinct subject that's unrelated to
6 the other portions of the measure?

7 MS. LARSEN: Well, as the initiative
8 is proposed, it is simply a measure to impose a fee
9 on carbon emissions. So consumers, when reading
10 this initiative, would assume that they're merely
11 going to be assessed a fee for each time they met
12 the metric ton requirement. However, beyond just
13 imposing a fee on consumers for essentially using
14 carbon, it attempts to go and be assigned authority
15 that has been granted to two entities, the FUC and
16 the Department of Health and Environment, the FUC's
17 authority stemming from the Colorado constitution
18 and the Department of Health and Environment by
19 statute. So voters are not necessarily going to be
20 able to go through, read this, and automatically
21 know that by voting yes for this proposal, they
22 will, in fact, be divesting the FUC of certain
23 authority and also divesting the Department of
24 Health and Environment the authority granted to it
25 by statute.

1 to energy consumers.

2 MR. DOMENICO: Okay. Can I ask a
3 question about the natural resources? What part of
4 the constitution do you read as giving exclusive
5 authority to the Department of Natural Resources to
6 run a program like energy -- like carbon
7 sequestration or something that relates to natural
8 resources?

9 MS. LARSEN: Actually, Colorado
10 Revised Statute, CRS 25-7-109, Section 2(C). That
11 statute provides that it is the authority of the
12 Department of Health and Environment to promulgate
13 emission control regulations. And the emission
14 control regulations include the regulation of
15 carbon oxides, which would be carbon dioxide, would
16 naturally fall under a carbon sequestration
17 program.

18 MR. DOMENICO: So that's just a
19 statutory conflict in your position?

20 MS. LARSEN: It is, yes, by statute.
21 The Department of Health and Environment is
22 authorized to oversee that.

23 MR. HOBBS: Let me ask a question
24 related to both of those issues. Assuming -- well,
25 regardless of whether the measure is

1 MR. HOBBS: I'm still having
2 difficulty seeing how those aren't just effects or
3 means by which the proponents are achieving their
4 purposes. They want to impose a fee or a tax to
5 fund certain purposes that -- and I'm not trying to
6 prejudge the right characterization of this, but to
7 fund activities of this related to global warming.
8 And the nature of the tax or the fee seems to be
9 related to the purpose for which the proponents are
10 trying to achieve results. And that sort of feels
11 like a single subject to me, even though there are,
12 like I say, different effects on how they are able
13 to carry out their purposes. I mean, the fact that
14 this particular fee is perhaps something that's
15 under the jurisdiction of the FUC constitutionally
16 doesn't necessarily make it a separate subject.

17 MS. LARSEN: Well, I would argue
18 that it would, because by going ahead and
19 attempting to implement an entire policy change,
20 that beyond the stated purpose of attempting to
21 reduce global emissions, that's fine. But the
22 manner in which they're attempting to also effect
23 that change results in significant policy changes
24 and structural changes as to how entities within
25 the Colorado government operate.

1 Also, going back to the carbon
2 sequestration program, that is a massive regulatory
3 mechanism that would be imposed upon industry in
4 Colorado, something that is greater than just an
5 attempt to reduce global emissions. It is a
6 regulatory program that would cause a great deal of
7 time and effort to implement, and it would bring up
8 issues of, you know, liability for entities in
9 Colorado who may -- who would be liable for the
10 sequestration program, just a whole host of issues
11 that are not, on its face, visibly evident when
12 reading this initiative.

13 MR. HOBBS: Well, I may be
14 belaboring this a bit, but I can see how a carbon
15 sequestration program is related to global warming.
16 What I'm looking for, as far as, you know, trying
17 to understand the argument here, is how is that,
18 you know, a distinct purpose that's unrelated to
19 the other portions of the measure?

20 MS. LARSEN: It would be -- at this
21 point, as it's proposed, the carbon sequestration
22 or the divesting of authority that is granted to
23 the FUC, those are issues that are not readily
24 evident to the voters when they read this
25 initiative. So the general goal of reducing global

1 sequestration.

2 MS. LARSEN: That's right.

3 MR. DOMENICO: All it says is that a
4 minimum 5 percent of the revenues from the measure
5 shall be used to implement carbon sequestration.
6 And then it gets into some details, saying, "The
7 paragraph shall be administered after consultation
8 with the Department of Agriculture and the
9 Department of Natural Resources."

10 And then carbon sequestration is
11 defined as "the removal of carbon dioxide from the
12 atmosphere. This term includes but is not limited
13 to the use of natural carbon sinks such as in soils
14 or forests in the form of increasing plant
15 biomass."

16 If I read that as giving -- creating
17 some massive new regulatory scheme, I think I might
18 agree with you that the measure would have a single
19 subject problem either in that it's creating a new
20 regulatory regime or maybe that it's doing
21 something surreptitiously or in a way that would
22 surprise most voters. Because I would be
23 surprised, reading that, if that imposed a massive
24 new -- Or even authorized a massive new regulatory
25 scheme.

1 emissions, while that may be effected through
2 proposing new programs and initiatives in this --
3 those taxes, it goes far beyond just attempting to
4 reduce global emissions. It's divesting the FUC of
5 authority, it is divesting the Department of Health
6 and Environment of authority to monitor these
7 programs and implement these programs. And carbon
8 sequestration, in and of itself, is going to be a
9 massive new regulatory policy that, while one may
10 attempt to argue that it's related to the reduction
11 of global warming emissions, it, in and of itself,
12 is a regulatory scheme that is far greater and
13 could result in entirely separate new regulatory
14 schemes being put in place.

15 So again, by just reading the
16 initiative, it's not clear that these will be the
17 results of the initiative as it's proposed.

18 MR. HOBBS: Other questions?
19 Mr. Domenico?

20 MR. DOMENICO: Why would -- I can
21 see how carbon sequestration could, in some
22 circumstances, be a massive regulatory project, but
23 all that this measure does that I can see is in --
24 wherever that is, on 6(C), right, I mean, other
25 than -- that's the part that implements carbon

1 As I read it, the state can spend
2 some money to figure out how to sequester carbon by
3 planting trees and the like. I don't see in there
4 the authority to create a new regulatory regime or
5 the requirement to do that. Because if another --
6 if there's going to be another regulatory regime
7 that springs out of this idea, it would seem to
8 probably require something beyond this.

9 MS. LARSEN: Well, as the definition
10 provides, carbon sequestration will include but
11 it's not limited to natural carbon sinks, et
12 cetera. Typically within carbon sequestration
13 plans, one may achieve carbon sequestration through
14 the use of biomass, forestry, things of that
15 nature. However, most generally, carbon
16 sequestration plans will actually involve the
17 implementation of carbon sequestration at the
18 source of the emissions. So that will result in
19 emitters within Colorado industries, Xcel or any
20 other carbon emitters, large energy producers,
21 small energy producers, having to implement carbon
22 sequestration in their facilities.

23 And the language in 6(C) does
24 provide that "Revenue shall be used annually to
25 implement carbon sequestration in Colorado." And I

1 think, as you point out, right now the language, as
 2 it's stated, says, "it shall be used to implement
 3 this program." The details of this are not
 4 necessarily addressed within the statute, so it's
 5 left up to, at some point, a debate whether or not
 6 that may involve just agricultural or forestry
 7 measures to implement carbon sequestration. But it
 8 certainly does not limit it to just implementing
 9 planting trees. And, in fact, most likely, to
 10 implement a carbon sequestration plan within
 11 Colorado you're going to have to look beyond just
 12 natural resources to implement that measure. It
 13 will come down on carbon emitters to also comply.
 14 And the compliance will result in a very large
 15 regulatory scheme to have to meet those.

16 MR. DOMENICO: All right. I have a
 17 question for the proponents, then, so we can move
 18 on.

19 MR. HOBBS: Ms. Eubanks?

20 MS. EUBANKS: If I could go back to
 21 Mr. Domenico's question regarding your argument
 22 involving the PUC's authority to regulate rates and
 23 all. I just need to be clear in terms of what your
 24 argument -- is it that you think that the measure
 25 violates Article 25 in terms of the authority

1 authority to another entity, to impose a fee on
 2 consumers for carbon issues, to change the
 3 authority granted to the Department of Health and
 4 Environment, and to implement a new regulatory
 5 scheme. Those are four distinct issues that
 6 they're attempting to couch under the tent of
 7 reducing global warming emissions. It's more than
 8 just reducing global warming when you're looking at
 9 changing the authority of two distinct entities
 10 within Colorado and imposing this regulatory scheme
 11 as well.

12 MS. EUBANKS: Thank you.

13 MR. HOBBS: Maybe you answered this,
 14 but now I'm not clear. Does the measure detract
 15 from the authority of the PUC? Other than setting
 16 a fee, does the measure in any way detract from the
 17 authority of the PUC?

18 MS. LARSEN: Not that I have stated.

19 MR. HOBBS: Okay. Any other

20 questions for Ms. Larsen? Thank you.

21 Is there anybody else who wishes to
 22 testify that the measure violates single subject?
 23 I'd like to finish hearing from anybody who opposes
 24 the measure on those grounds. If not, then I'll
 25 return to Mr. McKinnon, I guess, or whoever wants

1 granted in the constitution to the PUC, or is it
 2 because this is only a separate and distinct
 3 purpose of the measure because it's taking
 4 authority from the PUC, arguably, and giving it to
 5 the governor's office or whoever would be involved
 6 here with the fee?

7 MS. LARSEN: Both, actually, in that
 8 because Article 25 does provide that the PUC is the
 9 entity that will regulate fees charged to
 10 consumers, and also this initiative then takes that
 11 authority and grants it to another entity to
 12 oversee.

13 MS. EUBANKS: In terms of your
 14 constitutional argument, is it your position that
 15 neither the general assembly nor initiative
 16 proponents can in any way change, modify, usurp,
 17 reduce the authority of the PUC that's set forth in
 18 the constitution?

19 MS. LARSEN: Certainly the
 20 legislature, and by initiative, if one wanted to
 21 propose an initiative that plainly and succinctly
 22 states that this authority will be changed in the
 23 constitution, that may be done. However, within
 24 this initiative, it's attempting to do that to
 25 change the Colorado constitution to grant the

1 to speak for the proponents and respond to the
 2 arguments concerning single subject. Would you
 3 have -- I mean, if you have anything prepared, or
 4 we'll just see if there's any questions for you?

5 MR. MCKINNON: I would just like to
 6 make a few comments. The first, regarding the
 7 authority of the PUC, the city of Boulder has been
 8 doing this for -- since 2006. Well, it passed
 9 election in 2006 and started in 2007, very similar
 10 fee that we're proposing here. It's .0022 cents --
 11 dollars per kilowatt hour. And when that went
 12 through, there was no constitutional issues.

13 MR. DOMENICO: It's implemented in
 14 the same way, through the PUC collects -- or the
 15 providers collect it and give it to the PUC?

16 MR. MCKINNON: Xcel Energy collects
 17 it, and it ends up in the coffers of Boulder.

18 MR. DOMENICO: So it's on people's
 19 electric bills?

20 MR. MCKINNON: It's a line item on
 21 their electric bills.

22 The -- well, I'm just caught by
 23 surprise here. But it's our understanding that the
 24 state does collect sales tax on electricity.
 25 That's not under the purview of the (inaudible) --

1 that's our belief.

2 Regarding Subsection 6(C) on the

3 sequestration, I think I would agree with you,

4 Mr. Domenico, that this isn't regulatory, it's

5 setting aside some revenues that the state will use

6 to add sequestration programs. Some of it will be

7 in agricultural soil, some of it will be in

8 forestry. We put a maximum amount of two

9 percentage points that can be used in the geologic

10 sequestration. So that's what Ms. Larsen was

11 referring to in terms of collecting at the site and

12 putting carbon dioxide underground.

13 MR. DOMENICO: So it's your intent,

14 with that language, not to authorize some executive

15 branch entity to impose new regulations on

16 emitters, but instead, to fund programs, to

17 sequester the carbon that it produced in other

18 ways, right?

19 MR. MCKINNON: That's correct. And

20 that is the major component in Governor Ritter's

21 Colorado Affirmative Action Plan, the sequestration

22 in agricultural soils.

23 MR. DOMENICO: So that's meant to

24 fund planting trees or whatever the best technology

25 is, not to fund inspectors to go around and check

1 Tom covered most of my points in

2 response to the objections that were raised about

3 the single subject. But to recap, as you said,

4 it's to maximize the reduction of greenhouse gas

5 emissions in the state of Colorado. And if there

6 are any reassignments of authority, as the argument

7 went, they are all secondary to that main purpose.

8 In each case that was brought up by Ms. Larsen, Tom

9 addressed the PUC usurpation of authority with the

10 Boulder climate tax and the sales tax.

11 There's another one that I wanted to

12 bring to your attention, which is Amendment 37,

13 passed by the voters, imposes a requirement on the

14 mix of renewable energies and the overall energy

15 mix of the utilities. Subsequent measures which

16 are all legislated and statutory in nature, such as

17 last year's House bill 1201, doubled that renewable

18 energy standard. And so by the argument that's

19 being made that this is a separate thing, those PUC

20 authorities, as they were, were also somewhat

21 impacted by those other bills. But the point

22 wasn't to impact the PUC. The point, of course,

23 was to advance the purpose of those bills.

24 There's nothing in our measure, I

25 believe, to address the question that it usurps the

1 on Xcel's plants to make sure they're not spewing

2 too much?

3 MR. MCKINNON: That is correct.

4 MR. DOMENICO: All right.

5 MR. HOBBS: Mr. McKinnon, would it

6 be fair to characterize the central purpose of the

7 measure as to reduce global warming?

8 MR. MCKINNON: That's correct, yes.

9 That would be what we would --

10 MR. HOBBS: And in your review,

11 then, everything in the measure relates to that

12 purpose?

13 MR. MCKINNON: We think every

14 subsection in this points to that subject.

15 MR. HOBBS: Any other questions for

16 Mr. McKinnon? If not, thank you.

17 Is there anybody else who wishes to

18 comment concerning the question of whether or not

19 the measure complies with the single subject

20 requirement?

21 Yes, sir. If you'll identify

22 yourself and who you represent, please.

23 MR. WEAVER: Good morning. My name

24 is Sam Weaver, and I'm also with Clean Energy

25 Progress.

1 authority of the Department of Health and

2 Environment to regulate emissions. We say nothing

3 about that. In other words, if the Department of

4 Health and Environment were told by the legislature

5 to go out and regulate smokestack emissions through

6 a cap program, there's nothing in our measure which

7 says that that can't be done. So we don't feel

8 that we do anything to impact the authority of any

9 other government agency right now. And

10 that's . . .

11 The carbon sequestration issue, you

12 know, I think Tom covered that very well. But when

13 we were drafting this, our vision was that it's

14 money to fund implementation and research, such as

15 integration -- integrated gasification-combined

16 cycle plants, which do direct carbon sequestration

17 from that process of electricity generation.

18 MR. HOBBS: Thank you. Any

19 questions for Mr. Weaver? Thank you. Anybody

20 else? Then let's turn to board discussion of

21 whether the measure complies with the single

22 subject requirement. Is there any discussion? I

23 guess it does seem to me that the central purpose

24 is to reduce global warming and that it's hard for

25 me to see that there are separate and distinct

1 purpose: in the measure. It seemed like the
2 imposition of the fee and the specific purposes for
3 which the fee is to be devoted all relate to that
4 central purpose. And the different items that have
5 been discussed as potentially separate subject,
6 seems to me that they're, you know, means to that
7 result or they're results themselves. But it's
8 hard for me to see at this point that those are
9 separate subjects. But it's kind of where I am at
10 this point.

11 Ms. Eubanks?

12 MS. EUBANKS: I think I'm in
13 agreement with your comments. I would just like to
14 add that in terms of the setting of the amount of
15 the fee and whether that impacts the authority of
16 the FUC, I view that more of a statutory change
17 that is permitted under Article 25. But if by
18 chance there's some constitutional issue, I don't
19 believe that that's for us to determine. That's
20 for the courts to determine. And I don't think
21 that that is a factor. But I see it fitting just
22 like any other statute that may be enacted by the
23 general assembly or by voters, through an initiated
24 measure that's within the framework of Article 25.
25 And I just wanted to add that comment.

1 think if there's a constitutional problem with the
2 FUC or the health department, then those are
3 constitutional problems that we can't really
4 address. Just like if this is properly to be
5 considered a tax rather than a fee, that's not
6 really our issue. So I'm prepared to vote for it
7 as a single subject.

8 MR. HOBBS: I guess I'll go ahead
9 and move then that the board find that the measure
10 comprises a single subject and to set titles on the
11 measure.

12 MS. EUBANKS: I second that.

13 MR. HOBBS: That's been moved and
14 seconded by Ms. Eubanks.

15 Any further discussion? If not, all
16 those in favor say aye.

17 MS. EUBANKS: Aye.

18 MR. HOBBS: Aye.

19 MR. DOMENICO: Aye.

20 MR. HOBBS: All those opposed, no.

21 That motion carries three to zero.

22 And let's turn to the staff-prepared
23 drafts Ms. Gomez has displayed with the staff draft
24 on the screen.

25 And Mr. McKinnon, let me just ask

1 MR. DOMENICO: I think I tend to
2 agree. I think -- I'm not sure I can agree that
3 just because these are all related to reducing --
4 to trying to reduce global warming, that that would
5 be enough to make anything that could be related to
6 that permissible. That seems like an excessively
7 broad concept to constitute a single subject that
8 would fit anything under it. But I do think that
9 in this measure, the things are tied together
10 tightly enough under the idea of reducing
11 greenhouse gas emissions, and the fee is related to
12 that. All of the programs are related to that.
13 And I do think that there would have been -- there
14 could have been a problem more under the
15 surreptitious provision issue than kind of a
16 straight-up single subject problem if, in fact,
17 this carbon sequestration was going to create a
18 huge new regulatory body of some kind. But if all
19 it is is some money for the state to institute its
20 own incentives or its own programs, then that, to
21 me, seems to fit within the rest of the scheme. It
22 doesn't seem to be the sort of thing that would
23 really surprise anyone. I mean, since that's what
24 we've been assured is the meaning of that section,
25 I'm comfortable going ahead. I don't think -- I

1 you, on behalf of the proponents, have you had an
2 opportunity to review the staff draft, and do you
3 have any concerns or objections to the staff draft?

4 MR. MCKINNON: (Inaudible).

5 MR. HOBBS: Okay. No concerns?

6 Does anybody else wish to comment on
7 the staff draft? Seeing no one else who wishes to
8 comment --

9 Ms. Eubanks?

10 MS. EUBANKS: I would like to ask
11 the proponents a question about the format of the
12 staff draft. And the context in which I'm asking
13 this question is the staff draft currently follows
14 sort of the standard format for ballot questions
15 for most types of initiatives, but there is a
16 constitutional requirement under Article 10,
17 Section 20 that certain measures involving
18 increases in taxes start with other ballot
19 language. And knowing that your measure refers to
20 the charge imposed as being a fee, I'm just
21 curious, especially in light of what the courts
22 have told us about various types of pecuniary
23 charges, such as a fee is usually for -- imposed
24 for the cost of a service provided versus the
25 provision of sort of general governmental purposes.

1 And I would just be interested in your take as to
2 why the title shouldn't start out "Shall state tax
3 be increased by a certain amount"?

4 MR. MCKINNON: The basic question is
5 why we're a fee as opposed to a tax?

6 MS. EUBANKS: Obviously, you can
7 call your charge anything you want in your measure.
8 I'm not really going after that. But in terms of
9 -- at least from the general assembly's
10 perspective, the courts have said that they won't
11 necessarily be controlled by what a charge is
12 called and that they'll go to the nature of the
13 charge imposed in determining what type of charge
14 it is. And although you call it a fee, I'm just
15 curious in terms of any thoughts you may have as to
16 whether or not we shouldn't start the ballot
17 question off by saying "Shall state taxes be
18 increased by the imposition of a fee." I'm not
19 advocating that we're changing what you're calling
20 it, but in terms of how we start the ballot
21 question, whether you have any thoughts about that.

22 MR. MCKINNON: Okay. I can't
23 comment specifically on the TABOR issues for this.
24 We consider this a fee, on the air we all are
25 surrounded with and breath and the comments --

1 (inaudible) on a pollution fee for putting global
2 warming pollution in the common space. That's why
3 we justified the fee.

4 I have difficulty in parsing favor
5 and --

6 MS. EUBANKS: Well, you aren't the
7 only one.

8 Go ahead, Dan.

9 MR. DOMENICO: Well, here's the
10 danger for you, it seems to me. If we don't write
11 the measure with a title that follows the TABOR
12 language, and then your measure is challenged
13 because someone considers it a tax rather than a
14 fee, my understanding is that the whole thing will
15 be thrown out as a violation of TABOR's requirement
16 that any imposition of a new tax follow that
17 language. And so I'm not sure what our role here
18 is, frankly, because if you want to insist that
19 this is a fee and not a tax, which you certainly
20 have a good argument. I'm not saying I know one
21 way or the other whether this is a fee or a tax,
22 but there's also a good argument to the contrary.
23 And so there's a risk for you, it seems to me, in
24 going forward this way as opposed to saying, well,
25 we'll take the conservative approach, the risk-

1 averse approach and include that language, even
2 though we think it's properly considered a fee.
3 And so that's just something -- that's more of a
4 warning or comment to you, just something to
5 consider.

6 And I'm not sure, as the board, if
7 we really -- do we have to decide whether we
8 believe this to be a tax or a fee in order to set a
9 title? It sort of seems like maybe we do. But I
10 don't know that we've ever been confronted with
11 that. I don't think I have since I've been here.

12 MR. HOBBS: Ms. Eubanks?

13 MS. EUBANKS: If I can respond,
14 actually, we have dealt with this issue. I don't
15 know if you remember No. 24, which was a fee that's
16 imposed on construction that was to be used for
17 funding higher education, capital construction
18 projects. And we did set a title for that. And
19 even though the measure was in the context of a
20 fee, the terminology, we set the title "Shall state
21 taxes be increased by such an amount by imposition
22 of a fee."

23 MR. DOMENICO: Did we do that over
24 the proponents' objection?

25 MS. EUBANKS: That I don't recall.

1 MR. DOMENICO: Okay. Because I just
2 -- I'm not -- I would prefer not to have us make
3 the decision of whether we think this is a tax or a
4 fee just because it's kind of a hard call. And it
5 gets into the substance, which we tend to try to
6 avoid, usually. But we probably do have to do
7 that, I guess, in order to set an accurate title if
8 we really think it's a tax. So I don't know.

9 MR. HOBBS: My own view is I think
10 we do have a responsibility to make an independent
11 determination. And I think we give deference to
12 proponents. I think that's reasonable, especially
13 in a close call where it's maybe hard to
14 distinguish. But at least I do feel like the board
15 has a responsibility to comply with the
16 constitutional requirement in TABOR.

17 Go ahead.

18 MR. MCKINNON: If it did have TABOR
19 language in it, then how (inaudible).

20 MS. EUBANKS: Basically, the
21 constitution requires that ballot measures starting
22 with the TABOR language, it shall state, in this
23 instance, "Tax be increased." And then you have to
24 increase the fiscal dollar amount for either the
25 first full fiscal year or total, if it's phased in.

1 And phrased in, and then it says annually. So
2 "Shall state taxes be increased blank amount
3 annually." And then we sort of would continue in
4 terms of describing the rest of the measure in
5 terms of, you know, the increase annually by the
6 imposition of a Clean Energy Progress fee or
7 however we want to word the title. But it's that
8 very beginning phrase, and it has to ultimately
9 appear in bold language and all bold type. But
10 it's just that beginning phrase, and then we're
11 back to describing the measure just like we would
12 regardless of whether it's viewed as a TABOR
13 measure or not.

14 MR. MCKINNON: We're using the
15 Boulder climate somewhat as a template, and they
16 did have TABOR language in 2006.

17 MS. EUBANKS: Did they call it a fee
18 or a tax? Do you recall? I'm just curious.

19 MR. MCKINNON: I think when we were
20 running the campaign -- I'm not sure what it said
21 either, but it had -- I know it was -- I don't
22 remember it verbatim.

23 MR. HOBBS: I guess I propose that
24 we add the TABOR language to the beginning of the
25 staff draft. And I think, you know, if there's

1 support for that on the board, again, as
2 Ms. Eubanks indicates, we would just be inserting
3 some words at the very beginning on line 1 that
4 would say, "State taxes" -- and, Mr. Gomez, if you
5 want to just go ahead and type this so we can see
6 what it looks like. "State taxes shall be
7 increased" -- and I'm going to go ahead and use the
8 figure in the OSPB estimate for now just for the
9 sake of looking at words. But it's \$209.0 million,
10 dollar sign 209.0 million in words -- the word
11 "million," actually. I think so. I don't know.
12 And then somebody will probably correct me on what
13 we have normally said. But annually by -- and then
14 and would begin with the lower case "a." "The
15 taxes shall be increased \$209 million annually by
16 an amendment to the Colorado Revised Statutes," et
17 cetera.

18 Ms. Eubanks?

19 MS. EUBANKS: I know this is a
20 difficulty because of the way we do the title
21 ballot and submission clause, but I don't know that
22 the "shall" should be there. Because when we put
23 it into a question format for the ballot title and
24 submission clause, then the "shall" goes at the
25 beginning. So I think, although it seems a little

1 awkward, I think for title purposes it would just
2 be "state taxes be increased \$209 million
3 annually." And then the "shall" gets put it in the
4 form of a question.

5 MR. HOBBS: I think you're right.

6 MR. DOMENICO: Really?

7 MS. EUBANKS: Yeah.

8 MR. HOBBS: Isn't that what we did
9 for example in good old Number 68, but maybe we
10 can . . .

11 MS. EUBANKS: Otherwise, I think you
12 would have two shalls.

13 MR. HOBBS: And just for
14 clarification, we actually set two titles, one
15 which is the title that we're looking at right now
16 and the other is the title in the form of a
17 question, which is the second title, which is below
18 what's on the screen right now.

19 MR. DOMENICO: I mean, that is just
20 -- can we write something that will make sense to
21 people? I mean, I don't -- that's sort of the
22 overriding -- I know TABOR requires that we do
23 something along those lines, but that doesn't make
24 any sense.

25 MS. EUBANKS: I think, if I could --

1 MR. HOBBS: Ms. Eubanks?

2 MS. EUBANKS: I thought I brought
3 it, and maybe I didn't, but I thought on No. 24,
4 that we simplified it and didn't have, sort of in
5 the single subject statement, a reference to
6 Colorado Revised Statutes. So it was more, you
7 know, "Shall" -- you know -- "state taxes be
8 increased by imposition of a fee."

9 And so in terms of the statement of
10 your single subject would be, and here on 24 it
11 was. And although it did say "by an amendment to
12 the Colorado constitution concerning the imposition
13 of charges on construction projects to provide
14 additional funding for universities and colleges."

15 MR. DOMENICO: Does the -- I know we
16 basically always just say that the submission
17 clause is just the same exact language in the form
18 of a question. And I've never even looked up if
19 that's a statutory requirement. But even if it is,
20 wouldn't -- if we put "shall" back in there,
21 wouldn't the way to rephrase that in the form of a
22 question be to just move "shall" to the beginning,
23 and wouldn't that comply with the requirement that
24 it be the -- I mean, there's a difference. You can
25 state the submission clause states something in the

1 form of a question by doing a little more than just
2 changing a period to a question mark, right?

3 MR. HOBBS: Well, referring to the
4 statute -- and I don't have an answer right off,
5 but the definitions in Article 40 of Title I first
6 defines title to be "a brief statement that
7 represents the true intent and meaning." And then
8 there's a separate definition for the term
9 "submission clause," which is defined to mean "the
10 language which is attached to the title to form a
11 question which can be answered yes or no."

12 And strictly speaking, I always
13 thought that meant you just add --

14 MR. DOMENICO: Like "shall" at the
15 beginning and a question mark at the end?

16 MR. HOBBS: Without changing the
17 title itself.

18 If you want to come to the
19 microphone so we can get you. Yes, you know, we do
20 this often enough, you think we would remember how
21 to do this.

