

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue, Denver, CO 80203
303.861.1111

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE, AND
SUMMARY FOR 2007-2008, #14

Petitioner: J. GREG SCHNACKE

v.

Respondents: MEGAN FERLAND and MATT
SAMELSON, Proponents,

and

Title Board: WILLIAM A HOBBS, DANIEL
DOMINICO, and SHARON EUBANKS

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Case No. 07SA155

OPENING BRIEF

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE.....	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
A. Proposed Initiative #14 Violates the Single Subject Rule Because it Encompasses More than One Subject.....	4
B. The Title Does Not Accurately Inform Voters of the Full Fiscal Year Dollar Increase that will Result from the New Tax	9
1) <i>The Title does not Comply with the Requirements of Article Ten, Section Twenty of the Colorado Constitution because it does not Accurately State the Full Fiscal Impact of the New Tax.....</i>	10
2) <i>Alternatively, the Title Board's Action Should be Vacated because It Was Based on Insufficient Information</i>	11
CONCLUSION.....	12

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>In re "Public Rights in Waters II",</i> 898 P.3d 1076 (Colo. 1995)	5, 6, 9
<i>In Re 1997-1998 #84 and #85,</i> 961 P.2d 456 (Colo. 1998)	6, 9
<i>In re Parental Choice in Education,</i> 917 P.3d 292 (Colo. 1996)	5
<i>In re Title and Ballot Title and Submission Clause for 2005-2006 #55,</i> 138 P.3d 273 (Colo. 2006)	5, 6
<i>In re Title, Ballot Title and Submission Clause for 2003-2004 #32 & #33,</i> 76 P.3d 460 (Colo. 2003)	5
<i>Title, Ballot Title and Submission Clause, and Summary for 1997-98 #30,</i> 959 P.2d 822 (Colo. 1998)	4, 5
 <u>State Statutes</u>	
C.R.S. § 1-40-106.5(1)(a)	4
C.R.S. § 1-40-107(1).....	1, 2
C.R.S. § 22-54 117.....	7
C.R.S. § 24-75-302	7
C.R.S. § 39-29-105	10
 <u>Colorado Constitution</u>	
Article IX, § 17	7
Article V, § 1.....	4
Article V, § 21.....	1, 4
Article X, § 10.....	9
Article X, § 20.....	1, 2, 4, 9, 10

J. Greg Schnacke (“Petitioner”), a registered voter in the State of Colorado, through undersigned counsel, submits this Opening Brief pursuant to C.R.S. section 1-40-107(1) and seeks review of the Title Setting Board’s (“Title Board”) action in setting a title, ballot title, and submission clause for Proposed Initiative 2007-2008 #14 (“Initiative #14”).

Initiative #14 would impose a new severance tax on income generated from oil and gas production and require the state to use revenues generated from the new tax to pay for various programs unrelated to oil and gas. Pursuant to this Court’s interpretation of the single subject rule, these dual purposes cannot be combined in a single initiative. Moreover, the title and summary do not accurately disclose the full fiscal impact of the new tax, in violation of Article X, section 20 of the Colorado Constitution. Thus, Petitioner respectfully requests that this Court reverse the actions of the Title Board with directions to decline to set a title and to return the Proposed Initiative to the proponents.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does Initiative #14 violate the single subject requirement set forth in Colo. Const. Art. V, § 21 by both imposing a new tax on oil and gas extraction and requiring the revenues from that tax to be spent on programs unrelated to the subject of the tax?

2. Does the title fail to inform voters of the measure's true meaning and intent because it does not accurately disclose the final, full fiscal year dollar increase that will result from the new tax as required by Colo. Const. Art X § 20?

STATEMENT OF THE CASE

This is a challenge to the actions of the Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2007-2008 #14.

The Title Board conducted its initial public meeting and set a title for Proposed Initiative 2007-2008 #14 on May 2, 2007. The Petitioner filed a Motion for Rehearing on May 8, 2007 pursuant to C.R.S. § 1-40-107(1). At the rehearing, which was held on May 16, 2007, the Board denied Petitioner's motion. Petitioner hereby seeks review of the final action of the Title Board regarding Proposed Initiative 2007-2008 #14.

