

FILED IN THE
SUPREME COURT

SUPREME COURT, STATE OF COLORADO 2 East 14 th Avenue Denver, CO 80203	DATE FILED: DEC 18 2017 December 18, 2017
Original Proceeding Pursuant to C.R.S. § 1-40-107 (2) Appeal from the Ballot Title Board	OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk
In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2017-2018 #70 (“Severance Taxes on Oil and Gas”)	▲ COURT USE ONLY ▲
Petitioners: Andrew J. O’Connor and Mary E. Henry, v. Respondent: Jeff Wasden, and Colorado Ballot Title Setting Board: Suzanne Staiert, Sharon Eubanks and Glen Roper.	
Petitioners: Andrew J. O’Connor and Mary E. Henry 1220 W. Devonshire Court Lafayette, CO 80026 Phone Number: (303) 882-1693 Email: oconnorandrew@hotmail.com	Case Number: 17-SA-286

**AMENDED PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING
BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 # 70 (“SEVERANCE TAXES
ON OIL AND GAS”)**

Andrew J. O’Connor and Mary E. Henry (“Proponents”), through undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107 (2), to review the actions of the Title Setting Board on December 6, 2017, of erroneously granting the Motion for Rehearing and denying Title Setting.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2017-2018 #70

Andrew J. O’Connor and Mary E. Henry (“Petitioners”) proposed Initiative 2017-2018

70 (the“Proposed Initiative”). Review and comment hearings were held before representatives of the Office of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

On November 15, 2017, a Title Board Hearing was held and the Title Board approved a single subject, a staff draft was amended and title was set. On November 22, 2017, Jeff Wasden (“Respondent”) filed a Motion for Rehearing, alleging that Initiative # 70 failed to designate a change to existing law, was vague and confusing, contained multiple subjects, was misleading and contained an impermissible catchphrase and that the abstract was misleading. On November 23, 2017, Petitioners filed Response in Opposition to Motion for Rehearing. On December 6, 2017, the rehearing was held and the Title Board erroneously granted the Motion for Rehearing on the grounds that the measure did not contain a single subject.

B. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107 (2). Petitioners timely filed this Petition for Review on December 11, 2017, within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107 (2).

As required by C.R.S. § 1-40-107 (2), attached to this Petition for Review will be certified copies of: (1) the draft, amended and final version of the initiatives filed by the proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Respondent; (4) the Response in Opposition to Motion for Rehearing filed by

Petitioners and (4) the ruling on the Motion for Rehearing granting same on the grounds that the measure does not constitute a single subject. The Petitioners believe that the measure contains a single subject and that Title Board erred in granting the Motion for Rehearing. Accordingly, this matter is properly before the Court.

GROUND FOR APPEAL

Whether the Title Board erred on December 6, 2017, by granting Respondent’s Motion for Rehearing on the grounds that the measure does not constitute a single subject.

PRAYER FOR RELIEF

Petitioners respectfully request that the Court remand 2017-2018 # 70, to the Title Board and order that title be set on Proposed Initiative 2017-2018 # 70 (“Severance Taxes on Oil and Gas”).

Respectfully submitted on this 17th day of December, 2017.

ANDREW J. O’CONNOR AND MARY E. HENRY

By: s/ Andrew J. O’Connor and Mary E. Henry
Andrew J. O’Connor and Mary E. Henry
1220 W. Devonshire Court
Lafayette, CO 80026
Phone Number: (303) 882-1693
Email: oconnorandrew@hotmail.com
Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December 2017, a true and correct copy of **AMENDED PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 # 70** was emailed and/or deposited in the United States Mail, first-class postage prepaid and addressed to the following:

Brownstein, Hyatt, Faber, Schreck, L.L.P.