22 MR. WEAVER: My comment is brief.
23 It's just on No. 78, which you'll hear next, I
24 believe. You have it phrased as "state taxes shall
25 be increased X annually." So it is just as this

1 but with the word "shall" in there. That was the
2 staff draft.

3 MR. HOBBS: And then on the staff
4 draft on that one in the question down below does
5 it say "shall," "State tax shall be increased"?

6 MR. WEAVER: "Shall state taxes be
7 increased X amount." So it just uses the word
8 "shall" after taxes. And that was the staff draft.

9 MR. DOMENICO: I think there's room
10 for common sense even when dealing with TABOR. So
11 I would suggest that we put in --

12 MS. HUBANKS: And that's what we did
13 on 24. I mean, "State tax shall be increased" and
14 "Shall state taxes be increased." So . . . I'll
15 defer to --

16 MR. HOBBS: So the proposal will be
17 "Shall state taxes be increased," and down below,
18 let's just be clear, it would be "Shall state taxes
19 be increased by an amendment to the Colorado
20 revised statutes." So I guess I'll go ahead and
21 move that addition to the beginning of the staff
22 draft.

23 MS. HUBANKS: Second.

24 MR. HOBBS: Any further discussion?
25 If not, all those in favor say aye.

1 MS. HUBANKS: Aye.

2 MR. HOBBS: Aye.

3 MR. DOMENICO: Aye.

4 MR. HOBBS: All those opposed, no.
5 That motion carries three to zero.

6 Any other proposed changes to the
7 staff drafts? Ms. Larsen?

8 MS. LARSEN: A couple of problems I
9 have, as it's currently written, the phrase -- sort
10 of catchphrases that are included in the title
11 setting, "global warming," "clean energy," those
12 are rather broad terms. And for voters to
13 understand exactly what the intent of the proposal
14 is, I think that just leaving those terms in there
15 as is without further explanation as to (inaudible)
16 what the intent of the initiative does can be
17 misleading, especially where it provides that just
18 natural gas consumption or electricity production.
19 It's more than that. A voter may see that and
20 think, well, if I merely don't consume so much, I'm
21 not going to be necessarily subject to this fee.
22 It's really on emissions, and that can -- depending
23 upon how the voter consumes the natural gas, I mean
24 electricity, that fee could be quite higher. But I
25 think just the term of "global warming,"

1 "pollution," "clean energy," it's not specific
2 enough for the voter to really know precisely what
3 is going on.

4 MR. HOBBS: Help me understand that
5 a little better. I mean, how would you change it?

6 MS. LARSEN: Well, for instance,
7 when we say "production," "global warming,"
8 "pollution," what exactly is this initiative going
9 to tax carbon dioxide emissions? So more specific
10 reference. So what exactly is going to be taxed
11 here? And "reduce global warming." Well, reduce
12 it how? Again, it's rather broad. I mean, we can
13 all reduce global warming pollution by not driving,
14 walking, bicycling to work. This initiative
15 doesn't necessarily get to that. It doesn't have
16 any impact on transportation. It's a very broad
17 statement, catchphrase, that's used that does not
18 adequately identify exactly what's going on.

19 MR. HOBBS: Does it help that --
20 well, in line -- on line 4 of the version that's
21 now on the screen it does say "the fees on natural
22 gas consumption and electricity production." I
23 mean, there's a little more specificity there than
24 there is in lines 2 and 1.

25 MS. LARSEN: It doesn't necessarily

1 specify, though, what is actually being taxed. Not
2 so much consumption that's being taxed, it's the
3 emission that is being taxed.

4 MR. DOMENICO: Well, I've had -- I
5 share some of your concerns about that first part
6 of this. And one of my concerns, though, was sort
7 of the opposite of that, that this doesn't -- that
8 this doesn't tell people that it's consumers who
9 are going to be paying the tax now. It's probably,
10 you know -- gets passed either way. If you really
11 did directly tax emissions, it would be passed
12 along, I assume.

13 But, I mean, that's one question
14 I've had about this is this gives the impression
15 that producers of global warming pollution are
16 being -- a fee is being imposed on them, when
17 really it's being imposed on consumers of
18 electricity and natural gas. Or I guess just
19 electricity, right? However it's produced. But
20 the -- so I was trying to figure out -- because I
21 guess the way that the amount that they're charged
22 is calculated is based on the pollution they
23 produce rather than -- the pollution produced by
24 the production of the electricity that they
25 consume. And so it's a little bit complicated how

1 the fee gets imposed.

2 And so I'm not sure how to resolve
3 that. It's sort of -- it's related to one of your
4 concerns, but it's in some ways the opposite of
5 what you were saying about . . .

6 MS. LARSEN: Well, certainly that is
7 definitely identifying who is exactly will pay the
8 tax. It's not necessarily clear, as it states
9 right now, that anyone who ends up with Xcel or any
10 other provider at the end of the day will actually
11 have this tax added to their bill. And it also
12 separate -- I don't know if that's necessarily
13 separate from your point. But just the manner in
14 which it's phrased, "global warming pollution,"
15 what exactly will that be? It's not defined here
16 as to what that global warming pollution --

17 MR. DOMENICO: I think I have three
18 issues with sort of the beginning of this. One is
19 the language "Clean Energy Progress fee." I think
20 that kind of is -- I don't know what that means
21 other than it's the language used in here. I would
22 just say "a fee," personally.

23 Then there's whether we need to
24 better define "global warming pollution," what that
25 means. I'm not sure -- I'm not sure I actually

1 think it's a problem as it is, but it's something
2 that caught my attention. And then this issue of
3 what the fee is actually imposed -- how this fee is
4 actually being imposed I'm not sure is clearly
5 conveyed by the title the way it's written. I'm
6 sort of moving on to discussions. But you brought
7 up some similar issues, so . . .

8 If you have something else, go
9 ahead.

10 MS. LARSEN: Thank you.

11 MR. HOBBS: Mr. McKinnon?

12 MR. MCKINNON: Ms. Larsen's comment
13 about how somehow there's going to be hidden costs
14 in here, I don't know where that comes from.
15 Perhaps she could explain it. But again, if we use
16 the Boulder plan as a template, it put in a cents
17 per kilowatt hour that would be charged.

18 MR. DOMENICO: I'm sorry. Before we
19 move on, so did that say -- so something like right
20 after the fee language it said a fee of something
21 per kilowatt hour? Is that what you mean?

22 MR. MCKINNON: I don't know where it
23 appeared in there, but a per kilowatt hour.

24 In ours it's a little more
25 complicated because we're specifying it on a per

1 ton of carbon dioxide. But what we like to do is
2 incentivize cleaner power, solar power, and so on.
3 But we would not be averse to putting a maximum
4 fee, which would just be set at the rate of
5 coal-fired power. That's the source of energy that
6 -- I know TABOR requires that. I think they have
7 sort of the upper limit. And then on natural gas
8 -- I don't remember the numbers off the top of my
9 head, but it's -- it would be so much per -- I

10 think it's about 2 cents per therm, so that number.
11 MR. DOMENICO: Would you object if
12 we got rid of "Clean Energy Progress" in line 2? I
13 sort of feel that that kind of is, if anything,
14 sort of just advertising and --

15 MR. MCKINNON: No, we wouldn't.
16 Clean Energy Progress is what internally we call --

17 MR. DOMENICO: Yeah, and I don't
18 know that it rises to the level of a catchphrase
19 that would make the title illegal, but it pushes
20 it, and you get pretty quickly into what the fee is
21 doing without it. So I think we should get rid of
22 that. And if you don't object -- why don't I move
23 that so we can move on.

24 MR. HOBBS: I'll second that. Any
25 further discussion? If not, all those in favor say

1 aye.

2 MS. EUBANKS: Aye.

3 MR. HOBBS: Aye.

4 MR. DOMENICO: Aye.

5 MR. HOBBS: All those opposed, no.

6 That motion carries three to zero.

7 Ms. Eubanks?

8 MS. EUBANKS: I've been scribbling

9 over here in terms of trying to come up with some

10 language to incorporate some of the concerns and

11 comments that have been made so far.

12 One thing that I'm finding a little

13 problematic is if we go the route of, say,

14 imposition of a fee on whether it's carbon dioxide

15 emissions or just emissions resulting from

16 electricity production and natural gas consumption,

17 there's those two things. There's energy,

18 electricity production, and natural gas

19 consumption. And whether we think that it's okay

20 because it's on those two different activities that

21 are generating the emission, even though they're --

22 the nature is a little -- of those two activities

23 are different, they both result in emissions. And

24 whether we think that we're okay single

25 subject-wise --

1 MR. HOBBS: Or putting it after the

2 "in connection therewith" in the next clause.

3 MR. DOMENICO: You know, the only

4 thing I could think of was something along the

5 lines of a fee imposed on the consumption of -- you

6 could either say -- well, you could say "the

7 consumption of energy produced by carbon

8 dioxide-emitting processes," or something like

9 that. And then you could get into it. I mean, I

10 can't come up -- I sort of do think it's important

11 to get the idea of the -- that this is imposed,

12 really, on consumers in there. But maybe it's not.

13 It struck me, though, that this doesn't get across

14 a pretty important point.

15 MR. HOBBS: Ms. Eubanks?

16 MS. EUBANKS: Well, if we go the

17 route -- if I'm following your train of thought, if

18 we talk about a fee on the consumption of energy

19 that results in, I don't know, carbon dioxide

20 emissions or emissions in general, I mean, whether

21 we go sort of that way -- I mean, because then at

22 least, you know, even though the fee is actually

23 imposed on the emissions, based on how -- the

24 quantity of the emissions, the fee isn't actually

25 paid until you've consumed the energy that was --

1 that either creates the emissions or was created --

2 I mean -- because the natural gas, it's the

3 consumption itself by the consumer, through their

4 furnace or whatever. Whereas electricity, it's the

5 production of the electricity, it isn't the

6 consumption of the electricity that's causing the

7 emission, it's the initial production.

8 But both -- it's both on the

9 consumption -- I mean, the fees collected on the

10 consumer.

11 MR. DOMENICO: Right.

12 MS. EUBANKS: And so if you talk

13 about it in terms of a fee on the consumption of

14 energy which produces emissions or something like

15 that, whether or not that would . . .

16 MR. MCKINNON: Just to make a

17 comment, again, on the drafting, we intentionally

18 limited this to not all forms of carbon dioxide

19 emissions because it became overly broad if we

20 attempted to address things like concrete plants,

21 gasoline. And so the focus here was to begin at

22 distribution methods that are, you know, already in

23 place direct to the end user. And we were not

24 trying to hide anything. I don't think the people

25 who drafted it were either because, you know, it

1 mentions the end user explicitly in here. There's

2 a potential -- and I'll just read this, and you can

3 listen. This would be a way to, I think, capture

4 some of the points that you're making about the way

5 we've implemented it. So the CRS is concerning a

6 fee on carbon dioxide emissions resulting from

7 consumption of fossil fuels and electricity

8 production or other consumption of natural gas.

9 So, again, it keeps it -- it states

10 what it is. As you say, it's on emissions from the

11 consumption of fossil fuels and electricity

12 production or other consumption of natural gas.

13 And, again, I think to get to

14 Mr. Domenico's point here, it does mention end user

15 explicitly in the text to try to call forth that

16 it's an end user. Greenhouse gases, global

17 warming, pollution are called out explicitly in the

18 text of the measure as to which six they are. So I

19 don't know how much needs to be in a title, but the

20 bill attempts to, in the language, define

21 explicitly.

22 MR. DOMENICO: I don't think you're

23 trying to hide anything. I think it's just a

24 little bit hard to -- the way it's structured, it's

25 just a little bit hard to capture in a couple

1 words. One thing you said -- I mean, I liked -- I
 2 liked a lot of what you suggested we say, but I do
 3 think it's important -- where we were going
 4 probably was misleading, because I think it's
 5 important. As you said, it's only electricity and
 6 natural gas consumption. So why don't we just say
 7 "a fee imposed on electricity and natural gas
 8 consumption."

9 MS. RUBANKS: Well, it's not the
 10 consumption of the electricity.

11 MR. DOMENICO: Well, it is, though.

12 MS. RUBANKS: It's the production.

13 MR. DOMENICO: Well, no, I mean,
 14 that's the way it's written. But if you don't
 15 consume it, you don't pay the fee. I mean, so the
 16 reason you're paying the fee is because you
 17 consumed natural gas or electricity, right? The
 18 way it's calculated is by calculating how much your
 19 use contributes to -- in the production process,
 20 how much your use contributes to emissions. But
 21 what's really being taxed, the act that's being
 22 taxed is consumption. Or the act on which the fee
 23 is being imposed is the act of consuming natural
 24 gas or electricity.

25 MR. HOBBS: Ms. Larsen? Do you want

1 to come to the podium?

2 MS. LARSEN: I'll follow up on that.
 3 Again, going back to exactly what global warming --
 4 or greenhouse gas is here. There are six
 5 greenhouse gases that could, in fact, be part of
 6 global warming pollution. And currently that's not
 7 reflected which greenhouse gas that is. That's the
 8 subject of the Initiative and it is not reflected
 9 in the title.

10 And then again, just to -- something
 11 to consider is when it comes to the sequestration,
 12 again, is that something that's specified, more
 13 clearly defined within the title exactly what is
 14 being proposed to sequestered and carbon. And that
 15 can also be -- and we're just kind of skirting
 16 around what exactly is the -- what's the subject
 17 here? (Inaudible) what is proposed to sequester?
 18 It is carbon emissions. I still would say that
 19 just limiting it to the phrase "global warming
 20 pollution" again is just too broad. In fact, this
 21 measure does not address all global warming
 22 pollution. It addresses one gas, one emission.
 23 MR. DOMENICO: All right. Well,
 24 yeah, I mean, I think it might be good to if not
 25 list the global warming forms of pollution that

1 this addresses, at least mentions that it defines
 2 them or lists them. But before we get into that, I
 3 want to try to resolve, if we can, the bit about
 4 what the fee is imposed on. I really do think it's
 5 imposed upon the consumption of electricity and
 6 natural gas. And it's calculated by figuring out
 7 how much your consumption contributes to the
 8 emission of carbon dioxide. So I would say that it
 9 should say "a fee imposed on the consumption of
 10 natural gas and electricity." Then I think you
 11 just end it. Well, I mean, you could go -- you
 12 could get rid of kind of all of the rest of that on
 13 2 and 3 down to "to be used to maximize." And I'm
 14 not sure I would put "maximize." But for the
 15 reduction, I probably would put it. And then some
 16 of the rest of how it's calculated would go in
 17 after "in connection therewith," and all the rest
 18 of what we've been talking about could go in there.

19 I think that gets across the main
 20 point I've been concerned about.

21 MS. LARSEN: And if I may -- I'm
 22 sorry, before we move on, again, when it does come
 23 to the consumption issue, I don't believe that the
 24 title, as it's now currently written, really
 25 conveys to the voter (inaudible) with that, by the

1 fact that they are consuming a product which will
 2 result in carbon dioxide emissions, that they are,
 3 in fact, going to be taxed. So in some way to get
 4 that across and clearly state that because of your
 5 consumption or result in this emission, you will,
 6 in fact, be taxed.

7 MR. DOMENICO: Right. And I think
 8 that suggestion addresses my concern, which I think
 9 is a valid one. It addresses the proponents' point
 10 that this only applies to electricity and natural
 11 gas, not your gasoline you put in your car or
 12 certain other forms of energy. And it's fairly
 13 straightforward, and it really is kind of -- if --
 14 and I think it captures what's going on, the
 15 important part of what -- the most important part
 16 of what's going on. What I see as the subject here
 17 is imposition of this fee in order to fund certain
 18 projects. And that would be captured in that
 19 language, I think.

20 MR. HOBBS: And I like most of what
 21 you're trying to achieve, Mr. Domenico. Actually,
 22 I like it all, except that I would prefer not to
 23 use the conjunction in the expression of the single
 24 subject if we could avoid it. The fact that the
 25 measure only addresses those two things, natural

1 gas and electricity, I'd rather find a way, in the
2 expression of single subject, to avoid identifying
3 those two things, you know. I would rather have
4 some phrase that embraces both of those. But I
5 won't fall on my sword over that because I do like
6 the idea of what you're trying to achieve. I do
7 think we need to address somehow that this is
8 ultimately going to be paid by the end user based
9 on consumption.

10 Mr. Weaver?

11 MR. WEAVER: I agree with your
12 point. And the thing that embraces both of those
13 things is carbon dioxide emissions. So the only
14 reason that we would suggest emission of carbon
15 dioxide or emission of greenhouse gas -- that's
16 your call -- resulting from the production of
17 electricity consumption and natural gas. Because
18 it gets tied together, as you say (inaudible).

19 MR. HOBBS: I mean, would it help to
20 follow my advice to say something like concerning a
21 fee based on carbon dioxide emissions to be used to
22 maximize something, and then in connection
23 therewith, imposing the fee on -- and then trying
24 to get more, you know, worked into that clause.
25 Imposing the fee on, you know, natural gas

1 consumption and electricity production, at cetera.
2 MR. DOMENICO: The problem I have
3 with that is the fee is not imposed on emitting
4 anything, it's imposed upon consuming natural gas
5 and consuming electricity. And it's calculated by
6 how much your consumption causes emission in its
7 production. And coupling it that way, as a fee
8 imposed on the emission of carbon dioxide -- I
9 mean, I don't think most people think they emit any
10 carbon dioxide. And so they wouldn't think that
11 this fee applies to them at all. And, in fact,
12 they don't emit very much. I guess if they burn
13 natural gas, they emit a little bit. But that's my
14 concern is that we -- we need to tell people what
15 -- what would cause this fee to be imposed. And
16 what causes it to be imposed is using natural gas
17 or electricity.

18 MR. HOBBS: Just to be a little
19 clearer, I intended to address that. I mean, you
20 know, what I was suggesting is that in this
21 expression of the single subject, we say a fee
22 that's based on carbon dioxide emissions, which I
23 think it's true. It's the amount of carbon dioxide
24 emissions is how the fee is calculated.

25 What I would want to do, though, is

1 achieve those purposes you identified, Mr.
2 Domenico, in the next clause, to be clear that, in
3 fact, it's going to be paid by the end user based
4 on their consumption, that it's going to be
5 translated to a fee paid by the end user.

6 MR. DOMENICO: I see what you're
7 saying. And that -- so saying "based on" does
8 address part of my concern. I still think it
9 doesn't -- I think the other way is clearer, and it
10 doesn't bother me that it involves a conjunction at
11 all. But I wouldn't vote against it if the board
12 wanted to go your direction. But I do find mine a
13 little more up-front.

14 MR. HOBBS: And, actually, I do
15 think it's important to make sure that somehow we
16 address both principles, that the -- you know, that
17 it is based on the amount of emissions and it's
18 going to end -- I mean, initially it is.

19 MR. DOMENICO: Right.

20 MR. HOBBS: But it's going to end up
21 being paid by a consumer.

22 MR. DOMENICO: I agree absolutely.
23 Both of those concepts need to be in there. The
24 question for me is really right up front, when
25 we're saying, "shall taxes be increased by a

1 certain amount," to me it's more important to tell
2 people what it will cause someone -- who this is
3 going to be -- these taxes will be imposed on, what
4 will cause the taxes to be imposed rather than how
5 they'll be calculated. But I agree they're both
6 important.

7 MR. HOBBS: Ms. Rubanks?

8 MS. RUBANKS: I've been scribbling
9 again. It doesn't really solve the conjunction
10 issue. And we could go -- just go ahead and
11 specify it out or maybe use the term "energy." But
12 let me just throw out some language. If we talk
13 about imposition on consumers of either certain
14 types of energy or of electricity and natural gas,
15 depending on how you want to deal with that issue,
16 based upon the carbon dioxide emissions generated
17 as a result of the consumption. Or you could just
18 say about the energy that -- you know, that it
19 generates carbon dioxide emissions and not tie it
20 -- you know. But I'm sure that wasn't perfectly
21 clear.

22 If you talk about that it's a fee on
23 consumers of energy, and it's based upon --

24 MR. DOMENICO: Do both of what we
25 were saying.

1 MS. SUBANKS: I'm trying --
 2 MR. DOMENICO: I like it. You could
 3 say "a fee based on carbon dioxide."
 4 MS. SUBANKS: "Generated as a result
 5 of the consumption."
 6 MR. DOMENICO: Or just imposed on --
 7 you just say, "a fee based on . . ." And you could
 8 switch the causes, I guess, a fee either imposed
 9 upon the consumption of natural gas and electricity
 10 based on the amount of carbon dioxide produced or
 11 emitted in their production, or you could switch
 12 the clauses around and say "based" -- "based on
 13 those things imposed on the consumption of
 14 electricity." That gets both of those what we've
 15 identified as important points in the subject. I
 16 don't think it causes any single subject problems,
 17 even if the conjunction's in there.
 18 MR. HOBBS: Can I ask, though -- I
 19 mean, I -- reluctantly, I might go along with the
 20 conjunction. But I don't want to lose sight of --
 21 it seems to me that we still need to say, in the
 22 expression of the subject, what it is for. In
 23 other words, right now we're saying it's a fee for
 24 a purpose. And as long as we can get all those
 25 words in there and not lose sight of the fact that

1 I think we need to say what the -- something about
 2 what the purpose is.
 3 MR. DOMENICO: Right. And my
 4 suggestion was we leave something at the end about
 5 "to be used for the reduction of global warming
 6 pollution." I mean, we may have to define that.
 7 But that part of it, I think you're right. The
 8 purpose should still be in there.
 9 MR. HOBBS: Ms. Subanks?
 10 MS. SUBANKS: I'm not convinced that
 11 we need to go about the purpose. And for one
 12 thing, I'm concerned about the use of "global
 13 warming" or "pollution," whatever, in terms of
 14 catchphrases. But, I mean, if you look at some of
 15 the other titles we've set just recently, like the
 16 severance tax, we just said single subject was
 17 imposition of severance tax, and then you talked
 18 about what it was used for. And because I think
 19 there is probably a -- many differing opinions as
 20 to whether or not, you know, there is global
 21 warming, what results in global warming, what would
 22 help global warming, the whole bit. And so to have
 23 this sort of very generalized purpose there, I
 24 mean, I think you deal with it in terms of
 25 specifying what the revenues are used for down

1 later.
 2 MR. DOMENICO: Yeah, especially when
 3 you've got the TABOR language in there, you may
 4 not --
 5 MS. SUBANKS: But that's -- can we
 6 work on the first part?
 7 MR. DOMENICO: Yeah. And then let's
 8 see if we can delete the rest.
 9 MR. HOBBS: Could I make a comment?
 10 And maybe then we can move on. But I appreciate,
 11 actually, Ms. Subanks, you did point out we should
 12 be consistent. And, you know, the fact that we
 13 didn't do that with severance taxes does trouble me
 14 that we did not say "a fee for a purpose," because
 15 we've struggled with that many times. What's the
 16 central thing about a measure? -- when it's wanting
 17 to achieve a result but it needs money to do it.
 18 And so there's both some revenue being raised and
 19 then revenue being devoted to a purpose.
 20 You know, although -- what I'm about
 21 to say, I guess, is inconsistent with the severance
 22 tax proposals. To make this all about the fee, to
 23 me, kind of turns it upside down. And that does
 24 bother me at this moment to say that it's
 25 concerning a fee. I mean, I would almost rather

1 say it's concerning global warming reduction and in
 2 connection therewith imposing a fee. We've already
 3 said, "Shall taxes be increased . . ." you know,
 4 by an amendment concerning global warming
 5 reduction. And that's just a very crude concept,
 6 but it seems to me a little backwards to make this
 7 all about that the subject, the only thing we're
 8 going to say about it in this subject is that it's
 9 -- that it's a fee. And that's why I was trying to
 10 get the fee and the purpose together and give them
 11 kind of equal billing in the single subject. Well,
 12 I don't know. Again, like I say, it strikes me it
 13 would be better to say that what the ultimate
 14 purpose is, that's what the measure is about, and
 15 then go into the first clause and explain how the
 16 revenue is being raised.
 17 Ms. Larsen?
 18 MS. LARSEN: If I might add, it's
 19 certainly the reduction of global warming and
 20 pollution. But the way to get there, to end that
 21 or to reduce global warming is through imposing a
 22 fee on the consumption of certain items, which in
 23 this case will be natural gas, electricity
 24 production. So if there was a way to craft it so
 25 it clearly states that through the consumption of

1 natural gas and electricity reduction, a fee will
2 be imposed which will (inaudible) global warming
3 pollution. But to be able to accurately reflect to
4 the voters the manner which the larger goal of
5 reducing global warming is going to be affected and
6 achieved is by reducing through imposing a fee on
7 consumption of these two, natural gas and
8 electricity production.

9 MR. HOBBS: And I certainly wouldn't
10 propose not saying that, I'm just proposing that it
11 be said in the second clause instead of the first.

12 MR. DOMENICO: Well, I've already
13 said I think that -- I don't think you can just say
14 "the purpose of this is global warming reduction."
15 I think that's way too broad and not helpful. And
16 so I would object to that.

17 MR. HOBBS: And I am concerned about
18 the catchphrase issue. I haven't -- I don't know
19 about that. But I'm just saying to me it's -- what
20 is the measure about? It's not about raising
21 revenue. It's about something else. And it just
22 kind of bothers me to make it all about a fee.

23 Mr. Gessler, if you would like to
24 identify yourself and who you represent, if you do.

25 MR. GESSLER: My name is Scott

1 Gessler. I'm with the law firm of Hackstaff
2 Gessler. I'm representing myself in this matter.
3 And I don't have a client but could not resist
4 coming up to the speaker podium, I guess.

5 If I could make a suggestion, I
6 mean, the single subject could be the consumption
7 of electricity and natural gas production. That
8 would itself be the subject. You could say "An
9 amendment to the Colorado Revised Statutes
10 concerning the consumption of electricity,
11 concerning the consumption of" (inaudible) and then
12 go into the specifics of it.

13 And I guess I would just point out,
14 I think global warming in particular is a big
15 catchphrase in this particular instance. It is
16 certainly emotionally charged. It will affect the
17 debate, and it does not add any understanding of
18 exactly what this is about. Certainly one can call
19 it global warming, and I would also argue that that
20 subject is so broad that it would include anything.
21 Subsidy of bicycle manufacturers to see people walk
22 to work rather than drive helps under this
23 reasoning of global warming. So it's excessively
24 broad, and that would be a catchphrase. And I
25 would certainly argue that that would stay outside

1 -- certainly outside of the purpose and outside of
2 the ballot title and submission clause altogether.

3 MR. HOBBS: Well, what about -- I'm
4 not going to let you off quite that easily.

5 For the sake of brainstorming -- but
6 what about, you know, concerning reduction of
7 carbon dioxide emissions?

8 MR. GESSLER: I think that that --
9 even that is probably overly broad in the sense
10 that it's -- the carbon dioxide emissions here, the
11 way it is done is through a very specific and
12 limited mechanism. And I would also say, you know,
13 carbon dioxide emissions come from a variety of
14 sources. I would, I guess, take issue with
15 Mr. Domenico that human beings (inaudible) a lot of
16 carbon dioxide emissions are breathing. And I say
17 that a little facetiously, but it just shows how
18 broad and ill-defined the issue of carbon dioxide
19 emissions is.

20 In this particular initiative, it
21 seems to be more on the consumption of (inaudible)
22 natural gas production in order to reduce carbon
23 dioxide emissions. And certainly using that as a
24 modifier, I think, would be appropriate because
25 then it properly limits the scope of that phrase.

1 MR. HOBBS: And an alternative --
2 and I don't know that it does any better to address
3 what you just said -- might be concerning a fee on
4 the consumption of fuels that produce carbon
5 dioxide emissions. But, again, I'm --

6 MR. GESSLER: I think that certainly
7 gets a lot closer. Maybe -- I know this -- and not
8 that I necessarily agree with the general approach
9 taken by the board in this, but I know oftentimes
10 the board will say, "I'm certain" -- you know, use
11 the word "certain" to specify that it's -- or to
12 imply that it's not all but only some. And that
13 may be a way to do it as well.