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

State taxes shall be increased \$244.6 million annually by an amendment to the Colorado constitution concerning the severance tax on the sale of oil and gas extracted in the state, and, in connection therewith, effective January 1, 2008, replacing the existing severance tax with a new severance tax of five percent of the gross income from the sale of oil and gas extracted in the state; permitting the general assembly to increase the rate of the new severance tax without future voter approval; exempting taxpayers with less than \$300,000 of gross income from the tax; permitting the general assembly to enact an exemption for minimal producing oil and gas wells; prohibiting a credit against the tax for property taxes paid; exempting revenues from the tax from state and local government spending limits; and requiring specified percentages of the tax revenues to be distributed for (1) school district capital construction, (2) counties and

municipalities impacted by the development, processing, transportation, or energy conversion of oil and gas, (3) public elementary and secondary education, (4) state capital construction, and (5) such other purposes as determined by the general assembly.

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

Shall state taxes be increased \$244.6 million annually by an amendment to the Colorado constitution concerning the severance tax on the sale of oil and gas extracted in the state, and, in connection therewith, effective January 1, 2008, replacing the existing severance tax with a new severance tax of five percent of the gross income from the sale of oil and gas extracted in the state; permitting the general assembly to increase the rate of the new severance tax without future voter approval; exempting taxpayers with less than \$300,000 of gross income from the tax; permitting the general assembly to enact an exemption for minimal producing oil and gas wells; prohibiting a credit against the tax for property taxes paid; exempting revenues from the tax from state and local government spending limits; and requiring specified percentages of the tax revenues to be distributed for (1) school district capital construction, (2) counties and municipalities impacted by the development, processing, transportation, or energy conversion of oil and gas, (3) public elementary and secondary education, (4) state capital construction, and (5) such other purposes as determined by the general assembly?

SUMMARY OF THE ARGUMENT

1) Proposed Initiative 2007-2008 #14 violates the single subject requirement because it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other—creating a new tax and dedicating the revenues from that tax to certain programs. There is no necessary or proper connection between these two purposes, even under the

general theme of “tax revenue,” and therefore the measure contains more than one subject in violation of Colo. Const. Art. V, § 21.

2) The title fails to inform voters of the measure’s true meaning and intent because it fails to disclose the final, full fiscal year dollar increase that will result from the new tax to be established in the Colorado constitution. See Colo. Const. Art. X, § 20(3)(c).

ARGUMENT

A. Proposed Initiative #14 Violates the Single Subject Rule Because it Encompasses More than One Subject

The Colorado Constitution prohibits initiatives containing more than one subject:

No measure shall be proposed by petition containing more than one subject which shall be clearly expressed in its title 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.

Colo. Const. Art. V, § 1(5.5); *see also* C.R.S. § 1-40-106.5(1)(a). While this Court may not examine the merits of a proposed initiative, it must sufficiently examine an initiative to determine whether it violates this constitutional mandate. *Title, Ballot Title and Submission Clause, and Summary for 1997-98* #30, 959 P.2d 822, 825 (Colo. 1998).

The single subject requirement protects voters from fraud and surprise by promoting clarity in drafting and discouraging overly complex measures that hide intended effects in the folds of complicated language. *In re "Public Rights in Waters II"*, 898 P.3d 1076, 1079 (Colo. 1995). It also ensures that initiatives are judged on their merits alone. *Id.* at 1078. In particular, the rule seeks to prevent the "evil" of "log rolling," or combining disparate subjects in the hope of attracting support from various factions that may have different or conflicting interests. *Id.*; *In re 1997-98 #30*, 959 P.2d at 825 (citing *In re Parental Choice in Education*, 917 P.3d 292, 294 (Colo. 1996)) (additional citations omitted). Put simply, the rule is meant to ensure that any initiative presented to the voters is clearly expressed and dependent solely on its merits for passage.