Attn: Jason R. Dunn

410 17th Street, #2200

Denver, CO 80202

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Attorneys for Respondent

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Denver, CO 80203

Email: leeann.morrill@coag.gov

Attorneys for Title Board

s/ Andrew J. O'Connor

Andrew J. O'Connor



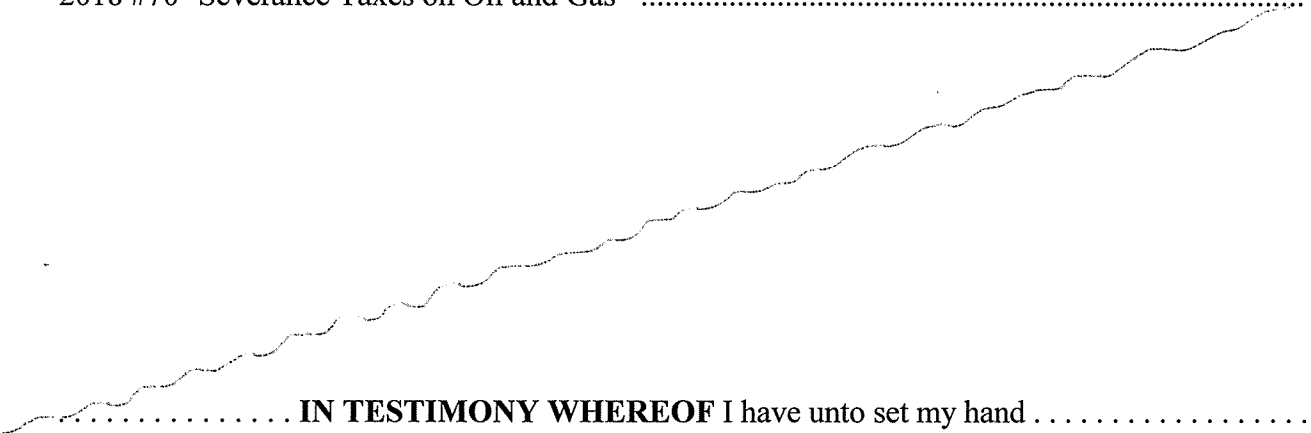
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

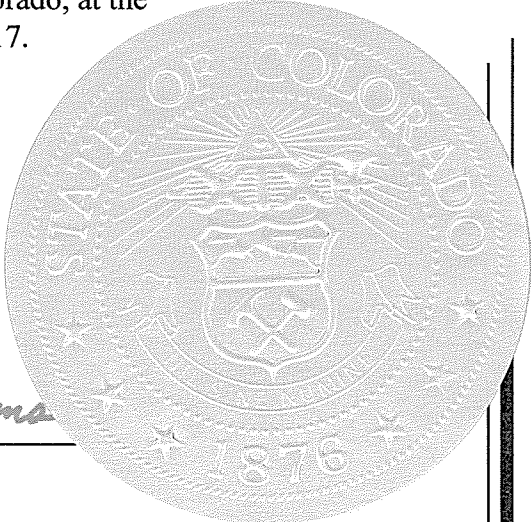
the attached are true and exact copies of the final text, initial fiscal impact statement, abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #70 'Severance Taxes on Oil and Gas'"



IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 11th day of December, 2017.

Wayne W. Williams

SECRETARY OF STATE





NOV 02 2017

S.WARD
2:58 P.M.

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

Colorado Secretary of State

SECTION 1. In Colorado Revised Statutes, 39-29-101, add (4) as follows:

39-29-101. Legislative declaration. (4) IN COLORADO, THE OIL AND GAS INDUSTRY PAYS AN EFFECTIVE SEVERANCE TAX OF ONLY 1.5%; BUT, IN THE NEIGHBORING STATES OF WYOMING AND NEW MEXICO, THE OIL AND GAS INDUSTRY PAYS AN EFFECTIVE SEVERANCE TAX OF 6.5%. IT IS THE INTENT OF THE PEOPLE OF THIS STATE TO REQUIRE THE OIL AND GAS INDUSTRY TO PAY ITS FAIR SHARE IN SEVERANCE TAXES AND STOP EXPLOITING COLORADO'S NATURAL RESOURCES AND PEOPLE. IT IS ALSO THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE IS APPROVED BY A VOTE OF THE PEOPLE AT THE 2018 GENERAL ELECTION SHALL SUPPLEMENT, RATHER THAN SUPPLANT, CURRENT APPROPRIATIONS TO THE FOLLOWING ENUMERATED PURPOSES AND SHALL BE USED TO PROVIDE FUNDING FOR THE FOLLOWING PUBLIC PURPOSES: ESTABLISHING ALL-DAY-KINDERGARTEN IN COLORADO PUBLIC SCHOOLS AND INCREASED FUNDING FOR COLORADO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; AND MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS CAUSED BY OIL AND GAS PRODUCTION IN THOSE COMMUNITIES IMPACTED BY OIL AND GAS PRODUCTION. IT IS THE FURTHER INTENT OF THE PEOPLE OF THIS STATE THAT THE PROGRAMS CURRENTLY FUNDED BY THE SEVERANCE TAX PAID BY OIL AND GAS PRODUCERS NOT BE ADVERSELY IMPACTED BY THE DISTRIBUTION OF THE ADDITIONAL REVENUE GENERATED BY THE CHANGES TO THE SEVERANCE TAX APPROVED BY A VOTE OF THE PEOPLE AT THE 2018 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3), C.R.S.