14 MR. HOBBS: Okay. Thank you.

15 Mr. McKinnon?

16 MR. MCKINNON: First I would just
17 like to disagree with Mr. Gessler. I mean, the
18 intent is to reduce global warming pollution. It's
19 defined in the statute definition section. And I
20 think in the colloquial vernacular, that is, I
21 would just like to make a comment. Perhaps this is
22 obvious, but we need to decouple that the fee is
23 raised on carbon emissions but the intent of the
24 statute is to maximize the reduction of global
25 warming pollution, and that includes carbon

1 dioxide, methane, nitrous oxide and other gases as
2 defined by the United Nations.

3 MR. DOMENICO: And the way it does
4 that -- I was just looking a little more carefully
5 at that. It's pretty indirect, right, how it
6 affects anything other than carbon dioxide, right?
7 I mean, there's no tax imposed on any other
8 emission, there's no regulation of it, it's -- I
9 mean, I only see global warming pollution mentioned
10 a couple of times. One is 5 percent of the funds
11 going to programs to reduce global warming
12 pollution and then allowing people to purchase some
13 portion of their energy from non-global-warming
14 pollution-creating sources don't have to pay a tax
15 on that source. Am I right that it's indirect, for
16 the most part?

17 MR. MCKINNON: Within Subsection 6
18 we specify where 60 percent of the funds -- a
19 direct 60 percent of the funds. The other
20 40 percent are open to the discretion of the
21 governor's energy office. Most of those address
22 carbon dioxide. So the largest one, paragraph A,
23 is -- 20 percent is for energy efficiency. Use
24 less energy, reduce carbon dioxide. B is for
25 renewable energy, and so on. But there are other

1 -- many other things that we didn't want -- when we
2 wanted to leave it in the discretion of the
3 governor's energy office -- technology changes, and
4 so on.

5 But an example would be something
6 that could be done in agriculture to reduce the
7 amount of nitrous oxide emissions. Fairly easy to
8 do, doesn't cost that much program. Importantly,
9 it's outside of the domain of just carbon dioxide
10 and falls under the umbrella of (inaudible).

11 MR. ROBBES: Thank you. So I don't
12 know that we're making progress at all.

13 Ms. Subanks?

14 MS. SUBANKS: Just an observation.
15 Understanding that the term "global warming
16 pollution" is a defined term in the measure, that
17 hasn't always stopped the court from finding the
18 term not to constitute a catchphrase. I mean, that
19 doesn't insulate them, but they're willing to take
20 the risk.

21 MR. WEAVER: May I address that
22 briefly? I believe there's an alternative phrase
23 that's used as term of art as well, which is
24 "greenhouse gas emissions." You'll find that
25 abbreviation in a lot of places, GHG, and it

1 usually refers to the six as defined by the IPCC.
2 So if you find global warming pollution to be
3 potentially too broad or too much of a catchphrase,
4 another term to consider is "greenhouse gas
5 emissions."

6 MS. SUBANKS: Is that term in your
7 measure, though, at all?

8 MR. WEAVER: No. We used "global
9 warming pollution" and then defined it as the six
10 specific ones.

11 In addition, if you wanted to have,
12 you could say that "greenhouse gas emissions, as
13 recognized" -- or, sorry, "global warming pollution
14 as recognized by the IPCC." Because we do refer to
15 that specifically in the measure. And the IPCC is
16 the Intergovernmental Panel on Climate Change.

17 MS. SUBANKS: Or you could just say
18 "global warming gases." I mean, or certain -- but
19 it doesn't get you away from the "global warming."
20 It does get you away from the "pollution."

21 MR. WEAVER: Sorry, we mentioned it
22 in the next section, I, "The global warming
23 potential of the six warming gases are defined thus
24 far by the IPCC." So that's where we've referenced
25 the IPCC.

1 MS. SUBANKS: Thank you.

2 MR. DOMENICO: Can we try to resolve
3 the what's-being-imposed issue before we -- and
4 then deal with the global warming and with the
5 point about whether we meet the purpose and whether
6 we need the purpose in the object? I mean, my
7 inclination is to make the subject statement pretty
8 specific, to include the concept of where the fee
9 is being imposed, which is consumption, what it's
10 based on, which is production of carbon dioxide.
11 And I also think it probably -- if we're going to
12 get that specific, we probably should have
13 something in there about the purpose it's being
14 used for. I would avoid using "global warming" in
15 the -- at least in the subject statements. I think
16 it's probably more dangerous as a catchphrase there
17 than if later you say something else. But I guess
18 we can deal with the first point, we can deal with
19 that next.

20 MR. ROBBES: I'm open to seeing some
21 language if you want to go ahead and make a
22 suggestion.

23 MR. DOMENICO: All right. Let's see
24 if I can do this. I would suggest that after "fee"
25 on line 2, we say, "a fee based on carbon dioxide

1 emissions imposed on the consumption of electricity
2 or natural gas." And then I would delete
3 everything -- the rest of what's now line 3,
4 everything up to "to be used." And then I would
5 probably say, "to be used for" -- yeah, "to be used
6 to reduce" -- and then we can have our discussion
7 about what to say there.

8 Personally, I would probably say
9 something like "to reduce certain forms of
10 pollution." I really am nervous about "global
11 warming pollution," especially up there.
12 "Greenhouse gas emissions" doesn't bother me nearly
13 as much except it's not defined, and then it would
14 be hard -- somehow we would have to explain what
15 we're talking about. And I'm not sure how we would
16 do that.

17 So I would suggest, then, that would
18 be the end of the subject and delete everything to
19 -- and "in connection therewith" would be my
20 starting point for this.

21 MR. HOBBS: Okay. So it would then
22 read "concerning a fee based on carbon dioxide
23 emissions imposed on the consumption of electricity
24 or natural gas."

25 MR. DOMENICO: I've got to fix that.

1 though it's not elegant.

2 A fee -- if you're going to add a
3 comma after "emissions," I think you would also
4 need one after "fee." And I think I would prefer
5 it without, just because these things have so many
6 commas, and avoid it.

7 MR. HOBBS: I think I agree. I
8 understand there is a pause there, but I would also
9 prefer not to have a comma I think.

10 Mr. McKinnon?

11 MR. MCKINNON: I would like to make
12 one minor point about our intent. The intent of
13 this fee is not, per se, to disincentivize the use
14 of natural gas or electricity. Because it is so
15 small, consumers won't even notice it. It's
16 rather, the second part of what you are saying
17 which is to raise funds for programs.

18 MR. HOBBS: Okay, thanks.

19 Ms. Eubanks?

20 MS. EUBANKS: Do we have any concern
21 that just the word "pollution" is a catchphrase? I
22 mean, it definitely has a negative connotation to
23 it.

24 MR. DOMENICO: You know, I had a
25 little bit of a question about that. But are all

1 That's terrible. One way to fix it would be to
2 move the first clause, "based on carbon dioxide
3 emissions," to after "natural gas" might be a
4 little bit better. The only other way I can think
5 of would be something -- would be require us to add
6 yet another conjunction, which -- so why don't we
7 try that, move "based on carbon dioxide emissions"
8 to right there after "gas."

9 MR. HOBBS: And then for those
10 listening at home, "concerning a fee imposed upon
11 the consumption of electricity or natural gas based
12 upon carbon dioxide emissions to be used to reduce
13 certain forms of pollution."

14 MR. DOMENICO: That's better. I
15 mean, that gets across the point that they're not
16 imposing a fee on breathing even though it produced
17 carbon dioxide emissions, as Mr. Gessler pointed
18 out, hopefully. It doesn't use a potential
19 catchphrase. And that really is the subject. I
20 mean, they're imposing a fee, they're -- I mean, I
21 assume part of the reason to impose the fee is to
22 make it more expensive to emit -- to use carbon
23 dioxide-emitting forms of energy, as well as to
24 help raise some funds for this other thing. And I
25 think that does a pretty good job of it, even

1 these things defined as pollutants under The Clean
2 Air Act or anywhere else, all these gases that you
3 list as global warming pollutants, are they all
4 basically --

5 MR. MCKINNON: They're defined by
6 the United Nations.

7 MR. DOMENICO: Is it at all
8 controversial?

9 MR. MCKINNON: No, not whatsoever.
10 It's simply the physics of the gases (inaudible).
11 There's absolutely no question that they are in
12 that order.

13 MR. DOMENICO: Because "pollutants"
14 in some context like "Clean Air Act," "Clean Water
15 Act" are terms of art. I mean, they're defined as
16 pollutants or forms of pollution. And I just don't
17 want to get in trouble if someone comes back and
18 says, "Well, only four of these are really defined
19 as pollutants and so you're misleading people." I
20 don't know the science or really the -- how that
21 fits in clear enough to -- if you guys have no
22 concern at all that pollution could be viewed as
23 some sort of improper catchphrase, then it's fine
24 with me, I think.

25 MS. EUBANKS: Because, you know, the

1 options which I don't know that I really like are
2 anything from heat-trapping gases to atmospheric
3 gases. And I don't know if that's really more
4 helpful. It just seems like pollution always has a
5 negative connotation. Pollution is bad. And so I
6 just didn't know if, even if you get rid of the
7 "global warming," whether there's still that
8 potential there.

9 MR. HOBBS: Mr. McKinnon?

10 MR. MCKINNON: May I address the use
11 of "global warming" as a catchphrase? We just did
12 a search of Congress, and so Senate Bill 309,
13 introduced last year, is Global Warming Pollution
14 Reduction, Federal government level. So . . .

15 MR. DOMENICO: Well, they always use
16 catchphrases, "Patriot Act" and all sorts of stuff.
17 And it's not necessarily that by saying something
18 is a catchphrase either that it's undefined, as
19 Ms. Bubank said, or that we necessarily think it's
20 somehow inaccurate or misleading. It's just --
21 it's just something that the courts have said -- if
22 it's the type of thing that is sort of
23 controversial, as Mr. Gessler said, something that
24 a lot of people have major disputes about what it
25 means, we're running a major risk by using it in a

1 title. And so I think that's why we're concerned
2 about that, just -- that's why I'm concerned about
3 it, at least.

4 MR. HOBBS: Ms. Larsen?

5 MS. LARSEN: I would agree that
6 "pollution" definitely has a very negative
7 connotation and it's something that could most
8 certainly be used to -- as a slogan to persuade
9 voters for this measure. I don't believe that
10 including a catchphrase such as this, that does
11 have such a negative connotation, is helpful.

12 MR. DOMENICO: Well, but just
13 because -- sort of the flip side of what I just
14 said. Just because it has a negative connotation
15 doesn't make it a catchphrase, right?

16 MS. LARSEN: However, it can be
17 easily -- it's such a divisive question, and a
18 subject that can be used and turned into a slogan
19 and at times be used to inaccurately reflect what,
20 in fact, is going on here.

21 MR. DOMENICO: Tell me how -- I
22 mean, I can see how -- the concern I have,
23 catchphrases concern, how it could be used as a
24 slogan is -- I could see that the proponents would
25 generally sell this as a way to, "Hey, we're going

1 to reduce global warming pollution." And there is
2 a concern that that's a catchphrase, a slogan-type
3 thing. I don't see, really, how you would run much
4 of a campaign going around saying, "We're going to
5 reduce certain forms of pollution." It doesn't
6 carry the same kind of emotional, preexisting
7 political connotation that "global warming" carries
8 with it, which is the concern I have.

9 MS. LARSEN: Well, I believe when --
10 if you're -- the flip side of that, if you're
11 attempting to characterize who these polluters are,
12 certainly where does the pollution come from, who
13 is emitting the pollution, it can be turned into a
14 platform for going after certain pollutants and
15 being used with the negative connotations that come
16 along with that. So someone who is just emitting
17 pollution left and right into the atmosphere, that
18 certainly is a connotation that you would associate
19 (inaudible) with pollution.

20 MR. DOMENICO: I don't disagree with
21 that, but I don't see that -- that requires a lot
22 more explanation. And a catchphrase to me is us
23 using a phrase that basically does a lot of the
24 work for the proponents, if you know what I mean.
25 And that kind of takes a position on something.

1 And certain forms of pollution -- unless there was
2 a major dispute that some of these really shouldn't
3 be considered pollutants at all. I might have a
4 concern because it's then inaccurate. But just
5 because it's got a negative connotation doesn't
6 bother me unless -- unless it's kind of misleading
7 in some way or adopts a political position that
8 will be in dispute. And I don't see this as doing
9 that.

10 Unless, as I say -- I mean, if you
11 come back and present us something on rehearing
12 that says, "Well, these really shouldn't be
13 considered pollution," then I might change my mind.
14 But I don't think it's a catchphrase as it's
15 written.

16 MS. LARSEN: Well, one last thing I
17 would say, it was mentioned earlier that most
18 voters wouldn't think that they emit carbon. I
19 don't think most voters are going to believe that
20 they are also polluters in everyday life. So I
21 don't know that (inaudible) I think could tend to
22 frame the debate that is something outside of the
23 control of your average polluter.

24 MR. HOBBS: Mr. McKinnon?

25 MR. MCKINNON: (Inaudible) polling

1 results are appropriate here, but we did a poll and
2 the overwhelming majority does, in fact, agree
3 (inaudible) "global warming."

4 MR. HOBBS: Okay. Thank you.

5 MR. DOMENICO: Well, just -- I think
6 this is pretty good, actually. And, you know, I --
7 I take some of the criticisms of Ms. Larsen, but --
8 and if -- but, in fact, the use of "pollution" is
9 in the kind of purpose part of this, which the
10 purposes this is being used for really do go beyond
11 nailing people who use stuff that emits carbon
12 dioxide and trying to come up with other ways to
13 reduce these gases. So I think it's accurate, and
14 I don't think pollution by itself is a catchphrase.
15 If someone showed me why it was inaccurate, then I
16 would think we need to change it. But I think it's
17 -- I like that statement of the subject.

18 MR. HOBBS: And I think I can live
19 with it, although, as I expressed earlier, I might
20 still prefer a completely different expression of
21 the subject, you know. But that's not focused on
22 imposing a fee. But at the same time, I think I
23 can live with what we've got there. I think it
24 still -- it addresses both the fee and who's paying
25 it as well as kind of what's it for. I mean, I'm

1 actually on the verge of even dropping the "what's
2 it for" just because it's awkward and we have
3 difficulty expressing what it's for.

4 But, you know -- and then as
5 Ms. Eubanks pointed out, we do have the severance
6 tax example. It's just -- it strikes me that it's
7 really about something other than imposing a fee.
8 But it's a long-winded way of repeating that I
9 think I'm okay with Mr. Domenico's suggestion, at
10 least for now. I'm assuming there's --

11 Well, let me ask Mr. Domenico what,
12 if anything, would you do with the next clause.

13 MR. DOMENICO: I think we could
14 probably get rid of some of the language later and
15 basically just jump into "in connection therewith,"
16 what you're doing with the fee in some way.

17 MR. HOBBS: Well, if it would be
18 helpful, maybe I'll just move what we have.

19 Go ahead and introduce yourself for
20 the record.

21 MS. RADFORD: Sue Radford. I find
22 that the language here on the fee is a little
23 awkward and I would like to suggest a possible
24 alternative, "a fee imposed on carbon dioxide
25 emissions, consumption of natural gas, and

1 consumption of electricity generated from fossil
2 fuels."

3 MR. DOMENICO: Say that one more
4 time, please.

5 MS. RADFORD: "A fee imposed on
6 carbon dioxide emissions from consumption of
7 natural gas and consumption of electricity
8 generated from fossil fuels."

9 MR. DOMENICO: I probably agree with
10 you that that's a bit less awkward than the current
11 phrasing, but I'm not -- I still get back to it's
12 -- it's not quite as accurate. Because it's
13 important to me that we tell people the fee is
14 being imposed on consumption.

15 MS. RADFORD: I think that does
16 that.

17 MR. DOMENICO: Well, what it says is
18 a fee imposed on emissions, which is really not
19 what's being done.

20 MS. RADFORD: Well, in fact, it is
21 what's being done. And it's the emissions
22 resulting from consumption of natural gas and
23 emissions resulting from consumption of
24 electricity.

25 MR. DOMENICO: I don't see that. I

1 mean, what's being imposed is when people consume
2 these forms of energy, they have to pay a fee. And
3 the way it's calculated is based on how much their
4 consumption causes to be emitted. But what really
5 -- to me it's important to tell people what they
6 can do or not do to pay the fee or who's paying the
7 fee. And saying it this way, while I agree it's
8 awkward and kind of ugly, is the only way that does
9 that. Your way, again, it kind of gets it
10 backwards, as I see it, which is actually more the
11 way the measure is phrased, but the way the measure
12 works is more this way. I mean, yours says it's
13 imposed on emissions, the fees imposed on
14 emissions. But it's really calculated based on
15 emissions and imposed on consumption. And that's
16 the problem I have with that, even though I
17 appreciate what you're saying.

18 MS. RADFORD: The idea here is the
19 fact of the emissions is built into the
20 consumption. And that's a fundamental fact that
21 people need to internalize.

22 MR. DOMENICO: Right.

23 MS. RADFORD: And I just find this
24 awkward.

25 MR. DOMENICO: I don't necessarily

1 disagree with that.

2 MS. RADFORD: I wanted to suggest a
3 way of moving forward that wasn't quite so painful.

4 MR. DOMENICO: I mean, I'm willing
5 to listen to suggestions. I just -- to me, we have
6 to get across the point that it's your consumption
7 that will cause you to be . . .

8 MR. HOBBS: Well, as imperfect as it
9 may be, I guess I'll go ahead and move that
10 language. And is there --

11 MR. DOMENICO: And the proponents
12 can ask for a rehearing, right, if they come up
13 with something better?

14 MR. HOBBS: That's right. I do have
15 a feeling that maybe sleeping on this might result
16 in something better. But like I say --

17 Mr. McKinnon?

18 MR. MCKINNON: If we add the word
19 "greenhouse gas" as opposed to "global warming,"
20 would that be more likely to not be viewed as a
21 catchphrase?

22 MR. HOBBS: Personally, I don't
23 think so. Less of a catchphrase, I think so, but
24 it's offset by the problem of I just don't know
25 what it means to the reader. And it's not a term

1 used in the measure and, I mean, I'm just finding
2 that a little troublesome also.

3 MR. MCKINNON: Guess I was saying
4 within the statute, the global warming statute
5 (inaudible) we used "global warming" because at a
6 colloquial level that is, in fact, what people are
7 more familiar with. But accurate enough.

8 MR. HOBBS: I don't know.

9 MR. DOMENICO: I would say I would
10 find it to be less of a problem. I'm not sure it's
11 worth it to you to go back and restart the process
12 just to deal with that, though. But maybe it is.

13 You know, if it's that, would we
14 include it in the subject? I would probably say
15 that's okay as a subject, I think.

16 MR. HOBBS: And I might, I guess --
17 I would want to revisit that question of is that a
18 scientifically certain term? You know, it still
19 sounds a little loaded to me, but I would just want
20 a little more information about it, I guess. And I
21 would agree with Mr. Domenico, I'm not sure that's
22 something to change the measure for as well. I
23 mean -- and I certainly don't fault the proponents
24 for using language in their measure that refers to
25 global warming. I think that's fine. Just as a

1 board, we struggle, though, with how to
2 characterize that fairly, you know, without tilting
3 towards one side or the other.

4 So I move the change. Is there a
5 second?

6 MS. EUBANKS: Second.

7 MR. HOBBS: That's been seconded.

8 All those in favor say aye.

9 MS. EUBANKS: Aye.

10 MR. HOBBS: Aye.

11 MR. DOMENICO: Aye.

12 MR. HOBBS: All those opposed say
13 no. That motion is adopted.

14 Mr. Domenico, do you want to take a
15 stab at maybe what to do next?

16 MR. DOMENICO: Well, the more I
17 think about it, I'm not sure I have a problem with
18 leaving it basically as is. We could, I think, get
19 rid of some of the specifics, since we have now
20 addressed them a little bit more up above. But if
21 we're following this format, this second part
22 really is supposed to, again, say everything that's
23 going on. And it's a little redundant. And you
24 could probably cut back some of it, but I don't
25 know. I mean, this probably provides some more

1 helpful detail -- is it too much detail? I don't
2 know. I would be willing to listen.

3 MR. HOBBS: I guess I'm trying to
4 figure out what that first clause after the "in
5 connection therewith" adds. We said that it's in
6 the subject, but it's imposed on the consumption of
7 electricity or natural gas. And then we say, "in
8 connection therewith, imposing the fee on natural
9 gas consumption and electricity production." It
10 almost seems either repetitive or confusing.

11 MR. DOMENICO: Right. I mean, I
12 guess it provides a little bit more clarity of
13 exactly how it's going to work. But you could get
14 rid of it, I think, given that we've been clearer
15 up above. I also even earlier thought you might be
16 able to get rid of the -- requiring the entity
17 providing the energy to the end user. I mean, that
18 could either -- would anyone actually care that the
19 fee goes -- is routed through the FUC? I mean,
20 that seems sort of just not very important to me.

21 I would be willing to get rid of
22 most of that first part. As I said, if we want to
23 provide more and more detail, I think it's okay.
24 But if everybody else wants to get rid of it, I'm
25 happy to go along.

MR. HOBBS: Ms. Rubanks?

MS. RUBANKS: Well, I agree there's some overlap in terms of the single subject statement versus some of these clauses that we're now looking at. I do think that perhaps the true nature of the basis of the fee hasn't been quite -- I don't know -- described in detail. And so whether or not perhaps you used that first phrase about imposing the fee on consumption, on the natural gas consumption or electricity production based upon the amount of carbon dioxide -- I don't know -- generated or emitted or, you know, add something that gives a little bit more specifics about it, because it's really the fact that using the natural gas or having the electricity to use has generated the carbon dioxide emissions. That's the concession.

I agree completely with you on the second phrase. I don't think it's important to talk about who's collecting the fee, where it's transmitted to. Do I think that it's important to maybe help clarify, since we only talk about in the single subject statement about the fee being imposed on the consumption, maybe you have the second phrase saying something like "collecting the

fee based on this, or is -- I guess my fundamental question is how this carbon dioxide equivalent fits with carbon dioxide emissions and with the -- what you call global warming pollutants. And I'm just -- I'm not sure we've got it accurate there that it's just based on carbon dioxide emissions, because isn't it based on carbon dioxide equivalents, emission of carbon dioxide equivalents? I'm just confused.

MR. MCKINNON: There are three separate issues here. First, carbon dioxide equivalent in the way of using what's known as the global warming potential, we have that in the definitions. Nitrous oxide, methane (inaudible). The fee is on -- or it's where it's collected is on carbon dioxide alone. Carbon dioxide equivalent, carbon dioxide are the same. There's other reasons for consistency, but we use carbon dioxide equivalent.

MR. DOMENICO: So the way it works is you've got science that shows that if you emit X amount of carbon dioxide, you're essentially also emitting X or Y amount of these either gases? And so that's why -- that's how they relate to each other?

fee from consumers of these forms of energy" or, you know, something to make it clear that it's the consumers of the energy that pays -- they pay the fee.

But those -- that's just sort of my initial reaction. But I do think that there's something that perhaps needs to be added more specifically about the basis of the fee, because I don't know that by saying it's imposed upon the consumption of electricity or natural gas based upon carbon dioxide emissions, I don't know that that, in a more specific way, conveys the basis upon which the fee is calculated. I don't know.

MR. DOMENICO: I think those are good ideas. And I really hate to do this, but I have a fundamental question, now that I've looked at this a little more carefully in this context. Is it really true -- I think I misunderstood this completely. The fee is really not just based on carbon dioxide emissions. In 3(A) and (B), isn't the fee calculated -- I mean, I guess -- I probably don't understand the science well enough. Is the way this fee is going to be calculated, someone goes and measures how much carbon dioxide is coming out of a certain plant, and then they've calculated

MR. MCKINNON: Not exactly. If I emit a pound of carbon dioxide, I'm going to emit so much global warming. (Inaudible) and it turns out that a pound of methane is 25 times more potent. A pound of nitrous oxide is 200 times more potent. So if you had your choice on an equivalent basis of reducing a pound of CO2 emission or a pound of methane emission, you would much rather reduce methane. So that's the notion of the carbon dioxide equivalent.

But because we're talking about the fee being put on carbon dioxide, in fact the carbon dioxide (inaudible) they're really the same thing. It's a way of normalizing it all to other gases than carbon dioxide (inaudible).

To return to your question about will someone go out and measure; no. For natural gas, there's no issue here. And so we specify in paragraph E that it's going to be 12.8 pounds of carbon dioxide per therm. All natural gas is the same. Electricity, however, is very different. Xcel is the largest retailer of wind energy, which has zero carbon footprint. But they also have coal plants, which have a much larger. But the utilities know this very well. They know exactly

1 how much fuel they're buying.

2 MR. DOMENICO: So it's kind of the
3 average of if you have X amount from coal and X
4 percentage --

5 MR. MCKINNON: So all they need to
6 do is -- I think we put this on an annual. It's on
7 an annual basis. They look at how much fuel
8 they're buying of various types, what the carbon
9 content is. All of this is known very well, and
10 they know how many kilowatt hours they sold. Take
11 a ratio of those two numbers. That's what's
12 reported to the governor's energy office.

13 MR. DOMENICO: I understand that
14 part, I think. But J(B) says, "The fee is computed
15 at a rate of \$3 per metric ton of carbon dioxide
16 equivalent emitted to the atmosphere from this
17 production and combustion." And carbon dioxide
18 says equivalent means a measure to compare the
19 emissions from the six global warming pollution
20 gases.

21 Maybe we're okay as it is because it
22 makes sense. But the way I read that, if you do
23 use methane, if you are emitting methane, say,
24 which you said is, what, 200 times as --

25 MR. MCKINNON: 25.

1 MR. DOMENICO: So it's 25 times. If
2 you emit a ton of methane, then you're being taxed
3 -- you're being taxed on that, right? If you have
4 a plant that emits a ton of methane, it's being
5 taxed even though it's not -- I mean, maybe this is
6 -- doesn't actually happen, but if it just emitted
7 methane and no carbon dioxide, you would still be
8 paying that tax, right?

9 MR. MCKINNON: Right. It would be
10 25 times more. But what you said maybe doesn't --
11 as a practical matter, it doesn't happen. So Xcel
12 Energy or the different utilities will buy natural
13 gas, which is mostly methane. It goes into their
14 plant and they make electricity. If they're
15 emitting methane, they're tearing up \$100 bills on
16 a rapid basis. So they're converting natural gas
17 or methane into heat and then, in doing so,
18 emitting carbon dioxide. So there would be a
19 negligible amount of methane emitted from the
20 combustion.

21 MR. DOMENICO: I see. So it's all
22 the emissions. And the way you figure out -- I
23 mean, I still -- so I guess the way it works is if
24 they're burning a bunch of methane --

25 MR. MCKINNON: Or natural gas.

1 MR. DOMENICO: -- or natural gas or
2 some of the other gases, right, those equivalents
3 -- those have a ratio of -- that goes into your
4 calculation and you figure, well, if you're using
5 this much of a certain gas to produce energy,
6 you're emitting certain -- this amount of carbon
7 dioxide? I mean, let me just tell you what my
8 concern is and then you can tell me if I'm just off
9 base and I'll take your word for it. My concern on
10 line 3 is saying that this fee is based on carbon
11 dioxide emissions, because the way I actually read
12 the measure, it's based on carbon dioxide
13 equivalents. And if there's really no difference
14 between what we say and what the measure says, then
15 I'm fine leaving it, and we can talk about science
16 some other time.

17 MR. MCKINNON: Science would say,
18 carbon dioxide and carbon dioxide equivalent,
19 there's these ratios that are put one for carbon
20 dioxide, by definition, 25 for methane, applied the
21 physics to it. Every gas has its own --

22 MR. DOMENICO: So you think it's
23 accurate to say the tax -- the fee is based on
24 carbon dioxide emissions?

25 MR. MCKINNON: That's correct. It

1 doesn't matter from our standpoint what fuel comes
2 in to generate the electricity. What we care about
3 is what global warming or greenhouse gases --

4 MR. DOMENICO: Okay. So you measure
5 how much fuel of these fuels are going into the --

6 MR. MCKINNON: The utility measures.
7 The state doesn't measure that.

8 MR. DOMENICO: Well, they get a
9 measurement of it. And then the way they calculate
10 how much carbon that's going into the atmosphere by
11 using those gases. So it's sort of the reverse of
12 what I was concerned about, right, is that the use
13 of these equivalents is because you don't actually
14 measure the carbon dioxide, you just figure if
15 you're using this much of certain gases, you're
16 emitting this much carbon, right?