An initiative violates the single subject requirement if it (1) relates to more than one subject, and (2) has at least two separate and distinct purposes that are not related to each other. *In re Title, Ballot Title and Submission Clause for 2003-2004 #32 & #33*, 76 P.3d 460, 461 (Colo. 2003) (citations omitted). In this spirit, an initiative "may neither hide purposes unrelated to its central theme nor group distinct purposes under a broad theme." *In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006).

In *Public Rights in Waters II*, this Court disapproved of a proposed initiative that would both adopt the public trust doctrine for the state's waters and impose

certain voting requirements on water conservancy and water conservation districts on single subject grounds. The Court observed that it could find “no unifying or common objective” between the two purposes included in the initiative, and that the common characteristic shared by the two purposes, “water,” was “too general and too broad to constitute a single subject.” *Public Rights in Water II*, 898 P.2d at 1080.

Likewise, in *In Re 1997-1998 #84 and #85*, 961 P.2d 456 (Colo. 1998), the Court disapproved of an initiative that would both implement local tax cuts and impose mandatory restrictions on state spending on state programs. The latter effect, which was not obvious from the initiative’s title, was a “purpose both hidden and unrelated to the central theme of effecting tax cuts.” *In re 2005-2006 #55*, 138 P.3d at 277 (analyzing *In re 1997-1998 #84 and #85*). Thus, the Court held that the initiative violated the single subject requirement because it sought both to impose a tax cut *and* to affect unrelated state spending on state programs. *In re 1997-1998 #84 and #85*, 961 P.2d at 460-61.

Pubic Rights in Waters II and *In re 1997-1998 #84 and #85* are both instructive in analyzing Initiative #14, which suffers from similar problems as the measures analyzed in those cases. Namely, Initiative #14 contains disparate purposes connected only by a general theme, and it seeks both to impose a new tax *and* mandates the manner in which the revenues from the new tax must be used.

Initiative #14 seeks to amend Article Ten of the Colorado Constitution to add a new severance tax on oil and gas. In paragraphs two and three, Initiative #14 increases the tax burden on oil and gas producers by imposing a new severance tax on income derived from oil and gas and eliminating the *ad valorem* tax credit, which is allowed as a set-off under the current severance tax statute:

(2) In addition to any other tax, there shall be levied, collected, and paid for all or any part of each taxable year commencing on or after January 1, 2008, a tax upon the gross income attributable to the sale of oil and gas severed from the Earth in this State. . . .

* * *

(3) There shall not be allowed as a credit against the tax created by this section any amount based on *ad valorem* taxes assessed on the value of real or personal property.

Paragraph 5 then directs the general assembly to appropriate and distribute the revenues from the new severance tax as follows:

(a) Twenty-three percent of such revenues shall be appropriated to the capital construction expenditures reserve established in section 22-54 117(1.5), Colorado Revised Statutes, or any successor reserve, for the purposes set forth therein.

(b) Fifteen percent of such revenues shall be appropriated to the state education fund created pursuant to section 17 of article IX of the Colorado Constitution.

(c) Fifteen percent of such revenues shall be appropriated to the capital construction fund created pursuant to section 24-75-302, Colorado Revised Statutes, or any successor fund, for the purposes set forth therein.

(d) Twenty-three percent of such revenues shall be appropriated and directly distributed to counties and municipalities socially or economically impacted by the development, processing, transportation, or energy conversion of the nonrenewable natural resources of oil and gas.

(e) Twenty-four percent of such revenues shall be appropriated and distributed as may be determined by the general assembly.