SECTION 2. In Colorado Revised Statutes, 39-29-105, **amend** (1)(b); and **add** (1)(c) as follows:

39-29-105. Tax on severance of oil and gas. (1)(b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000. FOR THE TAXABLE YEARS PRIOR TO JANUARY 1, 2019, THERE SHALL BE LEVIED,

COLLECTED, AND PAID, a tax upon gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce ~~fifteen~~ 15 barrels per day or less of oil and gas produced from wells that produce ~~ninety thousand~~ 90000 cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. The tax for oil and gas shall be at the following rates of the gross income:

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

1(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2019, A TAX UPON THE GROSS INCOME ATTRIBUTABLE TO THE SALE OF OIL AND GAS SEVERED FROM THE EARTH IN THIS STATE; EXCEPT THAT OIL PRODUCED FROM ANY WELLS THAT PRODUCE SEVEN AND ONE HALF BARRELS PER DAY OR LESS OF OIL AND GAS PRODUCED FROM WELLS THAT PRODUCE FORTY-FIVE THOUSAND CUBIC FEET OR LESS OF GAS PER DAY FOR THE AVERAGE OF ALL PRODUCING DAYS FOR SUCH OIL AND GAS PRODUCTION DURING THE TAXABLE YEAR SHALL BE EXEMPT FROM THE TAX. NOTHING IN THIS PARAGRAPH (C) SHALL EXEMPT A PRODUCER OF OIL AND GAS FROM SUBMITTING A PRODUCTION EMPLOYEE REPORT AS REQUIRED BY SECTION 39-29-110 (1) (D) (I). THE TAX FOR OIL AND GAS PROVIDED FOR IN THIS PARAGRAPH (C) SHALL BE AT THE FOLLOWING RATE OF GROSS INCOME:

Under \$25,000	7%
\$25,000 and under \$100,000	8%
\$100,000 and under \$300,000	9%
\$300,000 and over	10%

SECTION 3. In Colorado Revised Statutes, 39-29-105, **add** (3) as follows:

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

SECTION 4. In Colorado Revised Statutes, 39-29-105, **amend** (1), introductory portion and (2); and **add** (2.3) as follows:

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

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

SECTION 5. In Colorado Revised Statutes, **add** 39-29-110.5 as follows:

39-29-110.5. Severance tax stabilization trust fund---creation---administration. (1) (a) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER THE SEVERANCE TAX STABILIZATION TRUST FUND. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND. AT THE END OF ANY FISCAL YEAR, ALL

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

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

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

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

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

(I) FIFTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF ESTABLISHING ALL-DAY-KINDERGARTEN IN COLORADO PUBLIC SCHOOLS AND INCREASED FUNDING FOR COLORADO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND SHALL BE DISTRIBUTED THROUGH THE STATE'S EXISTING METHOD FOR FUNDING PUBLIC SCHOOLS;

(II) FIFTY PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR THE EXCLUSIVE PURPOSE OF MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS FROM OIL AND GAS PRODUCTION, INCLUDING, BUT NOT LIMITED TO, INCREASES IN ASTHMA, CANCER, IMMUNE SYSTEM DISEASES, COGNITIVE DEFICIENCIES, MISCARRIAGES AND BIRTH DEFECTS ALL PROXIMATELY CAUSED BY OIL AND GAS PRODUCTION;



**Colorado
Legislative
Council
Staff**

Initiative #70

**INITIAL FISCAL
IMPACT STATEMENT**

Date: November 14, 2017

Fiscal Analyst: Larson Silbaugh (303-866-4720)

LCS TITLE: SEVERANCE TAXES ON OIL AND GAS

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020
State Revenue	\$219.4 million	\$470.8 million
Cash Funds	\$219.4 million	\$470.8 million
State Transfers	\$219.4 million	\$470.8 million
Department of Natural Resources	3.7 million	51.5 million
Department of Local Affairs	3.7 million	51.5 million
Severance Tax Stabilization Fund	212.0 million	367.8 million
State Expenditures	\$198.5 million	\$434.1 million
General Fund	0.2 million	
Cash Funds	\$198.3 million	\$434.1 million
Perpetual Base Fund (DNR)	1.9 million	25.8 million
Operational Fund (DNR)	1.9 million	25.8 million
Department of Local Affairs	3.7 million	51.5 million
K-12 Education (CDE)	95.4 million	165.5 million
Medical Care (CDPHE)	95.4 million	165.5 million

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff will revise this estimate for the Blue Book Voter Guide as new information becomes available.

Summary of Measure

Beginning January 1, 2019, the measure increases the oil and gas severance tax rate by 5 percentage points for all operators, eliminates the existing property tax credit, and halves the threshold for the stripper well exemption. Oil and gas severance taxes under the measure are exempt from the spending limits in the state constitution. Starting in 2019, oil and gas severance tax revenue is allocated to the following funds:

- 22 percent to the Severance Tax Trust fund within the Department of Natural Resources;
- 22 percent to the Local Government Severance Tax Fund within the Department of Local Affairs; and
- 56 percent to a newly created Severance Tax Stabilization Trust Fund which is distributed to the Department of Education and Department of Public Health and Environment.