17 MR. MCKINNON: That's right.

18 MR. DOMENICO: Okay.

19 MS. KUBANKS: Is this why we became
20 attorneys instead of --

21 MR. DOMENICO: You know, my dad is
22 actually an atmospheric scientist. I'll have
23 something to talk about next time we get together.

24 (Inaudible comment from the
25 audience.)

1 MR. DOMENICO: I am. And I'm from
2 Boulder. I really am a great disappointment to the
3 family.

4 Well, so, hopefully that will serve
5 some purpose besides my edification.

6 That made it a little bit more clear
7 how we would say what Ms. Bubanks was trying to get
8 at about how exactly these things are calculated,
9 which I do think is a good idea of using that first
10 sentence to clarify --

11 MS. EUBANKS: More specifically --

12 MR. DOMENICO: -- The calculation.

13 MS. EUBANKS: So if we go along
14 those lines, perhaps we use the language that's
15 there in that first phrase, and then perhaps add to
16 it something along the lines of "based upon."

17 So, Cesi, if you would like to go
18 with the end of the phrase after "production,"
19 "electricity production," insert --

20 MS. GOMEZ: Before the semicolon?

21 MS. EUBANKS: Before the semicolon,
22 please. "Based upon the amount of carbon dioxide"
23 -- and I don't know whether to just say "emissions"
24 or to say "emitted from such" -- I don't know --
25 because you have production and you have

1 consumption. I have this problem of lumping it all
2 into one. "Emitted" -- just leave it like that.

3 If you guys -- please add to it if
4 you'd like. I mean, we could, you know, say
5 "emitted from such consumption and production."
6 But I sort of hate to go there.

7 MR. DOMENICO: What if you move that
8 up a little bit -- I'm sort of thinking out loud,
9 so it may not work -- "imposing a fee" -- or
10 "imposing the fee based upon the amount of carbon
11 dioxide emitted by natural gas consumption and
12 electricity production." You know what I'm saying?

13 MS. EUBANKS: Let's try it and see.

14 MR. DOMENICO: So I would cut that
15 and move it to after "fee." And then I would
16 change "on" to "by" or "through" or something, some
17 other preposition. Or you could -- in the process
18 of --

19 MS. EUBANKS: Resulting from

20 or . . .

21 MR. DOMENICO: Yeah, resulting
22 from --

23 MS. EUBANKS: You said "based upon
24 the amount of carbon dioxide emissions resulting
25 from."

1 MR. DOMENICO: Yeah.

2 MS. EUBANKS: Change the "emitted"
3 to "emissions"? Resulting from . . .

4 MR. DOMENICO: I like that for that
5 clause.

6 MS. EUBANKS: And I would so move.

7 MR. DOMENICO: I'll second it.

8 MR. HOBBS: Any further discussion?
9 If not, all those in favor say aye.

10 MS. EUBANKS: Aye.

11 MR. HOBBS: Aye.

12 MR. DOMENICO: Aye.

13 MR. HOBBS: All those opposed say
14 no. The motion carries three to zero.

15 MS. EUBANKS: And then on the next
16 phrase it starts -- I would strike, I think, the
17 whole phrase and replace it with something like --

18 MS. GOMEZ: What do you need me to
19 delete?

20 MS. EUBANKS: That whole phrase that
21 says "requiring the entity" all the way through
22 "public utilities commission." Strike all that
23 language. And then replace it with "collecting the
24 fee from consumers of this energy or these forms of
25 energy"? Or just "collecting the fee from energy

1 consumers"? Although it is only from natural gas
2 and electricity.

3 MR. DOMENICO: What about just
4 "consumers"?

5 MS. EUBANKS: "From consumers"?
6 Okay.

7 MR. DOMENICO: Is there any reason
8 to prefer "consumers" or "end users"? I think I
9 prefer "consumers," but --

10 MS. EUBANKS: I don't know that "end
11 user" would make a lot of sense to most people on
12 the street.

13 MR. DOMENICO: Makes me think of
14 computers.

15 MS. EUBANKS: I'm comfortable with
16 consumers because I think that, ultimately, the use
17 of that term is that that person is not going to be
18 selling the energy for use by someone else.

19 MR. DOMENICO: I'm okay.

20 MS. EUBANKS: Then I would move that
21 change.

22 MR. DOMENICO: I'll second.

23 MR. HOBBS: Any further discussion?
24 All those in favor say aye.

25 MR. DOMENICO: Aye.

1 MR. HOBBS: Aye.
 2 MS. EUBANKS: Aye.
 3 MR. HOBBS: All those opposed say
 4 no. That motion carries three to zero.
 5 Ms. Eubanks?
 6 MS. EUBANKS: In terms of the next
 7 phrase that's dealing with specifying that the fee
 8 is in addition to existing programs which are not
 9 to be reduced, I'm -- you know, "existing programs"
 10 is very broad. And whether we stick in a certain
 11 -- because it's only certain types of programs,
 12 those related to the types of programs that are
 13 specified in the measure, and just to say "existing
 14 programs" or saying "existing programs" and then
 15 you get into, you know, global warming, and then
 16 again, it's very difficult to group those because
 17 there's a very diverse purpose to some of those
 18 types of programs.
 19 MR. DOMENICO: Yeah. The only thing
 20 I can think of other than "certain existing" is
 21 "existing related programs." But I don't know if
 22 there's any danger that someone could say, "Oh,
 23 some of these aren't related." It may be safer to
 24 say just certain existing programs.
 25 MS. EUBANKS: I would insert

1 "certain" before "existing."
 2 MR. DOMENICO: I would suggest
 3 getting rid of the "which" clause after that. I
 4 think it's redundant, if it's in addition to the
 5 others.
 6 MS. EUBANKS: I'm fine with that.
 7 MR. DOMENICO: Yeah. Although up to
 8 the -- from that comma to the semicolon, I also
 9 think it's -- I would actually get rid of the comma
 10 and leave the semicolon.
 11 I think it's redundant. I think
 12 it's potentially misleading in that as some of the
 13 questioning, I think, was pointing out at the very
 14 beginning, it may not really be possible to bind
 15 the legislature forever not to reduce the other
 16 programs in a statute rather than the constitution.
 17 But I'd rather not take a position on it, if you
 18 don't have to.
 19 MS. EUBANKS: I would move those
 20 changes.
 21 MR. DOMENICO: Second them.
 22 MR. HOBBS: Any further discussion?
 23 All those in favor say aye.
 24 Aye.
 25 MS. EUBANKS: Aye.

1 MR. DOMENICO: Aye.
 2 MR. HOBBS: All those opposed, no.
 3 That motion carries three to zero.
 4 Ms. Eubanks?
 5 MS. EUBANKS: In terms of sort of
 6 the laundry list of various projects or purposes
 7 for which the fee revenues are supposed to be used,
 8 I want to go sort of the way we've been dealing
 9 with some of the severance tax measures in terms of
 10 -- I think it's very difficult to have a laundry
 11 list the way it's written right now where it has
 12 sort of projects -- it almost makes it -- you have
 13 to get through the whole list before you sort of
 14 understand what all these terms relate to. And so
 15 perhaps we could say, "specifying minimum
 16 percentages of the revenues that are to be spent on
 17 the following purposes," and then colon, and then
 18 do some numbering to break them apart and keep them
 19 separate, because I just think that might make it a
 20 little bit more readable for folks.
 21 MR. HOBBS: Okay.
 22 MS. EUBANKS: So if you'd strike
 23 "specific" and substitute "the following purposes,"
 24 colon, then do you a "(1) Energy Efficiency," and
 25 then after that, "(2) Before Carbon Sequestration."

1 I'm not a scientist to pronounce the words. Or
 2 after and put (A). And then I think we would also
 3 strike "projects" there at the end.
 4 MS. GOMEZ: Projects?
 5 MS. EUBANKS: Yes. I just think
 6 maybe that makes it a little bit easier for folks
 7 to read.
 8 MR. DOMENICO: I'll move that.
 9 MS. EUBANKS: Second.
 10 MR. HOBBS: Any further discussion?
 11 All those in favor say aye.
 12 MS. EUBANKS: Aye.
 13 MR. HOBBS: Aye.
 14 MR. DOMENICO: Aye.
 15 MR. HOBBS: All opposed, no. That
 16 motion carries three to zero.
 17 MS. EUBANKS: I think that's a
 18 separate phrase. Now, I do have an issue with that
 19 phrase in terms of I don't know that it's just
 20 established in a task force. It's funding the task
 21 force which is established, and perhaps it's
 22 similar to issues we've dealt with on some of the
 23 severance tax measures that we want to say,
 24 "funding a Clean Energy Progress tax force which is
 25 established to develop strategies for a clean

1 energy portfolio."
 2 Because those are -- in terms of the
 3 way the measure -- I mean, it goes through and it
 4 specifies certain percentages for certain purposes,
 5 which I think generally are the laundry list
 6 purposes. And then it gets into separate dollar
 7 amounts for the task force, for the senior advisor
 8 on climate change. And it just -- I don't know, it
 9 seemed a little different rather than including
 10 that in the laundry list. But I guess we could do
 11 that if you think that's more appropriate.

12 MR. DOMENICO: Well, you would have
 13 to rewrite the intro to the laundry list. Because
 14 the ones -- the current laundry list really are
 15 minimum percentages, and these are dollar amounts,
 16 specific dollar amounts. So you could -- I mean,
 17 you could rewrite that to say something like
 18 "specifying" --

19 MS. EUBANKS: "That the revenues are
 20 to be spent."

21 MR. DOMENICO: Yeah. I think I
 22 prefer to leave it kind of as it is with the
 23 percentages part and then a separate funding of
 24 these projects. Just because there is a -- there's
 25 a fundamental difference. I mean, these -- the

1 later parts get a set amount of money, basically,
 2 and the others sort of have to rely on the whims of
 3 how much the tax brings in. And maybe more
 4 importantly, it's probably good to hint to people
 5 that those might -- it's kind of -- that if they're
 6 concerned about how much is going into renewable
 7 energy versus public education, that they should
 8 look, that it's specified, the ratios are
 9 specified. And I think putting it this way is
 10 helpful for that purpose.

11 So I would probably leave it.

12 MR. HOBBS: Ms. Eubanks, I'm
 13 wondering if it would be better -- well, going back
 14 to something you said earlier, if we should say,
 15 "funding the establishment and operation of a Clean
 16 Energy Progress task force to develop strategies,"
 17 et cetera.

18 MS. EUBANKS: And I'm fine with
 19 that. Or you could say, "funding a Clean Energy
 20 Progress task force, which is established to
 21 develop strategies for clean energy portfolio" --
 22 however you want to --

23 MR. DOMENICO: Or "establishing and
 24 funding."

25 MS. EUBANKS: And I'm fine with that

1 too.

2 MR. HOBBS: How about "establishing
 3 and funding"?

4 MR. DOMENICO: I'd be happy with any
 5 of those three.

6 MS. GOMEZ: "Establishing and
 7 funding"?

8 MS. EUBANKS: Yes.

9 MR. HOBBS: I'll move that.

10 MS. EUBANKS: Second.

11 MR. HOBBS: All those in favor say
 12 aye.

13 Aye.

14 MS. EUBANKS: Aye.

15 MR. DOMENICO: Aye.

16 MR. HOBBS: All those opposed say
 17 no. That motion carries three to zero.

18 Ms. Eubanks?

19 MS. EUBANKS: And I don't know that
 20 -- it's my recollection, although my memory is not
 21 very good, I believe that perhaps the governor's
 22 already established by, perhaps, executive order or
 23 something that there's a senior advisor on climate
 24 change. So I don't know that that measure is
 25 establishing or only just funding it. So I think

1 we should leave that phrase just the way it is, if
 2 my memory is correct.

3 MR. DOMENICO: I think that's right.

4 MS. EUBANKS: And then I would -- I
 5 just don't think the last phrase, that that's a
 6 major component of the measure. And I would strike
 7 it completely. And relating to that, then, in
 8 front of the phrase "funding a senior advisor," I
 9 would insert an "and," because that would be the
 10 end of the last phrase.

11 MR. HOBBS: Unless there's some
 12 objection, I would think that's fine. Don't all
 13 government agencies have to deliver an annual
 14 report just by their nature?

15 MR. DOMENICO: If you guys want it
 16 in there, it's important to the proponents, that's
 17 fine with me. But it's what governments do.

18 MR. HOBBS: We could avoid a
 19 reference to global warming pollution.

20 MS. EUBANKS: You want to put a
 21 period after "senior advisor to the governor on
 22 climate change"? Put a period there and then
 23 strike the remainder.

24 MR. HOBBS: I'll move that change.

25 MS. EUBANKS: Second.

1 MR. HOBBS: Any further discussion?
 2 All those in favor say aye.
 3 Aye.
 4 MS. EUBANKS: Aye.
 5 MR. DOMENICO: Aye.
 6 MR. HOBBS: All those opposed, no.
 7 That motion carries three to zero.
 8 Any further changes?
 9 MS. EUBANKS: Let me look at it for
 10 just a second.
 11 MR. HOBBS: Maybe for the record --
 12 I'm going to have to do this sooner or later --
 13 I'll go ahead and read it into the record the way
 14 we've amended it so far. The title would read,
 15 "State taxes shall be increased \$209 million
 16 annually by an amendment to the Colorado Revised
 17 Statutes concerning a fee imposed on the
 18 consumption of electricity or natural gas based on
 19 carbon dioxide emissions to be used to reduce
 20 certain forms of pollution and in connection
 21 therewith imposing the fee based upon the amount of
 22 carbon dioxide emissions resulting from natural gas
 23 consumption and electricity production; collecting
 24 the fee from consumers; specifying that the fee is
 25 in addition to certain existing programs; exempting

1 revenues generated from the fee from applicable
 2 constitutional spending limits; specifying minimum
 3 percentages of the revenues that are to be spent on
 4 the following purposes: (1) Energy Efficiencies,
 5 (2) Renewable Energy, (3) Carbon Sequestration,
 6 (4) Pollution Reduction, (5) Work Force Training,
 7 (6) Technology Commercialization, (7) Public
 8 Education, and (8) Curricula Development;
 9 establishing and funding a Clean Energy Progress
 10 task force to develop strategies for a clean energy
 11 portfolio; and funding a senior advisor to the
 12 governor on climate change."

13 Any further changes? Is there a
 14 motion to adopt, then, the staff draft as so
 15 amended with the understanding that the same
 16 changes would be made in the ballot title and
 17 submission clause except that it would begin "Shall
 18 state taxes be increased \$209 million," et cetera.

19 MS. EUBANKS: I would so move.
 20 MR. DOMENICO: I second the motion.
 21 MR. HOBBS: It's been moved and
 22 seconded. If there's no other discussion, all
 23 those in favor say aye.
 24 Aye.
 25 MS. EUBANKS: Aye.

1 MR. DOMENICO: Aye.
 2 MR. HOBBS: All those opposed say
 3 no. That motion carries three to zero.
 4 And that completes this action on
 5 No. 83. The time is 11:14 a.m.
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1 REPORTER'S CERTIFICATE
 2 I, Diane M. Overstreet, Certified Realtime
 3 Reporter and Notary Public in and for the State of
 4 Colorado, certify that the above and foregoing
 5 constitutes as accurate and complete a
 6 transcription as is possible given the quality of
 7 the audio recording of the recorded proceedings to
 8 the best of my ability. Corrections in audio
 9 interpretation were made with the assistance of
 10 Ms. Larsen.
 11 Dated this 12th day of May, 2008.

16 _____
 17 Diane M. Overstreet
 18 Certified Realtime Reporter

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ATTACHMENT 2

1 Initiative Title Setting Review Board
2 Wednesday, April 16, 2008
3 Secretary of State's Blue Spruce Conference Room
4 1700 Broadway, Suite 270
5 Denver, Colorado
6 Proposed Initiative 2007-2008 #83
7 Fees on Energy Emissions
8 Rehearing
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14
15 Board Members:
16 William A. Hobbs
17 Daniel D. Domenico
18 Sharon Rubanks
19
20 Also Present:
21 Cesi Gomez
22
23
24 Diana M. Overstreet
25 Registered Professional Reporter
Certified Realtime Reporter

1 P R O C E E D I N G S
2 MR. HOBBS: Let's then move on to
3 the next agenda item. That's No. 2007-2008,
4 No. 83, Fees on Energy Emissions.
5 MS. LARSEN: Yes, thank you. My
6 name is Mimi Larsen, and I'm here representing
7 Mr. Ross in respect to the motion for rehearing on
8 Initiative 83. You have been provided a copy of
9 the motion for rehearing, and within that motion it
10 sets forth our arguments as to why the initiative
11 active action does contain more than one subject.
12 And if you don't mind, I would like to just take a
13 moment or two to go over some of those items.
14 Under the broad beam of global
15 warming, the initiative attempts to link several
16 unrelated subjects which should be addressed in
17 separate initiatives. The initiative is proposing
18 to tax consumers for the carbon emissions which
19 results from consumption of electricity and natural
20 gas. The initiative is also proposing to regulate
21 carbon as a pollutant through the mandate under
22 carbon sequestration program be implemented. This
23 carbon sequestration program would allow for not
24 only terrestrial sequestration but also geological
25 sequestration. It is through the geological

1 A P P E A R A N C E S
2
3 For Clean Energy Programs:
4 J. THOMAS MCKINNON
5 SAMUEL P. WEAVER
6 JERRY TODD
7
8 For the Opponents:
9 MARIAN C. (MIMI) LARSEN
10
11
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1 sequestration that the regulation of carbon would
2 result. Apparently, carbon is not regulated either
3 under federal law, The Clean Air Act, or any other
4 federal regulation, or under Colorado law.
5 The initiative will also assign
6 authority to the departments of agriculture and
7 natural resources in the governor's energy office
8 to implement emission control regulations, which
9 stem from the implementation of the carbon
10 sequestration program. Because the initiative will
11 implement this sequestration program, which will
12 then result in the regulation of carbon, the
13 program will -- that program would normally be
14 implemented (inaudible) by the air quality control
15 commission, that authority option is now being
16 transferred over to the departments of ag and
17 natural resources in the governor's energy office.
18 Because carbon is not a regulated
19 pollutant, however, the Commission is prohibited
20 from implementing any regulation or standard which
21 is, quote, otherwise more stringent than the
22 requirements of The Clean Air Act. And that's
23 found in CRS 25-7-105. (Inaudible) the commission
24 would be unable to implement such a program.
25 Therefore, the initiative provides that the

1 departments of agriculture and natural resources,
2 with the governors's office, will implement this
3 program. The result it is vesting authority into
4 two departments, and the government's office
5 departments and the governor's energy office which
6 authority should in fact be with the Commission.

7 Finally, the initiative will result
8 in prohibiting future general assemblies from
9 repealing or reducing funding to certain programs.
10 Because of these reasons, we find the initiative,
11 in fact, fails to meet the single subject
12 requirement.

13 I'm happy to take questions on this
14 issue right now if you would like also to discuss
15 why the title fails to its requirements as well.

16 MR. HOBBS: Any questions at this
17 point? Why don't you --

18 MR. DOMENICO: I've got questions,
19 but I think for the proponents, so I'd say go
20 ahead.

21 MS. LARSEN: Thank you. With
22 respect to the ballot title and submission clause,
23 it is confusing and misleading. The title fails to
24 inform the voters of who exactly is to be taxed.
25 It's unclear as to whether the tax is only assessed

1 on consumers or if that may also apply to
2 electricity producers. The title fails to
3 adequately describe what activity will result in
4 the tax being assessed. Is it only on consumption?
5 Is it on production of energy or is it both. The
6 voters are not told within the title what the
7 amount of the taxes are that they will be assessed.
8 While the title currently does provide what the
9 estimated amount of revenue is, it doesn't inform
10 the voter what that tax or what that rate is that
11 they are being assessed.

12 The fee should be referred to
13 throughout the title as a tax. It is, in fact, a
14 tax. It's not a fee. The title fails to
15 adequately describe to the voters the extent of the
16 statutory and policy changes it results in. The
17 initiative will result in, as I mentioned before, a
18 new regulatory scheme. And it will repeal the
19 longstanding tradition that the general assembly
20 not be prohibited from acting. Neither of those
21 issues are addressed fully within the Title. The
22 title fails to inform voters as to what forms of
23 pollution reduction measures their money will be
24 spent on. Voters are not -- do not know who is in
25 charge of allocating the revenues that are

1 collected from this tax.

2 Finally, the title contains
3 catchphrases such as "global warming" and
4 "pollution," words that will work in the
5 initiative's favor without contributing to the
6 voters' understanding.

7 MR. HOBBS: Questions for
8 Ms. Larsen? Ms. Bubanks?

9 MS. KUBANKS: In terms of the
10 catchphrase "the global warming," I believe that's
11 in regard to -- no, I guess it's the climate
12 change.

13 MS. LARSEN: Pardon me, I misspoke.
14 You're right, climate change.

15 MS. KUBANKS: That's in regard to
16 the requirement under the measure for a portion of
17 the revenues to be funding a permanent staff
18 position, senior advisor on climate change. And
19 it's climate change, and it's my understanding
20 that's created by executive orders. Since that's
21 the name of the position, how would you suggest
22 eliminating that, the supposed catchphrase that's
23 the title of the position which the measure
24 requires to be funded?

25 MS. LARSEN: You know, at this

1 point, I really can't take the position as to how
2 that could be reworded, merely because it is an
3 office that -- or a position that's been created by
4 executive order. Not being that, though, by
5 including it within the title, it could be
6 considered as a catchphrase. In fact, it does rise
7 to the level of a catchphrase.

8 MS. KUBANKS: Thank you.

9 MR. HOBBS: One of the things I
10 wanted to ask about -- I'm still trying to catch up
11 here. You're pretty fast, so -- and it's a pretty
12 long motion for rehearing.

13 Subsection 4, I'm just trying to
14 find where it is. I wanted to think a little bit
15 -- think through this, the argument that's on
16 page 9 of the motion for rehearing about preventing
17 future legislators from amending the act. And I'm
18 trying to find the provision in the measure. Point
19 me to that. I knew where it was.

20 MS. LARSEN: Section 4(A), I
21 believe? Section 4.

22 MR. DOMENICO: I think three pages.

23 MR. HOBBS: Okay. Oh, okay. And
24 the sentence, it reads, "Such existing program
25 shall not be repealed or reduced by the general

9
1 assembly in consideration of this section." That's
2 -- and this is in -- this is a separate subject?
3 Is that the argument?
4 MS. LARSEN: Correct. Yes.
5 MR. HOBBS: What would prevent the
6 general assembly from amending that sentence in
7 future legislation and, for example, striking that?
8 MS. LARSEN: To my knowledge, I
9 don't know that they would be prohibited from
10 amending that section. However, by -- on its face,
11 the fact that the issue is proposing to inhibit the
12 general assembly from acting in the future is, in
13 and of itself, a separate subject.
14 MR. HOBBS: Even though it may be
15 ineffective, it's -- by its existence, it's a
16 separate subject.
17 MS. LARSEN: That's correct.
18 MR. HOBBS: Doesn't it relate
19 directly to the measure? It's trying to prevent
20 the general assembly from having an effect on the
21 measure.
22 MS. LARSEN: It encompasses more
23 than just this measure. The language is very
24 broad, and it doesn't specify only programs which
25 relate specifically to this measure would be

11
1 result of this language.
2 So the general assembly may find
3 that there's a job creation program that is
4 ineffective or the money is going to be allocated
5 elsewhere. The language that is provided for in
6 here would prohibit that action.
7 MR. HOBBS: Okay. Are there
8 questions for Ms. Larsen? Thank you. I'm not sure
9 who -- I've got other people signed up. Is there
10 anybody else who wants to address the motion for
11 rehearing?
12 Yes, sir. Go ahead. I'm not sure
13 what order to go in. I've got three other people
14 that said that they wanted to testify. But go
15 ahead.
16 MR. MCKINNON: My name is Tom
17 McKinnon, and I'm here with Clean Energy Progress.
18 And may I just go down what my point is?
19 MR. HOBBS: Yes. Go right ahead.
20 MR. MCKINNON: All right. So that
21 in point No. 2 of the motion, it says that -- well,
22 in arguing against the single subject, we're
23 implementing separate and distinct programs. We
24 already had a discussion on this point two weeks
25 ago on April 2, and I think perhaps the most rogent

10
1 considered under Section 4. It provides that the
2 fees imposed by the section shall be in addition to
3 any other program, including job creation, economic
4 development, et cetera, and then those existing
5 programs. So any other job creation, economic
6 development program that addresses job development
7 and economic development outside of this new energy
8 economy would be affected by this section.
9 MR. HOBBS: Okay. Hopefully, I
10 understood that. But it just seems like it's just
11 trying to ensure that the fees derived from this
12 measure will be supplementary and not substituted
13 for any of those programs. I mean, even though it
14 goes to a lot of -- it goes to these other
15 programs, it seems that this is not a separate and
16 distinct purpose or subject.
17 MS. LARSEN: Well, Section 4
18 provides that the general assembly may not actually
19 reduce or repeal any of these programs. So even if
20 you had a job development program that focused on
21 industry outside of what would be considered a new
22 energy economy for purposes of this initiative by
23 this statute, the general assembly would be
24 prohibited from either repealing or reducing
25 funding for that job creation program merely as a

12
1 argument that was brought up was income taxes, if
2 there was income taxes on the ballot, that those
3 funds would be spent for different things, any
4 money for funds for different things, although they
5 are closely related to the single subject of global
6 warming. Throughout the motion, there is what we
7 think is a fallacious argument made that we are
8 trying to regulate carbon dioxide, we're putting a
9 fee on carbon dioxide and would emit all the carbon
10 dioxide we would like to.
11 MR. DOMENICO: Can I interrupt you
12 again? I think I asked you before, and I just want
13 to make sure, because it is a little more focused
14 now. Their argument is that the carbon
15 sequestration -- and I think more specifically, the
16 geologic carbon sequestration program is a
17 regulatory program rather than simply one of the
18 funding -- one of the things you're trying to fund.
19 Do you disavow that? Is this purely something to
20 fund programs for the state to engage in its own
21 capture and geologic reintroduction of carbon
22 emissions, or is that going to be used to fund some
23 kind of regulation where energy producers are
24 required themselves to engage in this?
25 MR. MCKINNON: That's correct, we're

1 not putting a regulatory system in there. It's --
 2 in fact, on page 4, it says, Despite statements
 3 made by the proponents of the initiative at the
 4 hearing, they do not intend for the initiative to
 5 include geologic sequestration. In fact, we have a
 6 maximum of \$4 million per geologic sequestration
 7 and the wording is to implement sequestration. It
 8 does not say regulate or regulate doesn't appear in
 9 the initiative. So we're a little baffled by why
 10 the authors of the motion are focused on that.

11 MR. DOMENICO: Okay. All right. So
 12 we won't be -- we won't -- you don't expect or
 13 intend for the general assembly or anyone else to
 14 take this measure and then say, "Here's how we're
 15 going to implement carbon sequestration. We're
 16 going to force you, Xcel, or whoever, energy
 17 producer, we're going to use this money to fund
 18 inspectors or whatever, a program requiring you to
 19 engage in this kind of sequestration yourself. The
 20 money is going to go to some state program where a
 21 state agency does it or studies it or however they
 22 implement it."

23 MR. MCKINNON: Or incentivize it was
 24 our intent. Geologic sequestration, if it happens,
 25 will be a very expensive, very capital-intensive

1 Resources the responsibility to implement these
 2 programs, to say nothing about regulation
 3 whatsoever. We're not giving regulation authority
 4 to anybody, taking it away from anybody. It's to
 5 implement the various programs listed in
 6 Subsection 6.