These provisions encompass two very different purposes that invoke very different goals and policy considerations. The first purpose, described in paragraphs two and three, is to increase the tax burden on oil and gas producers. Presumably, the intent behind the new severance tax is to curtail oil and gas production in the state, as the emotional language used to describe oil and gas extraction suggests:

(1) The people of the State of Colorado hereby find that nonrenewable natural resources of oil and gas are a part of Colorado's treasure and legacy and, when removed from the Earth, the value of such resources to the State of Colorado is irretrievably lost

The second purpose, described in subsections (a) through (e) of paragraph five, raises a host of policy considerations that are distinct, to say the least, from the first purpose. To increase the tax burden on producers of oil and gas, thereby making the business of oil and gas extraction more costly in the state, is a separate policy decision than how the state should distribute those revenues. This is particularly true where, as here, those revenues are being dedicated to uses that are completely unrelated to the primary purpose of the tax.

Indeed, Initiative #14 presents a classic example of "log rolling." Education, capital construction, and "energy impacted" communities are all issues that attract distinct constituencies. The obvious effect of paragraph five of Initiative #14 is to

attempt to enlist support from these various constituencies by promising that they will all benefit from passage of the initiative. This is precisely the type of mischief the single subject rule was meant to prevent—that proponents will seek support from various factions whose interests may be opposed to secure passage of a measure that could not succeed on its merits alone. *See Public Rights in Waters II*, 898 P.2d at 1080. Such a result is not permissible. The fact is that, like the initiatives considered by this Court in *In re 1997-1998 #84 and #85*, Initiative #14 seeks to effect a change in tax revenues *and* to influence unrelated state spending, purposes that are not necessarily related to or dependent upon each other. As such, Initiative #14 violates the single subject requirement, and, accordingly, this Court should return the initiative to the Title Board with instructions to decline to set a title and return the initiative to the proponents.

B. The Title Does Not Accurately Inform Voters of the Full Fiscal Year Dollar Increase that will Result from the New Tax

Section Twenty of Article Ten of the Colorado Constitution requires that any initiative proposing a new tax shall include in its title the full fiscal impact of the new tax. *See Colo. Const. Art. X, § 10(3)(c)*. In this case, the Title Board determined that the full fiscal impact of the new severance tax would be \$244.6 million. As explained below, this amount is woefully inaccurate and based on faulty information.

- 1) *The Title does not Comply with the Requirements of Article Ten, Section Twenty of the Colorado Constitution because it does not Accurately State the Full Fiscal Impact of the New Tax*

By its terms, Initiative #14 repeals the existing severance tax and replaces it with an entirely new tax.¹ As such, the ballot title must state the “full fiscal impact” of the new tax. *See* Colo. Const. Art. X, § 20(c)(3). The title set by the Title Board sets the fiscal impact of the new tax at \$244.6 million, which represents the incremental impact of the new tax, or the difference between revenues generated by the existing severance tax and revenues generated by the new tax. *See Fiscal Analysis for Proposed Ballot Initiative #14*, attached hereto as Ex. 1, at 1 estimate ignores the letter and spirit of Article Twenty, Section Ten of the Colorado Constitution as it does not inform the electorate of the true fiscal impact of the proposed new tax.

Because the proposed severance tax is completely new—and repeals the existing tax—the ballot title must inform voters of the *full* fiscal impact of the new tax. According to the fiscal analysis provided by the Office of State Planning and Budgeting, the full fiscal impact of the new tax is \$428.3 million. *See* Ex. 1 at 2. As stated, the ballot title is misleading because it does not reveal the full fiscal impact of the new tax, and, accordingly, the action of the Title Board should be vacated.

¹ Paragraph 6 of Initiative #14 provides: “Section 39-29-105 [the current severance tax statute] Colorado Revised Statutes is hereby repealed.”

2) *Alternatively, the Title Board's Action Should be Vacated because It Was Based on Insufficient Information*

As stated above, the Title Board adopted the estimate contained in the fiscal analysis provided by the Office of State Planning and Budgeting. The analysis suffers from several errors and conclusory assumptions. First, the analysis appears to ignore the fact that Initiative #14 affects both oil *and* natural gas. In its listing of the assumptions underlying the analysis, the memorandum states that severance taxes are extremely volatile because “energy prices are effectively determined by a small cartel of OPEC ministers, whose future output decisions will hinge on unknown economic and geopolitical events.” *See* Ex. A at 1. Leaving aside, for the moment, the accuracy of that statement, it is obviously applicable only to oil prices, not natural gas. What assumptions, if any, were made regarding oil and gas are left to the imagination, as none are listed.