7 In 2(D) of the motion, they claim
 8 that the initiative seeks to tie the hands of
 9 future legislators. The language that Ms. Larsen
 10 finds offensive is, in fact, in our constitution,
 11 Article 10, Section 21, Subsection 3. That's the
 12 tobacco amendment. So everything in Subsection 4
 13 of our initiative is the same as Subsection 3,
 14 which I can read if you like, but just for the word
 15 "tobacco" was in there, it was taken out and
 16 replaced with "fee." So it's in the state
 17 constitution already.

18 In 3(A) of the motion, Ms. Larsen
 19 claims that we're failing to inform the voters of
 20 who the consumers will be. This is something that
 21 we discussed probably for an hour on April 2. I
 22 don't think there's anything new in the motion that
 23 we haven't already talked about, but if you would
 24 like, in Section 3(B), she's claiming that, in
 25 fact, we're not a fee, we're a tax. There's a

1 proposition.

2 MR. DOMENICO: Okay. That satisfies
 3 me on that point.

4 MR. MCKINNON: Okay. My next point
 5 is in 2(B) of the motion, they're claiming that
 6 carbon dioxide is not a pollutant. We believe that
 7 assertion is a clear misreading of the Supreme
 8 Court ruling on April 2 of 2007. Justice Stevens,
 9 writing for the majority, wrote that under the
 10 Clean Air Act the term "air pollutant," quote,
 11 embraces all airborne compounds of whatever stripes,
 12 because greenhouse gases fit well within the Act's
 13 capacious definition of air pollutant. EPA and
 14 statutory authority to regulate emissions of such
 15 gases for new motor vehicles. Motor vehicles was
 16 the case they were looking at, and that was per the
 17 majority. So Kennedy, Souter, Ginsburg, and
 18 Breyer.

19 Let's see, in 2(C) of the motion,
 20 they claim that the initiative will repeal the
 21 authority of the Department of Health and
 22 Environment to promulgate emission control
 23 regulations.

24 Again, we're giving the governor's
 25 energy office and the Department of Natural

1 number of arguments to that. The one I'd like to
 2 make -- and some of my colleagues, I think, say
 3 want to make different ones. The notion of --
 4 well, a fee, as it's written in the motion, a fee
 5 is charged -- is the charge imposed to defray the
 6 cost of a service. In a well-established area of
 7 academic research is the notion of an ecosystem
 8 service. In this field, a monetary value is
 9 calculated for services provided by ecosystems.
 10 For example, if we have a wetland, a wetland might
 11 clean up brown water as well as a \$1 million sewage
 12 treatment plan. So if someone were to subtract
 13 from the efficacy of that wetland, they would be
 14 expected to pay a fee. So it's a very similar
 15 thing to what we're doing. Carbon dioxide,
 16 certainly the atmosphere provides tremendous
 17 services for us. An article on that -- which I can
 18 enter into the record, if that would be okay.

19 MR. HOBBS: Okay.

20 MR. MCKINNON: This was by Castanza
 21 and co-authors in the journal of "Nature." They
 22 estimated that the global sum value of ecosystem
 23 services in fact is, at a minimum, double the global gross
 24 national product. So one of the big problems we
 25 have is that these services that we get are not

17
1 monetized. And so we make our decisions based on
2 (inaudible). So that's why we think this, in fact,
3 truly is a fee.

4 We agreed at the last hearing to
5 sort of TABOR-ize the amendment to put "tax" in the
6 first word and first sentence to avoid a court
7 challenge later, and so admit there is "tax" in the
8 first word, "fee" later on. But we think in the
9 true spirit of it, the "fee," and by constitutional
10 requirement, put "tax" in there.

11 Let's see Ms. Larsen or Mr. Seby, in
12 the written motion, objects -- and this is in
13 3(D) -- that there were lots of details that were
14 not included in the title. The initiative itself
15 is just slightly under 2,000 words. The title is
16 an attempt to summarize (inaudible). You've got it
17 down to 160 words by necessity. Not all the
18 details can be carried through.

19 And then finally, on the catchphrase
20 argument, there are two catchphrases that --
21 supposedly catchphrases that were brought up of
22 "pollution" and "climate change." We think the
23 Supreme Court has handled the pollution argument
24 for us. I mean, the Supreme Court has determined
25 that carbon dioxide is a pollutant. So if the

19
1 think you may have a legal problem with that being
2 enforceable, trying to do that through statute as
3 opposed to the tobacco one, which is in the
4 constitution in the sense that future legislatures
5 can always ignore statutes and change them and act
6 as they want, unlike constitutional provisions
7 which we have to abide by.

8 But I don't think that that's a
9 single subject problem. If this were, in fact, a
10 constitutional amendment, for example, then that
11 problem goes away and you're left with saying,
12 "Don't eliminate these other programs based on this
13 additional funding requirement we're imposing."
14 The one argument that seems to make some sense is
15 that I think that provision refers to job creation,
16 economic development programs, which really are
17 sort of unrelated to this. But simply said, I
18 think the way I would interpret that provision is
19 simply that it means you can't -- that you can't
20 simply swap this for that. It doesn't -- that
21 doesn't make it into a single subject simply
22 because it refers to something else. I mean, it
23 basically says -- separates this provision from
24 those provisions rather than tying them together.
25 So I think I'm okay on that point if every one else

18
1 Supreme Court says so, we can put it in here
2 without it being a catchphrase.

3 And with regard to the climate
4 change, we would simply like to agree with what
5 Ms. Rubanks remarked earlier. We're not littering
6 this about -- the title in any way about
7 catchphrase, we're referring to a most specific
8 position that was initiated by Governor Ritter on
9 April 16 of last year to establish this position of
10 the -- of the governor's office on -- or advisor to
11 the governor -- the climate policy change advisor.
12 Climate change policy advisor.

13 MR. HOBBS: Questions for
14 Mr. McKinnon?

15 MR. DOMENICO: I have a couple, but
16 I'm willing to wait until others have gone. But --
17 or I can go first.

18 MR. HOBBS: I don't think I have
19 any.

20 MR. DOMENICO: I think -- well, the
21 only one of my comments, questions that has
22 anything to do that's outside the title that has to
23 do with the single subject is related to the tying
24 the hands of future legislators. I think we've
25 talked about everything else plenty. And that I

20
1 is.

2 The two -- a couple of the issues
3 with the -- a couple of issues with the title, if
4 -- I don't know if we want to move on to the title
5 or still talk about single subject, but I did --
6 I'm pretty persuaded, despite glancing at this
7 interesting article, that this really should be
8 referred to as a fee. I mean, I understand the
9 concept that when you're paying money to improve
10 the environment, you're getting something in
11 return. I don't doubt that. But that, to me,
12 doesn't change it into a fee rather than a tax.
13 This really is something, basically, imposed to
14 fund a bunch of general -- related but general
15 services that don't really go back to the person
16 directly. They don't benefit the person paying the
17 tax or fee any more than they benefit everyone
18 else. And so it really does seem like a tax to me.
19 And I think that argument is well taken on the part
20 of the motion that we really should change this to
21 -- references to tax.

22 I don't know if we want to discuss
23 that, because next I've got to get into the science
24 that I kind of made a fool out of myself on last
25 time.

1 MR. MCKINNON: May I respond to
2 chat?
3 MR. DOMENICO: Sure.
4 MR. MCKINNON: Another analysis my
5 colleague was going to make. The analogy would be
6 to a sewage fee. In certainly the city where I
7 live, we pay a sewage fee that's proportional to
8 the amount of water that we purchase because the
9 water is measured, the sewage is not. And so it's
10 the same sort of thing. The more carbon dioxide I
11 throw into the atmosphere, the more fee I pay, just
12 as the more sewage I generate, the more fee I pay.
13 MR. DOMENICO: I appreciate that.
14 That's a good analogy, except there's a lot more
15 going on here than, you know, if your sewage fee
16 went to all kinds of studies about sewage and all
17 sorts of funding a position in the governor's
18 office to consider sewage, then that would be one
19 thing. But basically, you're paying for sewer
20 pipes and maintenance and that sort of thing with
21 your sewage fee, is the way I understand it.
22 MR. MCKINNON: In fact, I do pay for
23 flooding and --
24 MR. WEAVER: It's part of my
25 testimony.

1 are doing the emissions. So we've tried to have a
2 strong tie between what we're taking the money for,
3 which is The Pollution Act, and what we're using
4 that -- those funds to do, which is to offset the
5 impacts of those acts on Coloradans by doing
6 programs in Colorado that do that. So I'm the one
7 that put those words in Tom's mouth. I thought I
8 should at least stand up.
9 MR. DOMENICO: I appreciate it. And
10 I understand completely the theory behind all of
11 this is that when we use electricity, we're not
12 paying for the full cost of it. I completely
13 understand the externality argument. But I don't
14 think that changes whether it's a tax or a fee.
15 And I understand you're trying to tie the costs
16 that we impose to the costs of the fee or the tax
17 that we're being asked to pay. But that, too,
18 doesn't, to me, make it a fee rather than a tax.
19 What makes something a fee is the benefit -- is
20 almost the opposite, actually, of that, is that the
21 benefit of what I pay for goes entirely to me.
22 Here the benefit goes to society as a whole to pay
23 for my externalities, right, that I'm imposing
24 costs on society as a whole. So I'm now being
25 asked to bear the cost of that. And to me that's a

1 MR. WEAVER: Sam Weaver, also with
2 Clean Energy Progress.
3 That analogy I find to be fairly
4 strong with the sewage fee or dumping fee, anything
5 of that nature. But in the past, there's an
6 evolution of the consciousness around these things.
7 There was a time in our country where you could
8 just go dump things off a cliff, for instance. And
9 it was only when the impact of that externality, if
10 you will, started to degrade the environments for
11 other people that people's consciousness raised and
12 the laws were promulgated that then addressed that,
13 and they usually did so with direct fees that were
14 used to fund infrastructure, alleviated the impacts
15 of whatever they were putting this fee on. So in
16 this case, all of these --
17 And I think I understand the point
18 you're making. I'm just going to go a teeny bit
19 further here and say that because what we're doing
20 is changing the chemistry of our atmosphere, it is
21 nontrivial to do direct things that mitigate those
22 impacts, except as we've called them out here, that
23 create these development programs and, in some
24 cases, direct mitigation such as carbon
25 sequestration or replacement of the things which

1 tax, not a fee for a service being provided to me.
2 It's a tax being imposed on me because I'm imposing
3 a cost on society generally.
4 So I appreciate everything you say,
5 and it is really -- when you say you're just going
6 a small step forward, maybe it is a small step
7 forward that to me takes you beyond a fee and into
8 the realm of a tax.
9 I don't know. I'm curious about
10 other --
11 MR. WEAVER: Again, I appreciate
12 that argument. It's a fine line that you walk with
13 any of these things. In particular, the analogy
14 with the sewage fee still carries a little bit,
15 because the only advantage you get from your sewage
16 fee is the ability to get this stuff out of your
17 house, if you will. You know, it's being able to
18 create it and stick it out there, and then any
19 benefit that you get is simply that. Well, the
20 benefit that you're getting here is electricity
21 into your home. You're directly getting
22 electricity or you're directly getting heat into
23 your home from the natural gas.
24 So you're paying this fee, which is
25 rationally related to the benefit that you're

1 getting, which is the electricity and the heat
 2 that's going into the home. And this fee is then
 3 passed into the system to cope with the
 4 externalities that you've mentioned. So it is a
 5 matter of perspective. I would argue that if it
 6 were a tax, the money would go into the general
 7 fund. And the legislature would then allocate that
 8 each year and decide where to put the money,
 9 whereas we've tried to lay out here the programs
 10 that are intended. You could argue that if the
 11 legislature guts all of these programs and then
 12 instead moves that money into the general fund, it
 13 is no longer rationally related, then it's more of
 14 a tax. But as we've put it out and framed it, we
 15 have tried very hard to frame it as an analog to a
 16 fee.

17 So I won't go on any longer. It's a
 18 matter of semantics in a sense.

19 MR. HOBBS: Thank you.

20 MR. DOMENICO: Thank you.

21 MR. TODD: May I elaborate on that a
 22 little bit? My name is Jerry Todd, also with Clean
 23 Energy Progress. And there's a great quote in the
 24 opponent's material on page 12. "The definition of

1 property to defray costs of a particular government
 2 service." In fact, in our particular proposal, the
 3 government service is to mitigate the consequences
 4 of climate change, and everybody is a beneficiary
 5 to that. There's some people who won't pay for
 6 that service, and that, according to our proposal,
 7 is those people who have voluntarily subscribed to
 8 noncarbon-emitting energy sources. And so this
 9 clearly does make the distinction that the service
 10 is being paid for by those who are creating the
 11 problem, those who are emitting carbon, and the
 12 beneficiaries -- go ahead.

13 MR. DOMENICO: I don't mean to
 14 interrupt, but actually, that highlights why my
 15 perspective on a fee versus a tax is different.
 16 Those people are still benefiting from what we're
 17 funding, right? If I go out and use all wind
 18 energy or something, I'm still receiving the
 19 benefit of all these programs that are being funded
 20 here.

21 MR. TODD: The distinction is if
 22 you're subscribing to a wind source you're not
 23 creating the problem.

24 MR. DOMENICO: Right. I understand.
 25 So I'm not paying the fee, but I'm getting the

1 benefit of it.

2 MR. TODD: You're not getting the
 3 benefit of solving somebody else's problem.

4 MR. DOMENICO: No, but I'm getting
 5 the benefit -- their solving their problem benefits
 6 me. That's the whole point, right, is that we, I
 7 believe, impose -- when we use energy, we impose
 8 externalities, we impose pollution on others. And
 9 so if I'm not imposing any pollution, I'm not
 10 paying this tax, but I'm receiving a part of the
 11 benefit. And that's why, to me, this is a tax.

12 MR. TODD: The benefit you're
 13 receiving is the absence of further diminution of
 14 the environment and support systems from this
 15 steady state, the natural state. So those who are
 16 using carbon are taking us from the status quo --
 17 and that's all of us -- are taking us from the
 18 status quo into a damaging situation. The purpose
 19 of the fee is to try to apportion those costs in a
 20 very small fee way to try to provide the government
 21 with funds to provide this government service,
 22 which is dealing with the consequences of climate
 23 change. And to me, that is the service the
 24 government is providing, and that is perfectly
 25 consistent with this applying a fee to the source

1 of the problem to fund the solution.

2 And I've used this analogy with --
3 the single subject rule. For instance, you know,
4 you can wonder, what do having 5 lanes in a pool
5 and hiring an aerobics instructor and having a bike
6 rack have in common? Well, it seems like those are
7 three different subjects. In fact, those fit quite
8 precisely under the subject of running a recreation
9 center, and creating a fee to run that recreation
10 center makes perfect sense and we do it all the
11 time. What this proposal does is creates a fee to
12 try to fund government services to try to solve the
13 problem. It tries to apportion them as fairly as
14 possible by recognizing that some people contribute
15 less to the problem and they should be charged fees
16 less.

17 MR. DOMENICO: Right. I agree with
18 everything you said. I just think that what that
19 means is that this is a tax, because the people
20 paying it are benefiting not just themselves but
21 everyone else. And the people not paying it are
22 also benefiting from it. I think of a fee as like
23 a sewage system. If I don't have a house that runs
24 -- that contributes to the city's sewer system, I
25 don't pay the sewer tax, but I don't get any

1 it is used, it's used to give a service directly to
2 the people who pay it or whether it's used to
3 benefit the state in general. And there are lots
4 of things that are not in the general fund that are
5 taxes. But, I mean, all of these funds we've been
6 talking about all morning are not in the general
7 fund but they're still taxes because they benefit
8 everyone generally. So this to me is a tax.

9 MR. TODD: May I just elaborate on
10 an example you brought up of the house that does
11 not generate sewage? Let's say you have some sort
12 of a toilet. You're not connected to the sewage
13 line, you're not -- and I think sewage is a fee and
14 not a tax. But, in fact, you are benefiting from
15 that, because if there was no sewer, sewage would
16 be going into the local creek or whatever and
17 everyone would be suffering from that. So, in
18 fact, the people who aren't paying -- a similar
19 direct analogy is a wind source.

20 MR. DOMENICO: Well, everything,
21 then, is a fee. Because paying for everything out
22 of the general fund and having brilliant lawyers
23 working in the attorney general's office benefits
24 all of us indirectly, right? And so all the taxes
25 we pay that end up going to fund that department of

1 benefit from it either. Or a toll on a toll road.
2 If I -- if I don't pay a toll, it's because I'm not
3 using the road. I don't get any benefit from this
4 toll road. Or if I do, it's very indirect. Here,
5 as you said, the -- everyone benefits from this
6 under -- the whole theory of this is we all suffer
7 from when this pollution causes climate change.
8 And so the people -- I agree with you, you've tried
9 to calculate the costs in a way that it's based on
10 the people causing most of the problem.

11 But when I look at whether that is a
12 tax or a fee, the question is who gets the benefit
13 from it? And we all get the benefit. And that to
14 me is the definition of a tax. So I don't know if
15 we -- I mean, I understand everybody's position on
16 it.

17 MR. TODD: I expect your definition
18 of tax and fees varies from economists, who would
19 suggest that the tax goes into the general fund and
20 is distributed for all kinds of pumps that aren't
21 specifically related to the purpose --

22 MR. DOMENICO: No, I don't -- that
23 doesn't change whether something is a tax or a fee,
24 if there's discretion on how to use it or not. It
25 has to do with whether the people -- whether, when

1 law are really -- should be considered fees. I
2 mean, that's the problem is there's no -- just
3 because we all indirectly benefit from good
4 government or good government programs doesn't turn
5 funding every program into a fee, does it?

6 MR. TODD: Well, the difference, I
7 think, is these things are very directly connected
8 through the emission of greenhouse gas (inaudible).

9 MR. HOBBS: I don't know -- may I
10 jump in here? I should say maybe for the benefit
11 of people that are here for the afternoon agenda of
12 the title board, we're still on our last morning
13 agenda item. And I think we're going to -- I mean,
14 it looks like we're a little ways off before we
15 finish that agenda item. And when we do, I intend
16 to take a five- or ten-minute break, at least. So
17 it will be a while before we get to the afternoon
18 agenda items. Just to let people know who may be
19 waiting.

20 With respect to the discussion that
21 we're having, I'm not sure, frankly, what to make
22 of it. I agree with Mr. Domenico, I think it's a
23 tax in the way that I usually think of fee versus
24 taxes from where I sit in state government. I
25 mean -- and yet I'm not quite persuaded that we

1 need to change the titles, because I think the
2 difficulty that we're struggling with is that I
3 think -- you know, I think there's sort of a middle
4 -- well, at least a common understanding that's not
5 quite -- doesn't have quite the same bright line
6 that lawyers may have or maybe economists or
7 others. I don't know. But I think this is not a
8 fee in the normal sense. I think if you pay
9 something and get something of value in return, the
10 fee for a driver's license or something.

11 I think of it as not being
12 necessarily a -- the way -- a tax the way some
13 people think of it, like income taxes. You know,
14 what's a little different here is -- and I'm trying
15 to harmonize some of the discussions here that
16 regardless of what you call it -- I'll maybe call
17 it a charge for the time being -- it is directly
18 related to the activity. In other words, it's a
19 charge that helps, as I understand it -- and there
20 may be some quibbling about what I'm about to say,
21 but it is a charge that helps offset the cost of
22 the activity that's being charged. There is a
23 connection there. Now, I still think that's a tax.
24 Like Mr. Domenico is saying, you're not getting the
25 benefit back, you're sort of getting -- you know,

1 you're being -- you know, you're offsetting the
2 cost of that, which probably what I think of as a
3 tax. And yet I think the average person might not
4 make that distinction in the same way, you know,
5 fee versus tax. And so I -- I mean, personally, I
6 think we've said it in the second word of the title
7 that it's a tax, basically, that we are raising
8 taxes.

9 I actually don't feel strongly about
10 changing it. I think we're okay the way we are. I
11 think we could change tax throughout. But it
12 sounds a little misleading, whether you say fee or
13 tax, in a way, in my opinion. It's just -- neither
14 one to me exactly captures the fact that this is a
15 charge based on the activity to offset the costs
16 associated or attributable to the activity. And I
17 sort of feel like we're having -- if we pick fee
18 versus tax, we're having to pick one side or the
19 other of the debate. They even come with their own
20 connotations that are a little inaccurate here,
21 maybe. But I don't know where that leads me. But
22 I'm -- I'm not yet persuaded to change the title,
23 even though I tend to agree with Mr. Domenico in
24 principle.

25 I don't know, Ms. Rubanks, whether

1 you want to comment on this or not?

2 MS. RUBANKS: I will at whatever
3 point in time you'd like me to. If now is the best
4 time, I think I'm in agreement. The reason that we
5 approved the title as it appears before us now is
6 that we think it's a tax. It doesn't fit the
7 characteristics of a fee in terms of it's a -- that
8 the cost of this service provided is equated to the
9 amount of fee being charged. I mean, what I equate
10 it to is similar to -- I get a driver's license and
11 there's this cost associated with issuing that
12 license, and I pay the cost for that service of
13 getting my license.

14 That, to me, is a fee for service as
15 the court has defined those particular types of
16 charges.

17 And I think how it's included in the
18 motion for rehearing, I think that also in Blum v.
19 Fort Collins, it's the same thing. I don't have to
20 have mathematical exactitude in terms of the amount
21 being charged for the service, but there has to be
22 a relationship between the amount being charged and
23 the actual service being provided. When you're
24 dealing with a sewer situation, you're being
25 charged based on the amount of waste produced for

1 transporting and disposing of that waste. And the
2 charge imposed by the municipality or sewer
3 district or whoever, it's related to the cost for
4 that quantity of disposing of the waste.

5 I see this because you don't have
6 that relationship to the particular cost of the
7 services provided. It's much more generalized in
8 terms of public purposes, in terms of benefits,
9 whether it's, you know, a free rider situation or
10 not. I think that the reason that we set the title
11 the way we did is because we did not think that the
12 charge imposed by the measure, even though the
13 measure calls it a fee, is a fee. It's a tax.

14 Now, in terms of what we call it,
15 I'm somewhat uncomfortable of going through and
16 replacing the reference to fee as was set in the
17 title, and I would go back to a similar provision
18 back -- I think it was No. 14, that imposed, I
19 believe, sort of a building permit fee that then
20 was to be used to fund higher education, capital
21 construction projects.

22 And we followed the same sort of
23 format as we are right now on 83 in terms of it
24 started out, "Shall state taxes be increased by the
25 imposition of a fee on this for this particular

1 purpose?"

2 I feel, as a member of the board, a
3 little uncomfortable changing the terminology that
4 appears in the measure, but I do agree with
5 Mr. Hobbs that the fact that it starts out with the
6 statement, "Shall state taxes be increased," it's
7 there because we don't think that it meets the
8 characteristics of a fee, that it is a tax, and
9 that's why we have that language.

10 MR. DOMENICO: I guess I may be
11 persuaded by that idea that even though it's a tax,
12 it's okay in this context to refer to it as a fee
13 because, generally, the reason that we're concerned
14 -- the times where tax versus fee is a material
15 issue is when someone's trying to get around the
16 TABOR requirements. And so since they're not doing
17 that here, maybe you're right that it's really just
18 not material to distinguish between a tax and a
19 fee, having already gone along with using the
20 introductory TABOR language. I mean, there is some
21 risk to you, I think, that they'll file in the
22 Supreme Court, and the Supreme Court will say, "No,
23 it's misleading to call this a fee." But if you're
24 willing to take that risk, I may be -- maybe you're
25 right, that it's not really material in this

1 represented as an atmospheric scientist.

2 But with that in mind, I really do
3 think -- and I talked with him, and he talked to
4 some of his co-workers who are atmospheric
5 scientists about this. I really do think that it's
6 not just carbon dioxide emissions that are being
7 attacked here, right? It's pollution of all these
8 gases. And unfortunately, what that means is I
9 think we need to change, on line 3, carbon dioxide
10 emissions to say something else. Because it really
11 is -- if you somehow had a plant that only emitted
12 nitrous oxide or something, then you'd still have
13 to pay this fee, right? Or not?

14 MR. MCKINNON: May I address that
15 while we're asking the question? So there's --
16 let's separate in our minds where we're getting the
17 funds and what we're doing with them. Practically
18 speaking, natural gas and electricity, the only
19 greenhouse gases -- natural gas when it's burned
20 and electricity when generated are carbon dioxide.
21 Natural gas, there are leakages of wellheads and
22 whatever there is, methane release, that's another
23 greenhouse gas. But we're talking about burning
24 it. So that captures -- I think the number is 77
25 percent of Colorado's greenhouse gas emissions,

1 context, even though in some cases it's really
2 dispositive. I think maybe we should just leave
3 it, if you're willing to take that risk that the
4 Supreme Court would disagree with us on that.

5 MR. MCKINNON: Yes, we are.

6 MR. HOBBS: We can come back to
7 that, but I want to make sure everybody's had a
8 chance to complete their arguments. And
9 Mr. McKinnon, I sort of lost track of where you
10 are. Did you get through yours?

11 MR. MCKINNON: Yeah, we're done.

12 MR. HOBBS: Does anybody else have
13 questions? Mr. Domenico.

14 MR. DOMENICO: I have one question
15 that I asked last time. And in this context, I
16 should note that I talked to my father about this.
17 And first of all, he warned me that I shouldn't go
18 out in public saying he's an atmospheric scientist.
19 Even though he has -- he has a degree, a Ph.D. in
20 astrophysics, but it's outside of our atmosphere is
21 his expertise. And even though he does work with
22 -- he works with all the guys at NCAR and
23 everything, so he spends a lot of time with
24 atmospheric scientists. But he says I should not
25 -- he says they would laugh if they heard him being

1 those two.

2 There are four other classes of
3 greenhouse gas, nitrous oxide and methane, sulfuric
4 chloride and so on, that contribute. From a
5 practical matter, they would be very hard to
6 measure. So, for example, the leakage at a natural
7 gas wellhead, you don't have any convenient meter
8 there to measure it. And the EPA's toxic release
9 inventory for other similar things, they just have
10 to make very coarse estimates, you know. A pump
11 won't leak so much, and they calculate it that way.
12 But that wouldn't be appropriate for collecting
13 this fee.

14 And then what the Clean Energy
15 Progress Fund will do is to promote measures to
16 reduce all six greenhouse gases as defined by the
17 Framework Convention on Climate Change.

18 So, as a practical matter, if you
19 did have a power plant that emitted only nitrous
20 oxide -- well, theoretically, if you only had a
21 plant that emitted nitrous oxide, you wouldn't pay
22 the fee. As a practical matter, that simply
23 doesn't happen. However, there are agricultural
24 sources that generate a lot of nitrous oxide. So
25 the Clean Energy Progress fund would then go out

1 and if that's a big source, which in fact it is,
2 then some of those funds would be used to reduce
3 nitrous oxide emissions from agricultural fields.

4 MR. DOMENICO: Okay. So I
5 understand that back end, but 3(A) says, "A clean
6 energy progress fee shall be imposed on the
7 production of global warming pollution."

8 "Global warming pollution" is a
9 defined term in 2(H), which means the emission of
10 the six heat-trapping gases, which includes all the
11 things we've talked about.

12 So as I read that, I mean, I guess
13 maybe what you were just saying is when you consume
14 natural gas and produce electricity, which is what
15 triggers the fee, the only one of those six that's
16 ever emitted in that part of the process is carbon
17 dioxide? Is that what you're saying?

18 MR. MCKINNON: It's 3(B) and 3(C)
19 that are the operative for the collection tax.

20 MR. DOMENICO: Right. Except the
21 way I read it, you're taxed if you emit any of
22 these six things. The way it's calculated is you
23 convert the emission of a ton of nitrous oxide into
24 the carbon dioxide equivalent, and then you
25 multiply that times whatever, the \$3 per metric

1 ton. And so I'm a little reluctant to rely on the
2 idea that in practice only -- the only one of these
3 six things that's emitted is carbon dioxide, when
4 the language of the measure itself that will be on
5 the books would impose this tax on all six of these
6 -- the emission of all six of these things.

7 And so my -- the problem is I'm
8 reluctant to use, in part 3, what would be the
9 obvious thing to use, which is global warming
10 pollution instead of carbon dioxide emissions.
11 Because that's how I read this as actually what the
12 fee is being imposed on is the production of global
13 warming pollution, which is why I'm reluctant to
14 change it. But I'm even more reluctant to say this
15 only taxes carbon dioxide emissions. I mean, maybe
16 this is the way to resolve this is to -- instead of
17 carbon dioxide on line 3, just say certain
18 emissions from the production -- well, let's see.
19 A fee imposed on the consumption of electricity or
20 natural gas based on the emission of certain --
21 based on certain emissions -- please help.

22 MR. MCKINNON: As a practical matter
23 here, it's only on electricity and it's only on
24 natural gas. The only greenhouse gas that's
25 emitted from those two is carbon dioxide. So we're

1 -- we're arguing a hypothetical here that simply
2 doesn't happen.

3 MR. DOMENICO: What's the
4 difference, then, between clean coal and dirty
5 coal? Really, what is the difference?

6 MR. MCKINNON: For example, the
7 latest plant that Xcel Energy is building is
8 marketed as a clean coal plant, which means they're
9 more aggressively removing nitrogen, sulphur and
10 mercury. There are certainly many people, our
11 former vice president, who says that there is no
12 such thing as clean coal unless the carbon dioxide
13 is also removed.

14 MR. DOMENICO: I understand that.
15 But you just said the difference is that you're
16 sequestering all this other stuff.

17 MR. MCKINNON: Sequestration usually
18 is associated with --

19 MR. DOMENICO: But the difference is
20 some plants emit other stuff besides carbon dioxide
21 and some don't. But the other stuff is never --
22 never hydrofluorocarbons or fluorohexane (phonetic)
23 fluoride? It's never any of those things? Okay.

24 MR. MCKINNON: Well, most of them
25 not. The ones that it does are insignificant.

1 MR. DOMENICO: So your intent is if
2 I'm running a plant and it's discovered that my
3 plant, in creating electricity, emits, somehow,
4 hydrofluorocarbons or nitrous oxide, you're saying
5 that just never happens?

6 MR. MCKINNON: Never happens. And
7 if it did, by this initiative you would pay no fee
8 on it.

9 MR. DOMENICO: Then why is it
10 written on 3(A) to say -- instead of just saying
11 "on the production of carbon dioxide emissions,"
12 why does it say "imposed upon the production of
13 global warming pollution," which pulls in all these
14 other things?

15 MR. MCKINNON: Well, I mean, from a
16 Venn diagram standpoint, the carbon dioxide is
17 inside the larger collection --

18 MR. DOMENICO: Exactly.

19 MR. MCKINNON: It means the same
20 thing in a practical matter. You could make an
21 argument it would have been more clear if line 31
22 had said carbon dioxide instead of global warming
23 pollution. I couldn't argue that. But I also --
24 the way it's written here is also logically valid
25 as well.

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1 MR. DOMENICO: Well, I mean, I guess
2 I just am nervous about a title that says we're
3 imposing a fee on -- that's based on carbon dioxide
4 emissions when the measure itself says it's based
5 on carbon dioxide emissions and emissions of
6 methane, nitrous oxide, hydrofluorocarbons
7 perfluorocarbons and fluorohexasulfide (phonetic),
8 even if it's true that those aren't emitted in the
9 production of electricity or burning of natural
10 gas. I don't know if anybody else is concerned at
11 all about that. I guess I'm willing to go along
12 with the majority. But --

13 MR. HOBBS: Ms. Subanks?

14 MS. SUBANKS: I have to agree. I
15 find it somewhat troubling that if carbon dioxide
16 is the only thing that's emitted, why it was
17 written the way it was. But what I was going to
18 suggest is, as you were proposing language, is if
19 we decide to go that way in terms of removing the
20 reference to carbon dioxide, one thing that it
21 helps, I think, to most people, when you have a
22 reference like carbon dioxide is you know it's a
23 gas, I mean, in terms of the type of emission.
24 And so what I was going to suggest
25 is as you were proposing your language, maybe you

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1 single subject statement getting really long and
2 complicated. And it sure does seem to me if we're
3 going to do that, maybe we go back to just ending
4 at getting rid of the part in the single subject
5 that refers to based on any kind of emission. And
6 you just sort of, in the single subject, say,
7 concerning a fee imposed on the consumption of
8 electricity or natural gas to be used to reduce
9 certain forms of pollution, and in connection
10 therewith, imposing the fee based on the amount of
11 emission of certain gases resulting from natural
12 gas consumption and electricity production.
13 And then you sort of resolved my
14 problem. Then the measure doesn't have any
15 reference, I don't think, to carbon dioxide, which
16 I'm not sure is a good idea, because even if --
17 because there really is the main focus, even if
18 it's not the main problem or the only thing.
19 MR. MCKINNON: We would oppose that
20 change because we think the voters are cognizant of
21 the fact that carbon dioxide is a global warming
22 gas, and if we start stripping it out and replacing
23 it with certain gases --
24 MR. DOMENICO: How about this? The
25 amount -- taking that part out of line 3 that I

45

1 say based on emissions of certain gases. At least
2 they know it's airborne rather than a liquid or
3 solid and maybe technically, you don't have an
4 emission of the solid. I don't know. I'm not a
5 scientist. But it just seems like the reference to
6 gas would be helpful to folks knowing in terms of
7 what types of emissions you're talking about.
8 Now, whether or not you want to go
9 further in terms of, you know, the emissions of
10 certain gases resulting from -- because then I hate
11 to -- you know, the production of electricity and
12 the consumption of natural gas. But I guess some
13 options, that if the board wants to go that way, I
14 agree that it does seem somewhat problematic to
15 have a reference to carbon dioxide when the measure
16 is drafted in such a way that it's referring to the
17 carbon dioxide equivalent, which is based on the
18 six gases. If we want to play it safe, I don't
19 know that it's incorrect to go with the more
20 general reference to emissions of certain gases.
21 The fact is that perhaps, as a reality, some of
22 them will never be emitted through that process.
23 But I don't know that that would be an incorrect --
24 MR. DOMENICO: You know, we're
25 running into the difficulty we had last time of the

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1 suggested, and then at the end of line 4 where it
2 says, "imposing the fee based on the amount of
3 carbon dioxide emissions or its equivalent
4 resulting from" -- or "carbon dioxide emissions" --
5 MR. MCKINNON: If we're going to add
6 "or its equivalent," I would suggest we add that in
7 line 3 after the carbon dioxide.
8 MR. DOMENICO: Yeah, you could --
9 you could do -- I would probably switch it around
10 to say something like -- if we left it in line 3,
11 "based on emissions of carbon dioxide or its
12 equivalent." It just reads a little bit better
13 that way.
14 MR. HOBBS: Is it really needed in
15 line 3?
16 MR. DOMENICO: I think I would get
17 rid of it in there. You could leave it in line 4,
18 "imposing the fee based upon the amount of carbon
19 dioxide, the amount of carbon dioxide emissions or
20 the amount of emissions of carbon dioxide or other
21 specified gases." That's probably what I would do.
22 And you have carbon dioxide in there in line 4
23 rather than line 3. It's still a reference to
24 other gases.
25 MR. MCKINNON: I would kind of like

1 to bring up a point that we do want to include
2 carbon dioxide to make sure that it's apparent that
3 wind source and ability -- well, all the wind
4 things are not paying a fee (inaudible).

5 MR. HOBBS: Wouldn't that be
6 accomplished by what Mr. Domenico is suggesting?

7 MR. MCKINNON: (Inaudible).

8 MR. DOMENICO: Yeah, my latest -- I
9 think my latest suggestion was delete "based on
10 carbon dioxide emissions" in line 3, leave line 4,
11 leave the reference in line 4 to carbon dioxide but
12 switch or move emissions to say "upon the amount of
13 emissions of carbon dioxide or other specified
14 gases." And then that would be it.

15 MR. MCKINNON: May I make one
16 comment? I think "carbon dioxide equivalent" is a
17 term of art. I think it's used in the IPCC reports
18 and so on. So one thing that might keep any
19 changes minor would be on line 3, "based on carbon
20 dioxide equivalent emissions" the next time "carbon
21 dioxide" shows up. Carbon dioxide equivalent is --
22 (inaudible) it's a cross-section, how long it stays
23 in the atmosphere, and that's what gives you an
24 equivalent talk about the carbon dioxide
25 equivalent, because carbon dioxide is the main

1 there.

2 MR. TODD: If I might offer a
3 comment just so you're factually correct there, the
4 fee is not imposed on all consumption of
5 electricity and the title needs to be perfectly
6 clear that when we're talking about the consumption
7 of electricity, the fee is only applied to that
8 consumption of electricity that involved the
9 release of carbon dioxide in its production. You
10 all struggled mightily with this a few weeks ago
11 and it was torturous for everyone, but actually you
12 did quite well there in the beginning in coming up
13 with a clause that's accurate and concise.

14 MR. DOMENICO: That's a valid point
15 that if I have a wind farm, it doesn't apply to me.

16 MR. HOBBS: Let me suggest we hold
17 that thought just for a little bit. I wanted to
18 hear from Ms. Larsen again, and if there's anybody
19 else who wants an opportunity to weigh in on any of
20 the issues raised in the motion for rehearing.
21 Ms. Larsen?

22 MS. LARSEN: I wanted to revisit the
23 point regarding the question of sequestration.
24 Again, the proponents are attempting to make the
25 conclusion that merely because they (inaudible)

1 greenhouse gas.

2 MS. HUBBANKS: If I could just
3 comment on that. To me, I don't think "carbon
4 dioxide equivalent" means anything to most people.
5 I mean, obviously, you know, folks that work in
6 that area, it's a term of art. But for the average
7 voter, I don't know that that tells them anything
8 at all, other than what does this mean?

9 MR. MCKINNON: Our preference is to
10 leave it as it is because from a practical matter,
11 it's 100 percent of what we're trying to do. I
12 mean, there is absolutely no chance now or in the
13 foreseeable future that electricity generation or
14 natural gas will generate significant amounts of
15 the -- of the Framework Convention greenhouse
16 gases.

17 MR. HOBBS: Well, I like
18 Mr. Domenico's suggestion. That's kind of where I
19 am.

20 MR. DOMENICO: It's not a perfect
21 way to do it. I mean . . . You know, the other
22 way would be to go back to just getting rid of
23 everything other than saying you're imposing a fee
24 on consumption of electricity or natural gas. But
25 I think we did want to get some of the purpose in

1 only have possibly a program or research completed
2 on the issue. The text does not limit carbon
3 sequestration to demonstration or research efforts.
4 In fact, geologic sequestration is specifically
5 defined in the Initiative as the sequestration of
6 carbon for more than 1,000 years at a rate of 1,000
7 feet below the earth. So it does envision and does
8 anticipate the fact that geologic sequestration is
9 going to be implemented and the manner in which a
10 minimum geologic sequestration program must meet --
11 must meet that certain requirement of how far below
12 the earth it will be stored and for how long.

13 If the proponents wish to limit the
14 sequestration program to just research and
15 development of such, I would hope that they would
16 have specified that within the initiative.
17 Unfortunately, they do not.

18 By the manner in which it's proposed
19 here, it will, in fact, result in a regulatory
20 program. If they will be implementing a geologic
21 sequestration program, that will result in emitters
22 of carbon, industries having to install
23 sequestration vehicles in order to capture that
24 carbon and to sequester it. Additionally, with
25 respect to whether or not carbon is, in fact, a

1 regulated pollutant, it's not. Despite the Supreme
 2 Court's standing and decision on that matter, EPA
 3 still has yet to regulate it. It's not yet a
 4 regulated pollutant despite the Supreme Court's
 5 decision. And in fact, as attached in our motion,
 6 Exhibit A, the letter from the EPA Administrator
 7 Johnson, it discusses in some detail the
 8 complexities that are faced with attempting to
 9 regulate carbon and how that will, in fact, require
 10 a great deal of discussion and analysis in order to
 11 see how that will be implemented. And it will
 12 affect not only just potentially the transportation
 13 sector but various other sectors and all facets of
 14 the economy.

15 With respect to the fact of whether
 16 or not the initiative prohibits the general
 17 assembly from further action in the future, the
 18 comment was made, "Well, because this -- this also
 19 is included in the tobacco tax amendment, the
 20 language as it's provided in here must be
 21 acceptable." As was noted, that was an amendment
 22 to the constitution, and the tobacco tax amendment
 23 fell specifically with tobacco taxes. So the
 24 language of that amendment specified taxes
 25 regarding tobacco. Within the initiative

1 MR. DOMENICO: Well, in addition to
 2 the points we've been discussing, I do think it
 3 probably should include amount of the tax, perhaps.
 4 I know we don't always include that, but since this
 5 is a new fee, it might be worth putting in there
 6 partly because I think it helps explain some of the
 7 difficulties we've been having about this -- what
 8 exactly this tax is going to apply to by including
 9 how you calculate it may help clarify what's going
 10 to be going on.

11 You know, on line 4 it could say
 12 something like "imposing the fee at a rate of \$3
 13 per metric ton of carbon dioxide or carbon dioxide
 14 equivalent emitted to the atmosphere from natural
 15 gas consumption and electricity production." That,
 16 I think, may help clarify a little bit of the issue
 17 with what we're talking about since that's what
 18 actually is going on.

19 That doesn't resolve all of the
 20 problems, but if you change 4 to say that, then I
 21 still think you could get rid of the essentially
 22 misleading part of line 3 and just skip referring
 23 to carbon dioxide. Even though I understand the
 24 concern that that may confuse some people into
 25 thinking that even though they're using all wind or

1 currently, it's very big. It's general, and the
 2 general assembly is not allowed to repeal funding
 3 to any program which deals with economic
 4 development and job creation. It does not specify
 5 just to pertain to programs that deal with a new
 6 energy economy.

7 And then just another item to go
 8 back to with respect to the title at this point.
 9 Without specifying here that this is, in fact, a
 10 tax throughout, leaving the term "fee" in there.
 11 By having that, you're inherently going to have a
 12 flaw in the title because there's going to be a
 13 conflict at some point for the average voter trying
 14 to determine whether or not a fee is being assessed
 15 upon them or a tax. And the fact at this point
 16 that you don't have set what the rate of taxation
 17 will be again leaves doubt within a voter's mind as
 18 to what exactly is being assessed. So I request
 19 again that the reference be changed.

20 MR. HOBBS: Thank you. Anybody
 21 else? I think I need to move on to board
 22 discussion because we're running pretty far behind.
 23 But I don't want to cut off anybody. But we just
 24 need to have some -- some kind of resolution to the
 25 issues that have been brought up.

1 renewable or non-CO2-emitting sources of energy,
 2 that they may be stuck with the tax. I think
 3 pretty quickly they would be disabused to that
 4 notion by reading any further along. And I'm not
 5 sure it's necessary -- I do think it's necessary to
 6 make that clear in the title. I'm not sure it's
 7 necessary to make it clear in the single subject
 8 statement, is what I'm saying.

9 MR. HOBBS: So to pursue that idea,
 10 would that involve -- I mean, it just sounds
 11 promising to me, but I would try to flesh that out
 12 a little better. In line 3, removing the phrase
 13 "based on carbon dioxide emissions" and then in
 14 line 4, incorporating Mr. Domenico's suggestions,
 15 imposing the fee -- and I don't know the exact way
 16 to do it -- but at the rate of \$3 per metric ton of
 17 carbon dioxide or carbon dioxide equivalent, which
 18 I like. And I don't know whether to pick up the
 19 rest of that from the measure emitted to the
 20 atmosphere from electricity generation and natural
 21 combustion. And we use that language to replace
 22 the first clause after the next therewith.

23 MR. DOMENICO: That would be my
 24 suggestion.

25 MR. HOBBS: I think I'm okay with

1 that. Let's at least take a look at that and
2 eliminating that phrase at the beginning of line 3.

3 MR. DOMENICO: So it's --

4 MR. HOBBS: I think the other part
5 was that was basically saying carbon dioxide twice.
6 So a ton of carbon dioxide or carbon dioxide
7 equivalent. It may not make anybody totally happy.
8 but I think it helps. I think it puts emphasis on
9 the carbon dioxide. It still has the phrase
10 "carbon dioxide equivalent," which may be a term of
11 art, but I think someone can figure it out,
12 actually, I think, that it's either carbon dioxide
13 or something equivalent to carbon dioxide.

14 MR. DOMENICO: Right. I mean, I
15 think the science -- that's not quite the way it's
16 used in the scientific sense of carbon dioxide
17 equivalent, but I do think it accurately conveys
18 how the fee is being imposed, which is what that
19 sentence is talking about. And if, in fact, these
20 equivalents or other gases are basically
21 immaterial, then that's not quite accurate, I don't
22 think it would mislead anybody in a way that it
23 would change anybody's load, though I think that's
24 pretty good.

25 MR. HOBBS: I'll go ahead and move

1 that change, then.

2 MR. DOMENICO: I'll second it.

3 MR. HOBBS: Any further discussion?

4 If not, all those in favor say "aye."

5 MS. EUBANKS: Aye.

6 MR. DOMENICO: Aye.

7 MR. HOBBS: All those opposed say

8 "no." That motion carries three to zero.

9 Any other changes, Ms. Eubanks?

10 MS. EUBANKS: In terms of the
11 argument that pollution is a catchphrase, that if
12 we have that concern up in the statement of single
13 subject, whether or not that could be changed to be
14 -- to reduce certain gases in the atmosphere.

15 MR. HOBBS: I'm not troubled by the
16 term "pollution." Maybe I'm wrong, but I think if
17 we -- if we neutralize it and talk about reducing
18 certain forms of gases in the atmosphere, that
19 seems a little misleading to me. The oxygen or --
20 I mean, I don't know. I mean, I'm just . . .

21 MS. EUBANKS: I agree. But also
22 there is a negative connotation to the word
23 "pollution" in terms of its something bad. They
24 may differ in terms of their opinion whether gas
25 being pollution or not. So I just wanted to throw

1 that out.

2 MR. DOMENICO: And there is a --
3 there is something to the argument about CO2 as a
4 pollutant in the sense that it's a necessary
5 pollutant up to a certain extent. We need a
6 certain amount of CO2 in the atmosphere, right? So
7 it's just too much is a bad thing, and so there is
8 a little bit of risk that by saying pollution in
9 addition to it just having a negative connotation
10 as a catchphrase, there is a little bit of
11 something to the idea that it's a bit inaccurate or
12 maybe misleading. I don't know if I'm quite there,
13 that I would really say it's misleading as it is,
14 but it may be better to avoid that problem when you
15 combine it with the potential for a challenge based
16 on -- based on a catchphrase and say something like
17 "to reduce certain -- to reduce the amount of
18 certain gases in the atmosphere." I mean, that's
19 pretty bland and -- but it's unquestionably
20 accurate, and because it's bland doesn't involve a
21 catchphrase risk.

22 MR. HOBBS: I could go either way, I
23 think, on that.

24 MS. EUBANKS: I guess in terms for
25 the proponents, are they willing to take that risk?

1 MR. MCKINNON: We're willing to take
2 the risk. And in fact, Ms. Larsen, arguing some
3 semantics that are disingenuous, the Supreme Court
4 unequivocally ruled that carbon dioxide is a
5 pollutant. Not a regulated pollutant, because it's
6 (inaudible) highest court in the land.

7 MR. DOMENICO: Well, right. But
8 that's just because The Clean Air Act's definitions
9 -- I mean, the -- this is not tying it to The Clean
10 Air Act, right? I mean, the only -- the only
11 reason is -- I mean, I guess I'm okay with it, but
12 -- yeah, I guess I'm okay with it.

13 MR. HOBBS: Anything else.

14 MR. DOMENICO: I mean, just to bring
15 that up, what I was starting to say is that
16 Congress could change The Clean Air Act to change
17 the definition to exclude carbon dioxide, and then
18 where would we be? So I think we should sort of
19 try to do it just based on a reasonable, everyday
20 use of the word "pollution" rather than a technical
21 analysis of EPA regulations versus The Clean Air
22 Act definition and see what a regular person
23 reading that would understand it to mean. And I
24 suppose the average person would understand. I
25 just don't know whether the average person would

1 think of CO2 as a form of pollution. But that's my
2 concern. But if everybody else is willing to go
3 with it as is, I guess I will too.

4 MR. HOBBS: Well, if there aren't
5 any other motions, then I guess I'll move that the
6 motion for rehearing be granted to the extent that
7 the board has amended the title and deny it in all
8 other respects. And I should say for the record
9 that the understanding is that the changes that
10 have been made would also be made in the ballot
11 title and submission clause that kind of begins on
12 the bottom of what's showing on the screen right
13 now.

14 MS. RUBANKS: Second that.

15 MR. HOBBS: That's been moved and
16 seconded. Is there any further discussion? If
17 not, all those in favor please say "aye."

18 MS. RUBANKS: Aye.

19 MR. DOMENICO: Aye.

20 MR. HOBBS: All those opposed, "no."
21 That motion carries three to zero.

22 That concludes the action on No. 83.

23 The time is 2:02 p.m.

24

25

1 REPORTER'S CERTIFICATE

2 I, Diane M. Overstreet, Certified Realtime
3 Reporter and Notary Public in and for the State of
4 Colorado, certify that the above and foregoing
5 constitutes as accurate and complete a
6 transcription as is possible given the quality of
7 the audio recording of the recorded proceedings to
8 the best of my ability. Corrections in audio
9 interpretation were made with the assistance of
10 Ms. Larsen.

11 Dated this 12th day of May, 2008.

12

13

14

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16

17 _____
18 Diane M. Overstreet
19 Certified Realtime Reporter

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ATTACHMENT 3

RECEIVED

MAR 20 2008

ELECTIONS LICENSING
SECRETARY OF STATE

41
18

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

2
3 SECTION 1. Article 75 of title 24, Colorado Revised Statutes, is amended BY
4 THE ADDITION OF A NEW PART to read:

5
6 PART 13
7 CLEAN ENERGY PROGRESS FUND

8
9 **24-75-1301. Clean energy progress fund.** (1) THE PEOPLE OF THE STATE OF
10 COLORADO RECOGNIZE THAT IT IS IN THEIR INTEREST TO CREATE THE CLEAN ENERGY
11 PROGRESS FUND FOR THE PURPOSE OF ADVANCING THE NEW ENERGY ECONOMY. THE PEOPLE
12 RECOGNIZE THAT EFFORTS TO ADVANCE THE NEW ENERGY ECONOMY WILL LEAD TO JOBS
13 CREATION, ECONOMIC DEVELOPMENT, ENERGY SECURITY, ENERGY RATEPAYER RELIEF, AND
14 THE REDUCTION OF GLOBAL WARMING POLLUTION. IN FURTHERANCE OF THESE GOALS, A
15 FUNDING MECHANISM FOR THE GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE,
16 SHALL BE CREATED TO ADVANCE THE DEVELOPMENT OF JOBS AND ECONOMIC DEVELOPMENT
17 IN THE AREAS OF RENEWABLE ENERGY, ENERGY EFFICIENCY, GLOBAL WARMING POLLUTION
18 REDUCTION, AND CARBON SEQUESTRATION. THE GOVERNOR'S ENERGY OFFICE, OR ANY
19 SUCCESSOR OFFICE, SHALL BE AUTHORIZED TO SPEND THE REVENUES ON PROGRAMS
20 TARGETED TO REDUCE ENERGY BILLS WITHIN COLORADO AND TO REDUCE GLOBAL WARMING
21 POLLUTION WITHIN COLORADO AS SET FORTH IN SUBSECTION (6) OF THIS SECTION. ALL
22 PROVISIONS OF THIS SECTION ARE SEVERABLE AND SUPERSEDE CONFLICTING STATE
23 STATUTORY, CHARTER, OR OTHER STATE OR LOCAL PROVISIONS.

24
25 (2) AS USED IN THIS SECTION:

26
27 (a) "CARBON DIOXIDE EQUIVALENT" MEANS A MEASURE TO COMPARE THE EMISSIONS
28 FROM THE SIX GLOBAL WARMING POLLUTION GASES BASED UPON THEIR GLOBAL WARMING
29 POTENTIAL. THE CARBON DIOXIDE EQUIVALENT OF AN EMITTED GLOBAL WARMING GAS
30 SHALL BE ITS TOTAL MASS EMITTED INTO THE ATMOSPHERE MULTIPLIED BY THE GLOBAL
31 WARMING POTENTIAL OF THAT GAS.

32
33 (b) "CARBON INTENSITY" MEANS THE POUNDS OF GLOBAL WARMING POLLUTION
34 EXPRESSED IN CARBON DIOXIDE EQUIVALENT EMITTED PER UNIT OF ENERGY USED. IN THE
35 CASE OF ELECTRICITY, THE GLOBAL WARMING POLLUTION MEASURED FOR DETERMINING
36 CARBON INTENSITY SHALL BE THOSE EMISSIONS INVOLVED IN GENERATING THE
37 ELECTRICITY, DETERMINED AT THE GENERATING STATION. FOR ELECTRICITY, THE ENERGY
38 UNIT SHALL BE KILOWATT-HOURS. IN THE CASE OF NATURAL GAS, THE GLOBAL WARMING
39 POLLUTION EMISSIONS MEASURED ARE THOSE GENERATED WHEN THE END USER OF ENERGY
40 BURNS THE FUEL. FOR NATURAL GAS, THE ENERGY UNIT SHALL BE THERMS.

41
42 (c) "CARBON SEQUESTRATION" MEANS THE REMOVAL OF CARBON DIOXIDE FROM
43 THE ATMOSPHERE. THIS TERM INCLUDES, BUT IS NOT LIMITED TO, THE USE OF NATURAL
44 CARBON SINKS, SUCH AS IN SOILS OR FORESTS, IN THE FORM OF INCREASING PLANT BIOMASS.

45
46 (d) "CLEAN ENERGY PROGRESS FUND" MEANS A FUND MANAGED BY THE
47 GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE, FOR THE PURPOSE OF MAXIMIZING
48 THE REDUCTION OF GLOBAL WARMING POLLUTION.