Second, the analysis completely ignores the elimination of the *ad valorem* credit, which was clearly meant by the proponents of Initiative #14 as a revenue enhancing measure. The memorandum makes the conclusory observation that “under the exiting statutes, firms had incentives to operate across several counties in order to maximize their *ad valorem* tax credit,” while “the new constitutional language would incentivize firms to arrange their corporate ownership structure so as to [avoid increased tax exposure].” Ex. A at 1. Thus, the memorandum concludes, “there is *no basis for calculating the net revenue gain for TABOR*

compliance purposes” that would result from the elimination of the *ad valorem* credit. *Id.*

There is simply no basis for this unfounded and speculative conclusion. Nowhere in the memorandum is there any explanation for the assertion that energy firms in Colorado would “arrange their corporate ownership structure” in such a way as to avoid the consequences of the new tax. Indeed, it strains common sense to imagine how they would do so quickly enough to justify the conclusion that the elimination of the *ad valorem* tax credit will have *no effect* whatsoever on future state revenue. Without some explanation for this speculative conclusion, the fiscal estimate for Initiative #14 cannot have been accurate, and, consequently, the Title Board should not have adopted the analysis in the ballot title.

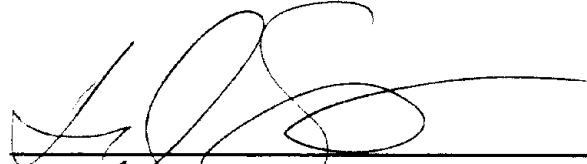
CONCLUSION

For the reasons given above, Petitioner respectfully requests that this Court reverse the action of the Title Board and return this matter to the Title Board with directions to strike the title and summary and return Initiative #14 to the proponents.

Respectfully submitted this 13th day of June, 2007.

HOGAN & HARTSON LLP

By:



Sean R. Gallagher, #16863

Jacqueline S. Cooper, #35066

ATTORNEYS FOR PETITIONER

Addresses for Petitioner:

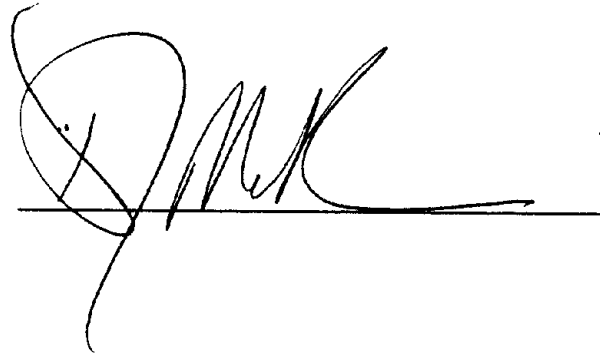
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Denver, Colorado 80203

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2007, a true and correct copy of the foregoing **OPENING BRIEF** was placed in the United States mail, postage prepaid, to the following:

Megan Ferland
1120 Lincoln Street, Suite 125
Denver, CO 80203

Matt Samelson
1159 Adams Street
Denver, CO 80210

A handwritten signature in black ink, appearing to read "MS", is written over a horizontal line. The signature is stylized and cursive.

APPENDIX A

Final Language for Proposed Initiative, Ballot Proposal #14

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

Article X of the Constitution of the State of Colorado is hereby amended BY THE ADDITION OF A NEW SECTION to read:

SECTION 22. SEVERANCE TAX ON OIL AND GAS. (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND THAT NONRENEWABLE NATURAL RESOURCES OF OIL AND GAS ARE A PART OF COLORADO'S TREASURE AND LEGACY AND, WHEN REMOVED FROM THE EARTH, THE VALUE OF SUCH RESOURCES TO THE STATE OF COLORADO IS IRRETRIEVABLY LOST; AND THAT IT IS APPROPRIATE AND FITTING THAT THE STATE ASSESS A TAX UPON INCOME DERIVED FROM THE EXTRACTION AND SALE OF SUCH NONRENEWABLE RESOURCES AND DEDICATE THE REVENUES COLLECTED FOR THE BENEFIT AND WELFARE OF THE PEOPLE OF COLORADO.