1
2 (e) "END USER OF ENERGY" MEANS ANY PERSON WHO OR ENTITY THAT OBTAINS
3 ELECTRICITY OR NATURAL GAS AND DOES NOT INTEND TO SELL IT OR GIVE IT AWAY.
4

5 (f) "ENERGY EFFICIENCY" MEANS PRODUCTS OR SYSTEMS DESIGNED TO USE LESS
6 ENERGY FOR THE SAME OR HIGHER PERFORMANCE THAN CURRENTLY OR COMMONLY USED
7 PRODUCTS OR SYSTEMS.
8

9 (g) "GEOLOGIC SEQUESTRATION OF CARBON" MEANS CARBON STORAGE FOR A
10 PERIOD OF AT LEAST ONE THOUSAND YEARS AT A DEPTH OF AT LEAST ONE THOUSAND FEET
11 BELOW THE SURFACE OF THE EARTH.
12

13 (h) "GLOBAL WARMING POLLUTION" MEANS THE EMISSION OF THE SIX HEAT-
14 TRAPPING GASES: CARBON DIOXIDE, METHANE, NITROUS OXIDE, HYDROFLUOROCARBONS,
15 PERFLUOROCARBONS, AND SULFUR HEXAFLUORIDE.
16

17 (i) "GLOBAL WARMING POTENTIAL" MEANS HOW MUCH A GIVEN GLOBAL WARMING
18 GAS, ON A MASS BASIS, CONTRIBUTES TO GLOBAL WARMING. THE GLOBAL WARMING
19 POTENTIALS OF THE SIX GLOBAL WARMING GASES SHALL BE THOSE DEFINED IN THE FOURTH
20 ASSESSMENT REPORT ISSUED BY THE UNITED NATIONS INTERGOVERNMENTAL PANEL ON
21 CLIMATE CHANGE.
22

23 (j) "LOW INCOME" MEANS ANY HOUSEHOLD WHOSE INCOME DOES NOT EXCEED
24 FIFTY PERCENT OF THE COLORADO MEDIAN INCOME.
25

26 (k) "NEW ENERGY ECONOMY" MEANS CREATING AN ENERGY POLICY TO CREATE
27 JOBS, REVITALIZE THE ECONOMY, PROTECT THE ENVIRONMENT, AND HELP SECURE OUR
28 NATION'S ENERGY FUTURE.
29

30 (l) "RENEWABLE ENERGY" MEANS ENERGY OBTAINED FROM SOURCES THAT ARE
31 ESSENTIALLY INEXHAUSTIBLE. THESE SOURCES INCLUDE, BUT ARE NOT RESTRICTED TO,
32 WIND, SOLAR, BIOMASS, GEOTHERMAL ENERGY, AND HYDROELECTRICITY WITH A
33 NAMEPLATE RATING OF TEN MEGAWATTS OR LESS. THIS TERM SHALL EXCLUDE NUCLEAR
34 ENERGY.
35

36 (m) "THERM" MEANS A UNIT OF ENERGY DEFINED AS ONE HUNDRED THOUSAND
37 BRITISH THERMAL UNITS.
38

39 (3)(a) A CLEAN ENERGY PROGRESS FEE SHALL BE IMPOSED ON THE PRODUCTION OF
40 GLOBAL WARMING POLLUTION FROM NATURAL GAS CONSUMPTION AND ELECTRICITY
41 PRODUCTION. WHEN NATURAL GAS COMBUSTION IS USED TO GENERATE ELECTRICITY, THE
42 FEE SHALL BE IMPOSED ON THE ELECTRICITY GENERATED AND NOT THE NATURAL GAS
43 CONSUMPTION.
44

45 (b) THE FEE SHALL BE COMPUTED AT A RATE OF THREE DOLLARS PER METRIC TON OF
46 CARBON DIOXIDE EQUIVALENT EMITTED TO THE ATMOSPHERE FROM ELECTRICITY
47 GENERATION AND NATURAL GAS COMBUSTION.
48

1 (c) THE ENTITY PROVIDING THE ENERGY TO THE END USER OF ENERGY SHALL BE
2 RESPONSIBLE FOR COLLECTING THE REVENUES FROM THE END USER OF ENERGY AND
3 REMITTING THEM QUARTERLY TO THE PUBLIC UTILITIES COMMISSION, OR ANY SUCCESSOR
4 COMMISSION. THE PUBLIC UTILITIES COMMISSION SHALL REMIT THE REVENUES QUARTERLY
5 TO THE STATE TREASURER. THE STATE TREASURER SHALL CREDIT THE REVENUES IN THE
6 CLEAN ENERGY PROGRESS FUND, WHICH IS HEREBY CREATED IN THE STATE TREASURY.
7

8 (d) THE CARBON INTENSITY FOR ELECTRICITY SHALL BE COMPUTED BY EACH
9 ELECTRICITY-SUPPLYING ENTITY IN THE STATE ON AN ANNUAL BASIS FROM JANUARY 1 TO
10 DECEMBER 31. THE CARBON INTENSITY SHALL BE REPORTED TO THE GOVERNOR'S ENERGY
11 OFFICE, OR ANY SUCCESSOR OFFICE, ON MAY 1 AND SHALL BE APPLIED TO CALCULATING THE
12 FEE EFFECTIVE JULY 1 OF THE SAME YEAR. THE CARBON INTENSITY SHALL REPRESENT THE
13 TOTAL ANNUAL EMISSIONS OF CARBON DIOXIDE EQUIVALENT OF GLOBAL WARMING
14 POLLUTION CREATED IN ORDER TO SUPPLY THE END USERS OF ENERGY IN COLORADO,
15 DIVIDED BY THE ANNUAL DELIVERY OF ENERGY TO THE END USERS OF ENERGY IN
16 COLORADO. THE CARBON DIOXIDE EQUIVALENT SHALL BE MEASURED AT THE GENERATING
17 STATION AND SHALL ACCOUNT FOR ALL ENERGY LOSSES DUE TO TRANSMISSION AND
18 DISTRIBUTION OF THE ELECTRICITY.
19

20 (e) THE CARBON INTENSITY FOR NATURAL GAS SHALL BE SET AT TWELVE AND EIGHT-
21 TENTHS POUNDS OF CARBON DIOXIDE PER THERM.
22

23 (1) THE CARBON INTENSITY REPORTED BY THE ENERGY-SUPPLYING ENTITIES SHALL
24 BE SUBJECT TO AUDIT BY THE GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE.
25

26 (4) THE FEES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER
27 PROGRAMS TO SUPPORT JOBS CREATION, ECONOMIC DEVELOPMENT, ENERGY SECURITY,
28 ENERGY RATEPAYER RELIEF, AND GLOBAL WARMING POLLUTION REDUCTION EXISTING AS OF
29 THE EFFECTIVE DATE OF THIS SECTION. SUCH EXISTING PROGRAMS SHALL NOT BE REPEALED
30 OR REDUCED BY THE GENERAL ASSEMBLY IN CONSIDERATION OF THIS SECTION.
31

32 (5) ALL REVENUES RECEIVED BY OPERATION OF SUBSECTION (3) OF THIS SECTION
33 SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20
34 OF ARTICLE X OF THE STATE CONSTITUTION, AND SHALL BE EXCLUDED FROM THE
35 CORRESPONDING SPENDING LIMITS UPON STATE GOVERNMENT AND ALL LOCAL
36 GOVERNMENTS RECEIVING SUCH REVENUES.
37

38 (6) THE REVENUES GENERATED BY THE OPERATION OF SUBSECTION (3) OF THIS
39 SECTION SHALL BE APPROPRIATED ANNUALLY BY THE GENERAL ASSEMBLY AND SHALL BE
40 ADMINISTERED BY THE GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE. THE
41 GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE, SHALL ADMINISTER THE CLEAN
42 ENERGY PROGRESS FUND TO MAXIMIZE THE REDUCTION OF GLOBAL WARMING POLLUTION IN
43 COLORADO SUBJECT TO THE FOLLOWING RESTRICTIONS:
44

45 (a) A MINIMUM OF TWENTY PERCENT OF THE REVENUES SHALL BE USED ANNUALLY
46 FOR THE PURPOSES OF DELIVERING ENERGY EFFICIENCY PROGRAMS TO COLORADO
47 RESIDENCES AND BUSINESSES, INCLUDING ENERGY AUDITS AND INSTALLATION OF ENERGY
48 EFFICIENCY MEASURES. THESE FUNDS MAY NOT BE USED FOR RESEARCH AND DEVELOPMENT.

1 A MINIMUM OF TWENTY-FIVE PERCENT OF THE AMOUNT ALLOCATED IN THIS CATEGORY
2 SHALL BE USED ANNUALLY FOR LOW-INCOME RESIDENTIAL ENERGY-EFFICIENCY PROJECTS IN
3 COLORADO.

4
5 (b) A MINIMUM OF FIFTEEN PERCENT OF THE REVENUES SHALL BE USED ANNUALLY
6 TO IMPLEMENT RENEWABLE ENERGY IN COLORADO.

7
8 (c) A MINIMUM OF FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY TO
9 IMPLEMENT CARBON SEQUESTRATION IN COLORADO. NO MORE THAN TWO PERCENT OF THE
10 REVENUES SHALL BE USED FOR GEOLOGIC SEQUESTRATION OF CARBON. THIS PARAGRAPH (c)
11 SHALL BE ADMINISTERED AFTER CONSULTATION WITH THE COLORADO DEPARTMENT OF
12 AGRICULTURE AND THE COLORADO DEPARTMENT OF NATURAL RESOURCES.

13
14 (d) A MINIMUM OF FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY FOR
15 PROGRAMS TO REDUCE THE TOTAL EMISSIONS OF GLOBAL WARMING POLLUTION FROM THE
16 TRANSPORTATION SECTOR IN COLORADO. THIS PARAGRAPH (d) SHALL BE ADMINISTERED
17 AFTER CONSULTATION WITH THE COLORADO DEPARTMENT OF TRANSPORTATION.

18
19 (e) A MINIMUM OF FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY FOR
20 WORKFORCE TRAINING AND DEVELOPMENT PROGRAMS AT COLORADO HIGHER EDUCATION
21 AND VOCATIONAL EDUCATION INSTITUTIONS FOR THE PURPOSE OF CREATING AND FILLING
22 JOBS IN THE RENEWABLE ENERGY AND ENERGY EFFICIENCY INDUSTRIES. THIS PARAGRAPH
23 (e) SHALL BE ADMINISTERED AFTER CONSULTATION WITH THE COLORADO DEPARTMENT OF
24 LABOR AND EMPLOYMENT.

25
26 (f) A MINIMUM OF FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY TO
27 SUPPORT EFFORTS TO ACCELERATE THE COMMERCIALIZATION OF CLEAN ENERGY
28 TECHNOLOGY. THIS PARAGRAPH (f) SHALL BE ADMINISTERED AFTER CONSULTATION WITH
29 THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT.

30
31 (g) A MINIMUM OF FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY FOR
32 COMMUNICATIONS, OUTREACH, AND EDUCATION OF COLORADO CITIZENS ON METHODS OF
33 REDUCING GLOBAL WARMING POLLUTION.

34
35 (h) FIVE PERCENT OF THE REVENUES SHALL BE USED ANNUALLY TO HIRE NEW OR
36 SUPPORT EXISTING FACULTY TO DEVELOP PROGRAMS AND CURRICULA IN CLIMATE CHANGE
37 AND SUSTAINABLE ENERGY AT THE UNIVERSITY OF COLORADO, COLORADO STATE
38 UNIVERSITY, AND THE COLORADO SCHOOL OF MINES. THE UNIVERSITY OF COLORADO SHALL
39 RECEIVE FORTY PERCENT OF THE MONEYS, COLORADO STATE UNIVERSITY SHALL RECEIVE
40 FORTY PERCENT OF THE MONEYS, AND THE COLORADO SCHOOL OF MINES SHALL RECEIVE
41 TWENTY PERCENT OF THE MONEYS. THIS PARAGRAPH (h) SHALL BE ADMINISTERED AFTER
42 CONSULTATION WITH THE COLORADO COMMISSION ON HIGHER EDUCATION.

43
44 (i) TWO HUNDRED THOUSAND DOLLARS SHALL BE USED ANNUALLY FOR THE
45 ESTABLISHMENT AND OPERATION OF A CLEAN ENERGY PROGRESS TASK FORCE COMPRISED OF
46 A BALANCED ASSEMBLY OF REPRESENTATIVES FROM THE STATE'S COAL INDUSTRY,
47 RENEWABLE ENERGY INDUSTRY, THE ENERGY EFFICIENCY INDUSTRY, OIL AND GAS
48 INDUSTRY, PROPANE INDUSTRY, BIOFUELS INDUSTRY, AND UTILITY COMPANIES TO DEVELOP

1 STRATEGIES FOR A CLEAN ENERGY PORTFOLIO FOR COLORADO. THE CLEAN ENERGY
2 PROGRESS TASK FORCE SHALL MEET AT LEAST ANNUALLY AND SHALL PRODUCE WRITTEN
3 RECOMMENDATIONS TO ADVISE THE DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE, OR ANY
4 SUCCESSOR OFFICE. THE MEMBERS OF THE TASK FORCE SHALL BE BALANCED IN
5 REPRESENTING THE ABOVE-NAMED INTEREST GROUPS, WITH NO MORE THAN TWO-THIRDS OF
6 THE MEMBERS FROM ONE POLITICAL PARTY. THE MEMBERS SHALL BE NOMINATED BY THE
7 DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE, AND CONFIRMED
8 BY THE COLORADO SENATE.

9
10 (j) TWO HUNDRED FIFTY THOUSAND DOLLARS SHALL BE USED ANNUALLY TO FUND
11 THE PERMANENT STAFF POSITION OF THE GOVERNOR'S SENIOR ADVISOR ON CLIMATE CHANGE
12 AND TO SUPPORT THE ACTIVITIES OF THAT POSITION.

13
14 (7) END USERS OF ENERGY WHO ENTER INTO VOLUNTARY CONTRACTS TO PURCHASE
15 SOME PORTION OF THEIR ENERGY FROM SOURCES THAT DO NOT CREATE GLOBAL WARMING
16 POLLUTION, SUCH AS WIND POWER, SHALL BE EXEMPTED FROM PAYING THE CLEAN ENERGY
17 PROGRESS FEE ON THAT PORTION OF THEIR ENERGY CONSUMPTION.

18
19 (8) INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN
20 THE CLEAN ENERGY PROGRESS FUND SHALL BE CREDITED TO THE FUND. MONEYS IN THE
21 FUND AT THE END OF ANY STATE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT
22 BE CREDITED TO THE STATE GENERAL FUND OR ANY OTHER FUND.

23
24 (9) THE DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE, OR ANY SUCCESSOR OFFICE,
25 SHALL DELIVER AN ANNUAL REPORT ON THE CLEAN ENERGY PROGRESS FUND, IN PERSON AND
26 ACCOMPANIED BY A WRITTEN REPORT, TO A JOINT MEETING OF THE HOUSE TRANSPORTATION
27 AND ENERGY COMMITTEE AND THE SENATE AGRICULTURE, NATURAL RESOURCES, AND
28 ENERGY COMMITTEE, OR ANY SUCCESSOR COMMITTEES, OF THE COLORADO GENERAL
29 ASSEMBLY. THE REPORT SHALL INDICATE THE TOTAL REVENUES COLLECTED AND HOW THE
30 REVENUES WERE USED. THE REPORT SHALL ALSO QUANTIFY THE AMOUNT OF GLOBAL
31 WARMING POLLUTION THAT WAS AVOIDED. THE REPORT SHALL BE DELIVERED EVERY YEAR
32 NOTWITHSTANDING PROVISIONS OF THE "INFORMATION COORDINATION ACT", SECTION 24-
33 1-136 (11) (a) (1).

34
35 (10) COLLECTION OF FEES SHALL BEGIN ON JULY 1, 2009.

36
37 Proponents:

38 J. Thomas McKinnon
39 2218 Mapleton Ave.
40 Boulder, CO 80304
41 (303) 638-2533

42 jmckinnon@resgroupinc.com

Samuel P. Weaver
2423 23rd St.
Boulder, CO 80304
(303) 588-5148
samw@sugarloaf.net

J. Thomas McKinnon

2218 Mapleton Ave.
Boulder, CO 80304
jmckinno@resgroupinc.com

March 18, 2008

Mike Coffman
Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

RECEIVED
MAR 20 2008
ELECTIONS/LICENSING
SECRETARY OF STATE
*2008 by hand tk
CT*

Re: Title setting request

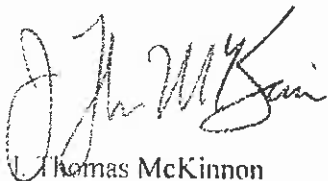
Dear Mr. Coffman,

Please find enclosed the following documents which constitute our request for title setting for the Clean Energy Progress Fund statute:

1. The statute version submitted to Legislative Council on February 26, 2008.
2. The memorandum from Legislative Council commenting on our March 26 submission.
3. A marked-up version of the statute reflecting how we addressed the comments from Legislative Council.
4. A memo we submitted to Legislative Council on March 12, 2008 with a narrative responding to their questions.
5. The revised version of the statute that we submitted to Legislative Council on March 13, 2008.

We are also submitting all of these documents electronically to your office today. We look forward to working with the Title Setting Board.

Sincerely,


J. Thomas McKinnon

ATTACHMENT 4

Ballot Title Setting Board

Proposed Initiative 2007-2008 #83¹

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

State taxes shall be increased \$209 million annually by an amendment to the Colorado Revised Statutes concerning a fee imposed on the consumption of electricity or natural gas to be used to reduce certain forms of pollution, and, in connection therewith, imposing the fee at a rate of three dollars per metric ton of carbon dioxide or carbon dioxide equivalent emitted to the atmosphere from electricity generation and natural gas combustion; collecting the fee from consumers; specifying that the fee is in addition to certain existing programs; exempting revenues generated from the fee from applicable constitutional spending limits; specifying minimum percentages of the revenues that are to be spent on the following purposes: (1) energy efficiency, (2) renewable energy, (3) carbon sequestration, (4) pollution reduction, (5) workforce training, (6) technology commercialization, (7) public education, and (8) curricula development; establishing and funding a clean energy progress task force to develop strategies for a clean energy portfolio; and funding a senior advisor to the governor on climate change.

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

Shall state taxes be increased \$209 million annually by an amendment to the Colorado Revised Statutes concerning a fee imposed on the consumption of electricity or natural gas to be used to reduce certain forms of pollution, and, in connection therewith, imposing the fee at a rate of three dollars per metric ton of carbon dioxide or carbon dioxide equivalent emitted to the atmosphere from electricity generation and natural gas combustion; collecting the fee from consumers; specifying that the fee is in addition to certain existing programs; exempting revenues generated from the fee from applicable constitutional spending limits; specifying minimum percentages of the revenues that are to be spent on the following purposes: (1) energy efficiency, (2) renewable energy, (3) carbon sequestration, (4) pollution reduction, (5) workforce training, (6) technology commercialization, (7) public education, and (8) curricula development; establishing and funding a clean energy progress task force to develop strategies for a clean energy portfolio; and funding a senior advisor to the governor on climate change?

Hearing April 2, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:14 a.m.

¹ Unofficially captioned "Fees on Energy Emissions" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Hearing April 16, 2008:

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

Hearing adjourned 2:02 p.m.

ATTACHMENT 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

March 27, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U. S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Davis
Ranking Member
Committee on Oversight and
Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Chairman Waxman and Ranking Member Davis:

Knowing of your continued interest in the issues involving greenhouse gas emissions, I am writing to inform you of action I have taken today to move the Agency forward to examine these critical issues.

In the time since the Supreme Court's *Massachusetts v. EPA* decision I have benefited from extensive briefings by EPA staff as they worked to develop an initial response to that decision and I carefully considered how EPA should best move forward.

As we were working on this response, Congress passed and the President signed the Energy Independence and Security Act (EISA) which, among other things, expanded EPA's authority over renewable fuels and required the Department of Transportation to coordinate with EPA on its CAFE regulations. Thus, the EISA represents a statutory change that will have concrete effects upon the emissions of greenhouse gases though it does not change EPA's obligation to provide a response to the Supreme Court decision. In the weeks following the passage of this law, I considered a range of options for how to move forward.

In doing so, EPA has gone beyond the specific mandate of the Court under section 202 of the Clean Air Act and evaluated the broader ramifications of the decision throughout the Clean Air Act. This review has made it clear that implementing the Supreme Court's decision could affect many sources beyond just the cars and trucks considered by the Court, including schools, hospitals, factories, power plants, aircraft and ships. In fact, the Agency currently has many pending petitions, lawsuits, and deadlines that must be viewed in light of the Supreme Court's decision.

During this review, I considered the option of soliciting public input through an Advance Notice of Proposed Rulemaking (ANPR) as the Agency considers the specific effects of climate change and potential regulation of greenhouse gas emissions from stationary and mobile sources

under the Clean Air Act. I have concluded this is the best approach given the potential ramifications.

Such an approach makes sense because, as the Act is structured, any regulation of greenhouse gases – even from mobile sources – could automatically result in other regulations applying to stationary sources and extend to small sources including many not previously regulated under the Clean Air Act. Consequently, any individual decision on whether and how sources and gases should be regulated may dictate future regulatory actions to address climate change. My approach will allow EPA to solicit public input and relevant information regarding these interconnections and their possible regulatory requirements.

This approach gives the appropriate care and attention this complex issue demands. It will also allow us to use existing work. Rather than rushing to judgment on a single issue, this approach allows us to examine all the potential effects of a decision with the benefit of the public's insight. In short, this process will best serve the American public.

In the advance notice EPA will present and request comment on the best available science including specific and quantifiable effects of greenhouse gases relevant to making an endangerment finding and the implications of this finding with regard to the regulation of both mobile and stationary sources.

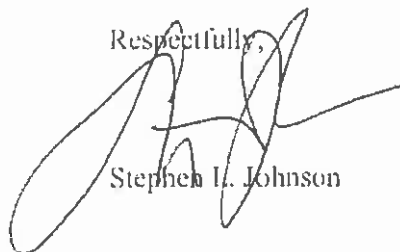
In addition, exploring the many relevant sections of the Clean Air Act, particularly those raised by groups requesting that we regulate greenhouse gases, we will highlight the complexity and interconnections within various sections of the Clean Air Act. EPA's advanced notice will also seek comment, relevant data, questions about and the implications of the possible regulation of stationary and mobile sources, particularly covering the various petitions, lawsuits and court deadlines before the Agency. These include the Agency response to the *Massachusetts v. EPA* decision, several mobile source petitions (on-road, non-road, marine, and aviation), and several stationary source rulemakings (petroleum refineries, Portland cement, and power plant and industrial boilers).

The advance notice will also raise potential issues in the New Source Review (NSR) program, including greenhouse gas thresholds and whether permitting authorities might need to define best available control technologies. If greenhouse gases were to become regulated under the NSR program, the number of Clean Air Act permits could increase significantly and the nature of the sources requiring permits could expand to include many smaller sources not previously regulated under the Clean Air Act. This notice will provide EPA an opportunity to hear from the public and from states on these issues.

In order to execute this plan, I have directed my staff to draft the ANPR to discuss and solicit public input on these interrelated issues. This advanced notice will be issued later this spring and will be followed by a public comment period. The Agency will then consider how to best respond to the Supreme Court decision and its implications under the Clean Air Act.

If you have additional questions or concerns, please contact me or EPA's Associate Administrator, Office of Congressional and Intergovernmental Relations, Chris Bliley, at 202-564-5200.

Respectfully,

A handwritten signature in black ink, appearing to read "S. Johnson", written over the printed name.

Stephen L. Johnson

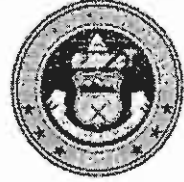
cc: Speaker Nancy Pelosi
Minority Leader John Boehner

ATTACHMENT 6

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol Building
Denver, Colorado 80203
(303) 866 - 2471
(303) 866 - 2003 fax



Bill Ritter, Jr.
Governor

D 004 08

EXECUTIVE ORDER

Reducing Greenhouse Gas Emissions in Colorado

Pursuant to Article IV, Section 2 of the Colorado Constitution and the authority vested in the Office of the Governor of the State of Colorado, I, Bill Ritter, Jr., Governor of the State of Colorado, hereby issue this Executive Order declaring the state's greenhouse gas reduction goals, directing the Colorado Department of Public Health and Environment ("CDPHE") to develop regulations mandating the reporting of greenhouse gas emissions for major emitters, requesting the Public Utilities Commission to require utilities to submit electric resource plans for meeting greenhouse gas reduction goals, and directing CDPHE to propose, after a full vetting process and within 24 months, regulations requiring reduced greenhouse gas emissions from passenger motor vehicles.

1. Background and Need

Scientists tell us that to head off disruptions to our economy, environment and society by the second half of this century, we must reduce greenhouse gas emissions by at least 80% below 2005 levels by 2050. Many sectors of Colorado's economy, including agriculture, recreation, skiing, and tourism, could experience significant changes and impacts if emissions are not reduced. Because long term planning to address climate change is essential, this Executive Order establishes a goal of achieving an 80% reduction from 2005 levels by 2050. To meet this long term goal, we must first strive toward an interim goal, and this Executive Order establishes a goal of a 20% reduction from 2005 levels by 2020.

To achieve even our interim goal as efficiently as possible, we must have accurate data regarding the sources of greenhouse gas emissions within the state. Colorado, together with 38 other states, seven Canadian provinces, six Mexican states, and three tribal nations, has joined The Climate Registry, a voluntary greenhouse gas emissions reporting system. This voluntary registry provides a mechanism through which businesses, state agencies, local governments, and others can measure and report their greenhouse gas emissions. This voluntary system, however, will not provide the comprehensive data necessary to enable policy makers and business leaders to determine how best to meet our state's emissions reduction goal. This Executive Order directs CDPHE to draft, within 18-24 months, regulations to mandate reporting of greenhouse gas emissions from major sources.

In 2005, emissions from electricity production accounted for 36% of carbon dioxide emissions in Colorado. We must work with utilities, which provide a vital service to the state, to reduce their greenhouse gas emissions. The Public Utilities Commission ("PUC") requires the state's investor-owned utilities to periodically file an electric resource plan ("ERP") that shows how they will meet their customers' energy needs well into the future. This Executive Order requests the PUC to seek from each utility within its jurisdiction an ERP that includes an analysis that shows how the utility could achieve a 20% reduction in its greenhouse gas emissions from 2005 levels by the year 2020. We recognize that large utilities will have to weigh many approaches to achieve a 20% cut in emissions, including significant expansion of renewable energy sources and energy efficiency, investments in new clean coal technologies, retirement of old, inefficient coal-fired generating stations, purchases of carbon credits to offset emissions, and other strategies. The benefits to the state from such reductions include reduced air pollution, new jobs, as well as a more diverse, and therefore less volatile, energy supply portfolio.

To ensure that such plans can be achieved in the most efficient manner, this Executive Order also directs the Governor's Energy Office ("GEO") to work with the Department of Regulatory Agencies and other relevant agencies to identify regulatory and legislative changes that may be needed to provide investor-owned utilities with the appropriate incentives to invest in renewable energy sources, energy efficiency, carbon credits, and clean coal technologies.

Whether to allow the construction of new, conventional pulverized coal plants is an important decision that requires careful study and outreach to many key stakeholders. This Executive Order directs CDPHE and GEO to evaluate alternatives for addressing greenhouse gas emissions from new coal-fired power plants in consultation with affected parties and to make a recommendation within 12 months.

Emissions in the transportation sector account for 23% of greenhouse gas emissions in Colorado. In the absence of federal action, state governments are taking direct action to ensure that automakers reduce emissions of both greenhouse gases and pollutants that cause high ozone levels. These standards must be thoughtfully and deliberately examined to determine if they make sense for Colorado. This Executive Order directs CDPHE to propose regulations, after a full vetting process and within the next 24 months, to the Air Quality Control Commission that will achieve maximum feasible and cost effective reductions of greenhouse gas emissions from passenger motor vehicles. This timeframe will allow CDPHE to engage in a stakeholder process to analyze issues associated with consumer choice, vehicle costs, driving performance at high altitude, and other issues that arise during the stakeholder process.

2. Declaration and Directive

A. State of Colorado Greenhouse Reduction Goal

1. I hereby declare that it shall be the goal of the State of Colorado to achieve the following greenhouse gas emissions reduction goals:
 - i. By 2020, to reduce greenhouse gas emissions in Colorado to 20% below its 2005 levels.

ii. By 2050, to reduce greenhouse gas emissions in Colorado to 50% below its 2005 levels.

2. State agencies are directed to join in a statewide effort, coordinated by CDPHE, the Department of Natural Resources, the Department of Agriculture, GEO, and the Governor's Office of Policy and Initiatives, to achieve these goals. This effort should consider, and where appropriate coordinate with, greenhouse gas reduction efforts occurring within local governments.

B. Reporting of Greenhouse Gas Emissions and State Inventory

1. I hereby direct CDPHE to develop and propose regulations, by no later than 24 months from the date of this Executive Order, to the Air Quality Control Commission mandating reporting of greenhouse gas emissions for all major sources. The reporting requirements should be phased in as standardized quantification protocols, baseline data, and other tools become available.
2. CDPHE is directed to plan for performing updates to the state's greenhouse gas emissions inventory, with the first update scheduled to be completed no later than 2012 and repeated every five years thereafter.

C. Greenhouse Gas Emissions from the Utility Sector

1. I hereby request that the PUC require from each utility within its jurisdiction an ERP for achieving a 20% reduction in its greenhouse gas emissions from 2005 levels by 2020.
2. I hereby direct GEO and the Department of Regulatory Agencies to identify regulatory and legislative changes that may be needed to provide investor-owned utilities with the appropriate incentives to reduce greenhouse gas emissions, and to reduce financial barriers to investments in renewable energy sources, energy efficiency, carbon credits, and clean coal technologies. The Executive Directors of these agencies will provide their suggestions to my office within 12 months of the date of this Executive Order.
3. I hereby direct CDPHE and GEO to evaluate policy options to address future demand for new coal-fired power plants. This effort shall consider, at a minimum, development of alternate sources of energy and options for reducing or mitigating greenhouse gas emissions from new plants. CDPHE and GEO shall evaluate these options in consultation with affected parties and make a recommendation to my office within 12 months of the date of this Executive Order.

D. Greenhouse Gas Emissions from the Transportation Sector

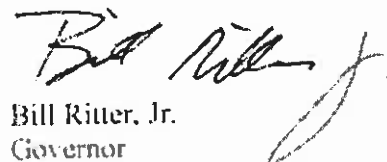
1. I hereby direct CDPHE to develop and implement a process for identifying and evaluating the benefits as well as potential impediments to measures designed to reduce tailpipe emissions of greenhouse gases from passenger cars and light duty trucks, including protection of consumer choice, vehicle costs, driving performance at high altitude, the utility and availability of alternative-fuel vehicles (including positive and negative effects on air quality), projected reduction in gasoline demand and consumption, and potential short- and long-term cost savings for consumers. As part of this effort, CDPHE shall develop a process for seeking the participation of all affected stakeholders and for periodically briefing the Air Quality Control Commission on these matters.
2. I further direct CDPHE, upon the completion of this process but in no case longer than 24 months from the date of this Executive Order, to propose to the Air Quality Control Commission a comprehensive proposal for reducing net emissions of greenhouse gases from the state's transportation sector, including measures to achieve the maximum feasible and cost-effective reductions of greenhouse gases from passenger cars and light duty trucks. This proposal should reflect the evaluation of costs and benefits achieved through the process outlined in D.1 and be tailored to the specific needs of Colorado.

3. Duration

This Executive Order shall remain in force until modified or rescinded by a subsequent Executive Order.



Given under my hand and
the Executive Seal of the
State of Colorado this 22nd
day of April, 2008.


Bill Ritter, Jr.
Governor

ATTACHMENT 7



THE ONLY U.S. NATIONAL LABORATORY DEVOTED TO FOSSIL ENERGY TECHNOLOGY

ABOUT NETL

KEY ISSUES & MANDATES

Carbon Sequestration FAQ Information Portal

ONSITE RESEARCH

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What is carbon sequestration?

What is carbon sequestration?

Carbon sequestration is the placement of CO₂ into a repository in such a way that it will remain permanently sequestered. Efforts are focused on two categories of repositories: geologic formations and terrestrial ecosystems.

What is geologic sequestration?

Geologic sequestration involves injecting CO₂ into underground reservoirs that have the ability to securely contain it. Geologic CO₂ storage R&D focuses on five types of geologic formations: oil and gas reservoirs, deep saline formations, unmineable coal seams, oil- and gas-rich organic shales, and basalts. Oil and gas reservoirs are layers of porous rock formations that have trapped crude oil or natural gas for millions of years. An impermeable, overlying rock formation forms a seal that traps the oil and gas; the same mechanism would apply to CO₂ storage. As a value-added benefit, CO₂ injected into these reservoirs can facilitate recovery of oil and gas resources left behind by earlier recovery efforts. CO₂ can increase oil recovery from a depleting reservoir by an additional 10-20 percent of the original oil in place. CO₂ enhance oil recovery (EOR) accounts for 4 percent of the Nation's oil production, and DOE studies have indicated that a widespread CO₂ EOR program in large, favorable reservoirs could significantly boost U.S. oil production.



Saline formations are composed of porous rock saturated with brine and capped by one or more regionally extensive impermeable rock formations, enabling trapping of injected CO₂. Compared with coal seams or oil and gas reservoirs, saline formations are more common and offer the added benefits of greater proximity to emission sources, higher CO₂ storage capacity, and fewer existing well penetrations. On the other hand, much less is currently known about the potential of saline formations to store and immobilize CO₂.

Unmineable coal seams, at depths beyond conventional recovery limits, represent another promising opportunity for CO₂ storage and can result in enhanced coalbed methane recovery (ECBM). Most coals contain adsorbed methane, but will preferentially adsorb CO₂, causing the methane to desorb. Similar to the by-product value gained from EOR, the recovered methane provides a value-added revenue stream to the carbon capture and storage process, reducing overall net costs. CO₂ injection is known to displace methane, and a greater understanding of the displacement mechanism is being developed to optimize CO₂ storage and to understand the problems of coal swelling and decreased permeability.

CO₂ storage in coal seams represents a promising sequestration pathway, and research is underway along several fronts to overcome technical, economic, and environmental barriers: 1) storage capacity in deep, unmineable coal seams, including guidelines for defining unmineable coals; 2) geologic and reservoir data defining favorable settings for injecting and storing CO₂ in coal seams; 3) enhanced understanding of the near-term and longer-term interactions between CO₂ and coals, particularly the ability to model coal swelling (reduction of permeability) in the presence of CO₂; 4) reliable, high-volume CO₂ injection strategies and well-spacing patterns that could reduce the number of wells required for storing significant volumes of CO₂; and 5) integrated CO₂ storage and ECBM recovery.

Shale, the most common type of sedimentary rock, is characterized by thin horizontal layers of rock with

very low permeability in the vertical direction. Many shales contain 1–5 percent organic material, and this hydrocarbon material provides an adsorption substrate for CO₂ storage, similar to CO₂ storage in coal seams. Research is focused on achieving economically viable CO₂ injection rates, given shales' generally low permeability.

Basalt formations are geologic formations of solidified lava. Basalt formations have a unique chemical makeup that could potentially convert all of the injected CO₂ to a solid mineral form, thus isolating it from the atmosphere permanently. Research is focused on enhancing and utilizing the mineralization reactions and increasing CO₂ flow within a basalt formation. Although oil- and gas-rich organic shales and basalts research is in its infancy, these formations may, in the future, prove to be optimal storage sites for stranded emissions sources.

What is a geologic "seal?"

In the context of geologic sequestration of CO₂ in deep formations, the term "seal," or "caprock," is used as a general term for one or more layers of rocks that separate the CO₂ injection reservoir from surrounding strata, especially the freshwater zones nearer the ground surface. These relatively impervious layers overlie the injection reservoirs and act to prevent movement of CO₂ and other fluids beyond the injection zones or immediate buffer zones. These layers have very low permeability—that is, their ability to transmit fluids and gases is extremely low. For example, many sandstones are good storage reservoirs because there is enough interconnected pore space between the sand grains that fluids, such as brine, or saltwater, flow easily through them. On the other hand, most shales (made of smaller, clay particles) have very little interconnected pore space and thus do not readily allow fluid movement, making them a good sealing layer.

What is terrestrial sequestration?

Terrestrial carbon sequestration is the net removal of CO₂ from the atmosphere by plants and microorganisms in the soil and the prevention of CO₂ net emissions from terrestrial ecosystems into the atmosphere. There is significant opportunity to use terrestrial sequestration both to reduce CO₂ emissions and to secure additional benefits, such as habitat and water quality improvements that often result from such projects.



Carbon analysis of soil using inelastic neutron scattering instrument at USDA Facility in Auburn, AL

In principle, terrestrial sequestration is the enhancement of the CO₂ uptake by plants that grow on land and in freshwater and, importantly, the enhancement of carbon storage in soils where it may remain more permanently stored. Terrestrial sequestration provides an opportunity for low-cost CO₂ emissions offsets. Early efforts include tree plantings, no-till farming, and forest preservation. More-advanced research includes the development of fast-growing trees and grasses and deciphering the genomes of carbon-storing soil microbes. NETL's terrestrial sequestration R&D is focused on reforestation and amending minelands and other damaged soils and analyzing various land management techniques, including no-till farming, reforestation, rangeland improvement, wetlands recovery, and riparian restoration.

How many acres of forest land does it take to offset the CO₂ emissions from a medium-sized coal-fired power plant?

Roughly speaking, about 220,000 acres would be required to offset emissions from an average-sized power plant. This assumes an average coal power plant from the existing fleet and a forest uptake rate of 3 tons of carbon per acre per year.

Terrestrial sequestration is conceptualized for use in conjunction with CO₂ capture and storage to provide fossil-fired power generation with zero net greenhouse gas emissions. It is expensive to capture the last 5–10 percent of CO₂ emissions from a fossil fuel conversion plant, due to the law of diminishing returns. A cost-effective approach for zero emissions is to capture 90 percent of emissions and offset the remaining 10 percent with forest land. Moreover, afforestation and other terrestrial sequestration approaches offer many collateral benefits, including flood protection, wildlife/endangered species habitat, restored ecosystems, etc.

What is soil carbon?

Soil carbon is both organic and inorganic carbon contained in soil. During photosynthesis, plants convert CO₂ into organic carbon, which then is deposited in the soil through their roots and as plant residue. Organic carbon is found in the top layer of soil, the A horizon. Inorganic soil carbon comprises carbonates that form through non-biological interactions. They are a minor amount compared with organic carbon, but are considered more permanent. Large plant roots, such as those of trees, are considered biomass and not part of the soil, but the organic matter, if you look closely, includes many fine root hairs, where much of the CO₂ "exchange" from the plant to the soil occurs.

What are the Regional Carbon Sequestration Partnerships?

Formed by DOE, the [Regional Carbon Sequestration Partnerships \(RCSPs\)](#) are a government/industry effort tasked with determining the most suitable technologies, regulations, and infrastructure needs for carbon capture and sequestration in different regions of the United States and Canada. The energy sectors of both countries are very closely related. Geographical differences in fossil fuel use and sequestration potential across the United States and Canada dictate regional approaches to sequestration of CO₂ and other greenhouse gases. The RCSPs are examining regional differences in geology, land practices, ecosystem management, and industrial activity that can affect the deployment of carbon capture and storage technologies. The [seven RCSPs](#) that form this network currently include more than 350 state agencies, universities, and private companies spanning 40 states; three Indian nations; and four Canadian provinces. In addition, agencies from six member countries of the [Carbon Sequestration Leadership Forum](#) are participating.

Regional Carbon Sequestration Partnerships



Developing the Infrastructure for Wide-Scale Deployment

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The RCSPs' effort has three distinct phases: 1) Characterization (2003–2005), 2) Validation (2005–2009), and 3) Deployment (2008–2017). The [Characterization Phase](#) began in September 2003 with seven RCSPs working to develop the necessary framework to validate and potentially deploy carbon sequestration technologies. The partnerships produced several dozen [reports](#) on projects conducted during this phase. At the end of the Characterization Phase, the RCSPs had succeeded in establishing a national network of companies and professionals working to support sequestration deployments, creating a National Carbon Sequestration Database and Geographic Information System ([NATCARRB](#)), and raising awareness and support for carbon sequestration as a GHG mitigation option. The Regional Carbon Sequestration Partnerships [Phase I Accomplishments paper](#) contains additional information.

The [Validation Phase](#) focuses on validating the most promising regional opportunities to deploy sequestration technologies by building upon the Characterization Phase accomplishments. [Two different sequestration approaches](#) are being pursued in this phase: [geologic](#) and [terrestrial](#). Efforts are being made to validate and refine current reservoir simulation for CO₂ injection; collect physical data to confirm capacity and injectivity estimates; demonstrate the effectiveness of [MM&V \(monitoring, mitigation, and verification\)](#) technologies; develop guidelines for well completion, operations, and abandonment; and develop strategies to optimize the storage capacity of various sink types.

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The [Deployment Phase](#) will consist of several [large-volume sequestration tests](#). These tests are designed to demonstrate that sequestration sites have the potential to store hundreds of years of regional CO₂ emissions. The large-volume sequestration tests in this phase will be conducted to address issues such as sustainable injectivity; well design for both integrity and increased capacity; and formation behavior with respect to prolonged injection.

Included in the RCSPs' programs will be Monitoring, Mitigation, and Verification projects. Detailed information about the RCSPs' contributions to carbon capture and storage is provided in DOE/NETL's [Carbon Sequestration Atlas of the United States and Canada](#). This atlas presents the first coordinated assessment of carbon capture and storage potential across the majority of the U.S. and portions of western Canada. The RCSPs also contributed to other pertinent publications and programmatic information about DOE/NETL's carbon sequestration R&D available [here](#).

What is the regulatory environment for carbon sequestration?

Although there is not yet a comprehensive federal legal and regulatory framework for carbon storage, the Environmental Protection Agency (EPA) has jurisdiction under the Safe Drinking Water Act of 1974 ([SDWA](#)) to regulate most types of underground injection. According to the EPA, the injection of CO₂ for underground storage is included. Specific regulations are brought together in the Underground Injection Control ([UIC](#)) Program, which regulates underground injection in five different classes of injection wells.

States are allowed to assume primary responsibility for implementing the UIC requirements within their boundaries, as long as the state program is consistent with EPA regulations and has received EPA approval. The SDWA itself authorizes any state to assume primary responsibility for controlling underground injection related to oil and gas recovery and production by demonstrating that its program meets SDWA requirements and represents an effective program.

The EPA announced in March 2007 through its "Guidance" procedure that it recommends using an experimental well category (Class V) for permitting pilot carbon sequestration projects. This special classification is aimed at pilot and demonstration projects with experimental goals. The EPA expressly recognizes that in the future, the technology surrounding CO₂ will no longer be considered experimental, but expects by then to have made a decision on a strategy to address CO₂ injection on a commercial scale. A different classification or an exemption of CO₂ in a manner analogous to that accorded natural gas may be called for in the long term. In any event, large commercial carbon sequestration operations raise broad issues of site selection criteria, monitoring for subsurface migration, injection well design standards, conditions attaching to any abandonment of the site, and standards for halting CO₂ injection if a loss of containment should occur. In short, as the need for carbon sequestration projects grows, comprehensive regulation will be required, addressing access to pipeline networks, pricing of transportation and storage, policies regarding monopoly control, and the mix of federal and state authority over the safety aspects of transportation and storage facilities. The legislative history of existing regulations pertaining to oil and natural gas transportation and storage will be instructive.

How are geologic sequestration sites chosen?

In the United States, DOE's Regional Carbon Sequestration Partnerships will manage this process in conjunction with the EPA. In general, goals for geological CO₂ storage selection are to analyze how much CO₂ can be stored at a potential storage site, and to demonstrate that the site is capable of meeting required storage performance standards. This requires collection of the myriad geological data needed to reach these criteria. By its nature, the process will be site specific in most respects. Much of the data will be integrated into geological models that will be used to simulate and predict the performance of the storage site. Other considerations are whether the site can be operated safely and how to accomplish it; whether there is a legal and regulatory framework within which the storage project can be undertaken; and whether the project is economically feasible.

Risks of underground CO₂ storage will be no greater than those associated with natural gas storage and enhanced oil recovery. The equipment used to monitor CO₂ storage will be the same as that in use to monitor natural gas stored underground. Similarly, the risks posed by CO₂ pipeline transport are expected to be lower than those imposed by oil and gas pipelines operating across the country. Risk management for geological storage involves four interrelated activities: (1) scrupulous site selection involving performance and risk assessment, as well as examination of socioeconomic and environmental factors; (2) monitoring to assure performance is as expected and provide warning leaks are detected; (3) effective regulatory oversight; and (4) prescription of remediation measures to eliminate the causes of leakage should it occur.

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ATTACHMENT 8



THE ONLY U.S. NATIONAL LABORATORY DEVOTED TO FOSSIL ENERGY TECHNOLOGY

ABOUT NETL

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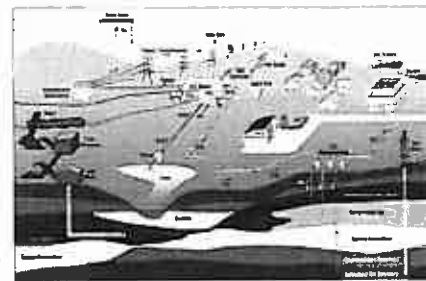
Carbon Sequestration FAQ Information Portal!

What is carbon capture?

Refineries — in a sense, energy facilities because they produce the transportation fuels that account for a large and growing share of the world's energy-related CO₂ emissions — would be ideal candidates for carbon capture because they are so energy-intensive themselves in terms of both electricity and thermal energy. But the costs would be huge. One study has shown that post-combustion CO₂ capture for a large refinery was technically feasible, but put the costs for CO₂ capture at \$50–60 per metric ton of CO₂ captured. That would put the bill for CO₂ capture at that hypothetical refinery at more than \$100 million per year. That same study considered subsequent geologic sequestration of the captured CO₂ for enhanced oil recovery, which could bring in new revenues to help offset some of the costs of CO₂ capture and storage.

What is carbon capture?

Carbon capture refers to the separation and capture of CO₂ from emissions point sources or the atmosphere and the recovery of a concentrated stream of that CO₂ that can be feasibly stored (sequestered) or converted in such a way as to mitigate its impact as a greenhouse gas. For all practical purposes, it entails the capture of CO₂ from stationary sources, such as fossil fuel-fired power plants and industrial facilities. Research efforts are focused on systems for capturing CO₂ from coal-fired power plants because they are the largest stationary sources of CO₂. Although current R&D emphasizes CO₂ capture in coal-fired power



Source: Argonne National Laboratory

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plants, the carbon capture technologies to be developed will apply to natural gas-fired power plants and industrial CO₂ sources as well. CO₂ capture has been happening for many years in the petroleum, chemical, and power industries, for a variety of reasons relevant to those industrial processes. However, in those cases, only a small portion of the CO₂ produced is captured. Capturing all, or even just three-fourths, of the CO₂ in a typical power plant with current technology would require equipment many orders of magnitude larger—a very expensive and highly energy-intensive option. In addition, without feasible, cost-effective ways to transport and store the captured CO₂, there is no point to capturing it from power plants. There are three types of CO₂ capture: post-combustion, pre-combustion, and oxy-combustion. Post-combustion CO₂ capture applies mainly to conventional coal-fired power generation but can also apply to combustion turbines fired by natural gas. In this case, the CO₂ is captured from flue gases after the fossil fuel has been burned. This technology is well-known and used to a limited degree. Pre-combustion entails a technology, widely used in chemical and some power plants, in which the fossil fuel is gasified instead of directly combusted, and the CO₂ can be readily captured from the gasification exhaust stream. With oxy-combustion, coal is burned in oxygen instead of in air, with resulting exhaust containing only CO₂ and water vapor. Because it yields an almost 100% CO₂ stream that is readily transportable, the process has strong potential but is extremely energy-intensive.

What is the regulatory environment for carbon capture?

In general, carbon capture projects are often initiated in response to government regulations, mandates, and incentives. However, there are currently no federal regulations related to carbon dioxide emission in the U.S. Other factors influencing a decision to initiate a carbon capture project may include a desire to increase familiarization with new technology, to evoke positive public relations, and/or to mitigate concern about environmental impacts of greenhouse gas emissions. The primary reason listed by carbon sequestration project developers is the presence of a regulatory emission reduction, cap and trading programs, or a need to avoid financial risks associated with the possibility of future regulations.

As national and international deliberations move ahead, state, local, and even corporate groups in the United States have already acted to impose regional CO₂ emissions limits. In 2002, some of the nation's largest greenhouse gas emitters joined with the City of Chicago to form the Chicago Climate Exchange based on a pledge to reduce CO₂ emissions below their 1998–2001 levels. In 2003, New York State obtained commitments from nine Northeast states to form a cap-and-trade CO₂ emissions program called the Regional Greenhouse Gas Initiative or RGGI. In 2007, the California legislature passed a law aimed at curbing CO₂ emissions through an array of project offsets. California has also led the development of the Western Climate Initiative in which six states and two Canadian provinces recently agreed to cut greenhouse gas emissions to 15% below 2005 levels by 2020. Wishing to avoid the uneven consequences of regional regulation, various corporate alliances have formed to petition Congress to level the playing field with uniform national standards for CO₂ emissions.

Once you capture the carbon dioxide from a power plant, what can you do with it?

Generally speaking there are three possibilities: (1) Use the carbon dioxide as a value-added commodity, (2) store the carbon dioxide, such as in underground formations, or (3) convert the carbon dioxide to methane, biomass, mineral carbonates, or other substances. Some of the uses for commodity carbon dioxide result in a portion of the carbon dioxide being sequestered, which is an added benefit. A common example of this is enhanced oil recovery. Oil companies currently inject over 30 million tons of carbon dioxide per year in depleting oil formations to enhance the production of crude oil. A portion of this carbon dioxide remains underground. A similar carbon dioxide use/storage application is the enhancement of methane production from coal seams that are too deep to be mined. Concepts for converting carbon dioxide to other chemicals, especially fuels, are in the very early stages of research.

What is the difference between carbon capture at power plants and at other industrial facilities?

Carbon capture — or more specifically, carbon dioxide (CO₂) capture — is a process that entails separating CO₂ from stationary energy or other industrial point sources to be readied for transportation, followed by value-added uses or disposal to avoid emission to the atmosphere.

CO₂ separation has been practiced for decades in certain industries. CO₂ is used extensively in the food and beverage industry, such as to carbonate beverages — making them fizzy. It also is used as a cryogenic fluid to quickly freeze food or to transport food (as dry ice, also known as CO₂ "snow"). As with CO₂ separation processes used in other industries, CO₂ is captured in food and beverage operations via amine scrubbing. Here, an exhaust gas stream containing CO₂, typically from fermentation processes, is bubbled through an amine solution that serves as an absorbent in towers that can be more than 120 feet tall. The liquid stream containing the CO₂ is then sent to a desorption tower, where the liquid is heated to free the CO₂ from the amine scrubbing. When used in products for human consumption, the CO₂ must be of the highest purity to avoid contamination, and extensive filtration is required (beverage-quality CO₂ can sell for more than \$100 per ton). This is a complex and expensive process, one that has never been done at the large scale required of a power plant.

In all, the U.S. commercial CO₂ industry supplies only about 25,000 tons of CO₂ per day to the food and beverage, medical, agricultural, and other industries. Of this total, 95% of the CO₂ is a by-product sourced from processes such as fermentation or air separation. The remainder comes from natural sources. Given the high cost of producing and transporting CO₂, an economically and technically feasible method for capturing and upgrading CO₂ at the large industrial point sources could prove a significant source of new revenue for that industrial operation.

In the natural gas processing industry, amine-based processes are used commercially to remove (again, via chemical absorption) corrosive impurities known as acid gases (typically CO₂ and hydrogen sulfide, or H₂S) from process gas streams. The acid gases removed through amine treating are then sent to a sulfur recovery unit, which converts the H₂S in the acid gas stream into elemental sulfur. The gas residue from this step undergoes further treating, and this treated residual gas — including the CO₂ — is burned, and finally is vented through the flue gas stack. In recent years, natural gas processors have been implementing a new process involving the use of polymeric membranes to dehydrate and separate the CO₂ and H₂S from the natural gas stream.

CO₂ separation also occurs in a similar fashion in the production of synthesis gas that is used to manufacture ammonia, alcohols, and synthetic liquid fuels (produced via the Fischer-Tropsch process). In almost all such industrial processes, if the CO₂ captured this way is not sold or used for another process, it is then vented to the atmosphere.

CO₂ emissions are also generated by industrial facilities other than power plants, such as refineries, petrochemical facilities, smelters, and cement plants, in the course of burning fossil fuels to produce heat and process steam. The CO₂ is emitted as part of the flue gas stream from the boilers and burners that produce the needed thermal energy in such industrial operations. In these instances, the technology

options for capturing CO₂ are essentially the same as they are for power plants that burn fossil fuels: Pre-combustion, post-combustion, and oxy-combustion.

What is important to remember is how the total volume of CO₂ emissions from power plants compares to all other industrial point sources. When looking at the energy sector as a whole, CO₂ emissions from petroleum exceed those of coal, even though coal use emits the most CO₂ per unit of energy. That is because the transportation sector accounts for the largest portion of petroleum-related CO₂ emissions. However, transportation sector carbon mitigation research and prospective policies focus on fuel economy/efficiency and fuel substitution, not carbon capture, which would be impractical for hundreds of millions of mobile sources.

Because the technologies suitable for carbon capture at power plants would be adaptable to other industries, the importance of NETL's research into reducing costs and improving effectiveness of carbon capture at fossil fuel-fired power plants is even more critical.

What types of energy facilities can participate in carbon capture?

In the United States, 98% of anthropogenic CO₂ emissions come from combustion of fossil fuels; consequently, CO₂ emissions and energy use are highly correlated. All forms of fossil fuel electric power plants would be candidates for carbon capture, as the power sector accounts for 40% of total U.S. energy-related CO₂ emissions. Coal-fired plants account for more than 80% of the power sector's CO₂ emissions.

Other power plant sources of CO₂ emissions include those that burn municipal solid waste, tires, or other carbon-containing materials to generate electricity. Non-fossil energy facilities that would *not* be candidates for carbon capture include nuclear, hydroelectric, solar, wind, geothermal, and other fuels or energy sources with zero or near-zero CO₂ emissions. Although geothermal contributes a small amount of CO₂ emissions, it is typically categorized with non-fossil energy sources.

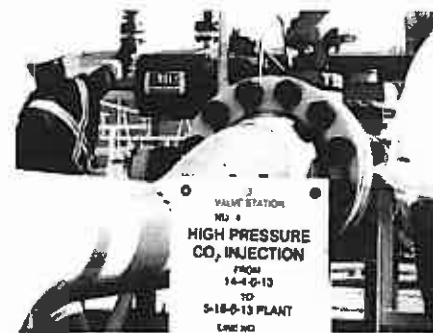
Natural gas processing plants must separate CO₂ from natural gas wellhead production streams in order to "sweeten" the production stream, as part of a process to treat and condition the natural gas so that it can be shipped via pipeline to energy consumers including power plants, and industrial, commercial, and residential users. Gas processing plants typically vent this CO₂, as there is little economic incentive to use it for any other purpose. At present, the gas processing industry's focus on reducing greenhouse gas emissions is on methane, through its Natural Gas STAR program partnership with the U.S. Environmental Protection Agency.

In a much broader sense, the industries that extract fossil energy resources — coal mining and transport, oil and gas drilling-production and transport, etc. — in and of themselves are sources of CO₂ emissions, as they typically burn liquid fuels and often consume fossil fuel-fired electricity to carry out their operations. In the greater scheme of things, however, CO₂ emissions from such energy "facilities" as coal mines and pipelines are inconsequential and not feasible for carbon capture.

In sum, the greatest potential impact for mitigating CO₂ emissions through carbon capture in any energy-related endeavor is to focus R&D efforts on carbon capture at coal-fired power plants — where much of the National Energy Technology Laboratory's research is focused.

How is CO₂ transported from the capture facility to the sequestration site?

Transporting CO₂ from a capture facility to a sequestration site is the easiest part of the CO₂ emissions mitigation challenge. CO₂ pipeline transportation has been in existence for more than 30 years in the United States. The first long-distance CO₂ pipeline started up in the early 1970s. More than 1,550 miles of pipeline transports over 40 million tons per year of CO₂ from natural and anthropogenic sources. For the most part, this CO₂ is shipped to oil fields in the Permian Basin of West Texas and New Mexico. There it is injected into the subsurface oil-bearing formations, or reservoirs, to enhance oil recovery (EOR).



CO₂ pipeline from Dakota Gasification Plant in Beulah, ND to Weyburn, Canada.

Shipping CO₂ via pipeline involves compressing gaseous CO₂ to a pressure above 1,160 pounds per square inch (psi), to increase CO₂ density and make it easier and less expensive to ship. The long pipelines moving CO₂ to the EOR projects operate in the dense phase mode, at ambient temperatures and at high pressures provided by compressors at the upstream end and occasionally at points in between the source and the injection site. CO₂ also can be transported as a liquid in seagoing vessels or via tankers on

roads or railways. In these instances, the CO₂ is held in insulated tanks at low temperatures and relatively low pressures. Road and rail tankers transport CO₂ at a temperature of 20°C and 290 psi. Because of the small capacities available, road and rail transport of the huge volumes of CO₂ targeted for sequestration would not be economically feasible. When large volumes or great distances overseas are involved, it makes better economic sense to transport the CO₂ by marine tankers that carry the CO₂ at low temperatures and pressures (about 100 psi). There is a small volume of CO₂ shipped this way because of limited demand. However, CO₂ properties are similar to those of liquefied petroleum gases (LPG), which are shipped overseas in large volumes. Consequently, CO₂ marine tankers could readily be scaled up to the size of large commercial LPG carriers if significant overseas demand for CO₂ manifested itself.

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