(2) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR ALL OR ANY PART OF EACH TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1, 2008, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE. THE TAX FOR OIL AND GAS SHALL BE AT THE FOLLOWING RATES OF THE GROSS INCOME:

(A) UNDER THREE HUNDRED THOUSAND DOLLARS SHALL BE EXEMPT; AND

(B) THREE HUNDRED THOUSAND DOLLARS AND OVER SHALL BE FIVE PERCENT OF THE ENTIRE GROSS INCOME OR AT SUCH GREATER RATE AS MAY BE DETERMINED BY THE GENERAL ASSEMBLY SUBJECT TO SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

(3) THERE SHALL NOT BE ALLOWED AS A CREDIT AGAINST THE TAX CREATED BY THIS SECTION ANY AMOUNT BASED ON AD VALOREM TAXES ASSESSED ON THE VALUE OF REAL OR PERSONAL PROPERTY.

(4) ALL REVENUES RECEIVED BY OPERATION OF THIS SECTION SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND FROM THE SPENDING LIMITS CONTAINED WITHIN SECTION 20 OF ARTICLE X, OR WITHIN ANY OTHER LAW, UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(5) THE REVENUES, INTEREST INCOME, AND INTEREST GENERATED BY OPERATION OF THIS SECTION SHALL BE APPROPRIATED ANNUALLY IN THE FOLLOWING PROPORTIONS:

(a) TWENTY-THREE PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED TO THE CAPITAL CONSTRUCTION EXPENDITURES RESERVE ESTABLISHED IN SECTION 22-54-117 (1.5), COLORADO REVISED STATUTES, OR ANY SUCCESSOR RESERVE, FOR THE PURPOSES SET FORTH THEREIN.

(b) FIFTEEN PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED TO THE STATE EDUCATION FUND CREATED PURSUANT TO SECTION 17 OF ARTICLE IX OF THE COLORADO CONSTITUTION.

(c) FIFTEEN PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED TO THE CAPITAL CONSTRUCTION FUND CREATED PURSUANT TO SECTION 24-75-302, COLORADO REVISED STATUTES, OR ANY SUCCESSOR FUND, FOR THE PURPOSES SET FORTH THEREIN.

(d) TWENTY-THREE PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED AND DIRECTLY DISTRIBUTED TO COUNTIES AND MUNICIPALITIES SOCIALLY OR ECONOMICALLY IMPACTED BY THE DEVELOPMENT, PROCESSING, TRANSPORTATION, OR ENERGY CONVERSION OF THE NONRENEWABLE NATURAL RESOURCES OF OIL AND GAS.

(e) TWENTY-FOUR PERCENT OF SUCH REVENUES SHALL BE APPROPRIATED AND DISTRIBUTED AS MAY BE DETERMINED BY THE GENERAL ASSEMBLY.

(6) SECTION 39-29-105 COLORADO REVISED STATUTES IS HEREBY REPEALED.

(7) THE GENERAL ASSEMBLY IS DIRECTED TO MAKE SUCH CONFORMING AMENDMENTS AND ADDITIONAL ENACTMENTS TO THE COLORADO REVISED STATUTES AS MAY BE NECESSARY AND APPROPRIATE TO REALIZE THE PURPOSES OF THIS SECTION. TO THE EXTENT CONSISTENT WITH THE PURPOSES HEREOF, ALL PROVISIONS OF ARTICLE 29 OF TITLE 39 OF THE COLORADO REVISED STATUTES NOT SPECIFICALLY REPEALED HEREIN SHALL REMAIN EFFECTIVE UNLESS AND UNTIL REPEALED OR MODIFIED BY THE GENERAL ASSEMBLY.

(8) THIS SECTION IS EFFECTIVE JANUARY 1, 2008.

STATE OF COLORADO

OFFICE OF STATE PLANNING AND BUDGETING

111 State Capitol Building
Denver, Colorado 80203
(303) 866-3317



Bill Ritter, Jr.
Governor
Todd Saliman
Director

MEMORANDUM

TO: Title Setting Review Board

FROM: Todd Saliman, Director

DATE: April 30, 2007

SUBJECT: Fiscal Analysis for Proposed Ballot Initiative #14

Ballot Initiative #14 would repeal the existing severance tax statutes and replace them with a new tax set forth in the Constitution. Apart from some minor but important technicalities, the most noticeable change in tax policy is to eliminate the *ad valorem* tax credit allowed on oil and natural gas. As the initiative appears to constitute a new tax, the Governor's Office of State Planning and Budgeting (OSPB) is tasked with calculating the annual amount of the tax increase as specified by TABOR in the following format: "Shall state taxes be increased \$_____ annually...?"

The OSPB has several concerns regarding proposed Ballot Initiative #14. They are outlined below. These concerns relate solely to estimating the fiscal impact of the initiative. It is important to note that the revenue received from this tax increase could vary greatly from the fiscal estimate if passed. In an effort to create a reasonable fiscal estimate, the OSPB consulted with the Department of Local Affairs and Legislative Council Staff economists on the assumptions inherent to this analysis.

- **Severance taxes are extremely volatile.** Energy prices are effectively determined by a small cartel of OPEC ministers, whose future output decisions will hinge on unknown economic and geopolitical events. The production decisions of firms in Colorado depend on several variables apart from output price, such as interest rates, technological ability and the political climate around drilling in areas of environmental significance. Colorado is a marginal state with respect to energy production, and as such it experiences all of the booms and busts of the industry in an aggravated manner.
- **The fiscal impact of this initiative is not observable *ex post*.** As this initiative replaces an existing tax with a new one, it is simply not possible to identify the net revenue gain after the fact. Whereas under the existing statutes, firms had incentives to operate across several counties in order to maximize their *ad valorem* credit, the new constitutional language would incentivize firms to arrange their corporate ownership structure so as to come in under the \$300,000 gross revenue threshold. Consequently, it will not be possible to examine data and determine what the existing severance tax would have generated were it not repealed. Therefore, there is no basis for calculating the net revenue gain for TABOR compliance purposes. For the reference of the title board, the OSPB will

furnish two numbers: the estimated incremental revenue impact from the entire initiative, and a forecast of the gross amount of tax revenue generated by the new tax.

Fiscal Analysis

Prices for Colorado's natural gas and oil are a weighted approximation, derived at the point-of-sale at hubs located in surrounding states where Colorado natural gas and oil is priced. These weighted prices are tracked by the Colorado Oil and Gas Conservation Commission and accessible from their website (<http://oil-gas.state.co.us/>). Colorado is distant from markets, leading to generally lower prices and a "basis differential" from national market gas prices. Ultimately, the basis differential, combined with national market behavior in response to supply and storage capacity, all act to create an extremely dynamic price environment.

The OSPB used the component analysis done by the Department of Local Affairs to establish the percentage increase DOLA expects to see in oil and gas tax revenue above DOLA's current-law forecast. After some technical adjustments regarding differences in assumptions between the OSPB and DOLA forecasts, this growth factor was applied to the OSPB forecast to establish the forecast of the gross amount of tax revenue resulting from the new tax.

The OSPB estimates that the gross amount of tax revenue generated by the new tax will be \$428.3 million in FY 2008-09. The OSPB March 2007 forecast of severance tax revenue in FY 2008-09 is \$183.7 million, which leaves the incremental impact of this initiative at \$244.6 million. The OSPB wishes to reiterate that this incremental amount is the difference between two forecasts, which are both heavily dependent on price and volume forecasts that can vary widely from actual data. As indicated above, it will not be possible to calculate the true fiscal impact of this initiative, because the old severance tax will be abolished and the new tax is structured differently from the old one.