State Revenue

This measure will increase oil and gas severance tax revenue by \$219.4 million in FY 2018-19 and \$470.8 million in FY 2019-20, with ongoing increases in future years. The measure begins January 1, 2019, half way through FY 2018-19.

Oil and severance tax revenue. Starting in tax year 2019, the measure increases oil and gas severance tax rates for all oil and gas producers as shown in Table 1.

Table 1: Severance Tax Rates on Oil and Gas Producers Under Initiative 2017-18 #70		
Gross Income	Current Law Tax Rate	Proposed Tax Rate
Under \$25,000	2%	7%
\$25,000 and under \$100,000	3%	8%
\$100,000 and under \$300,000	4%	9%
\$300,000 and over	5%	10%

The new tax rates are a 5 percentage point increase for all oil and gas producers, regardless of gross income level.

The measure also eliminates the property tax credit and halves the stripper well exemption starting in 2019. Under current law, oil and gas producers are allowed to claim a credit against their severance tax liability equal to the amount they paid in property taxes to local governments in the prior year. In addition, current law exempts from taxation the value of production from oil and gas wells that produce either fewer than 15 barrels of oil per day or fewer than 90,000 cubic feet of natural gas per day. The measure reduces the threshold for the exemption to 7.5 barrels of oil per day or 45,000 cubic feet of natural gas per day. Table 2 shows the revenue associated with each change in the oil and gas severance tax structure .

Table 2: Change in Revenue Under Initiative 2017-18 #70		
	FY 2018-19	FY 2019-20
Current Law Forecast*	\$159.2 million	\$185.9 million
New Revenue	\$219.4 million	\$470.8 million
Increased Tax Rates	\$80.0 million	\$186.9 million
Elimination of Ad Valorem Credit	\$103.6 million	\$210.7 million
Halve Stripper Well Exemption	\$35.8 million	\$73.2 million
Total Oil and Gas Severance Tax Revenue	\$378.6 million	\$656.7 million

**September 2017 Legislative Council Staff Oil and Gas Severance Tax Forecast.*

The revenue impact in this fiscal impact statement is based on the September 2017 Legislative Council Staff oil and gas severance tax forecast. The price of oil and gas is volatile, introducing significant forecast error into the revenue forecast.

State Transfers

The measure changes the distribution of oil and gas revenue to the Department of Natural Resources (DNR) and the Department of Local Affairs (DOLA), and creates an allocation to the new Severance Tax Stabilization Fund starting January 1, 2019. Table 3 shows the current law distributions of oil and gas severance taxes and the distributions under the measure.

Transfer	Current Law	Initiative #70
Department of Natural Resources (DNR)	50%	22%
Department of Local Affairs (DOLA)	50%	22%
Severance Tax Stabilization Fund	-	56%
Total	100%	100%

Table 4 shows the current law transfers of oil and gas severance tax revenue, the transfers under the measure, and the net change for FY 2018-19 and FY 2019-20.

FY 2018-19			
Transfers	Current Law	Initiative #70	Net Change
Department of Natural Resources	\$79,582,495	\$83,303,499	\$3,721,004
Department of Local Affairs	\$79,582,495	\$83,303,499	\$3,721,004
Severance Tax Stabilization Fund	-	\$212,045,271	\$212,045,271
TOTAL	\$159,164,990	\$378,652,269	\$219,487,279
FY 2019-20			
Transfers	Current Law	Initiative #70	Net Change
Department of Natural Resources	\$92,954,948	\$144,477,832	\$51,522,884
Department of Local Affairs	\$92,954,948	\$144,477,832	\$51,522,884
Severance Tax Stabilization Fund	-	\$367,761,754	\$367,761,754
TOTAL	\$185,909,896	\$656,717,418	\$470,807,522

State Expenditures

In FY 2018-19, the measure increases state expenditures by \$116,688 and 0.9 FTE from the General Fund for the Department of Revenue to administer the new tax structure, and increases cash fund expenditures by up to \$198.3 million. In FY 2019-20, cash fund expenditures will increase by up to \$434.0 million. Table 5 summarizes expenditures for each agency under Initiative #70 and more detail is provided below.

Agency	FY 2018-19	FY 2019-20
Department of Revenue	\$116,688	
General Fund Total	\$116,688	
Department of Natural Resources	\$3,721,005	\$51,522,884
Department of Local Affairs	\$3,721,005	\$51,522,884
Department of Education	\$95,420,372	\$165,492,789
Department of Public Health and Environment	\$95,420,372	\$165,492,789
Cash Fund Total	\$198,282,754	\$434,031,346
TOTAL	\$198,399,442	\$434,031,346

Initiative #70

Department of Revenue. Department of Revenue General Fund expenditures will increase by \$116,688 and 0.9 FTE in FY 2018-19 as shown in Table 6. This amount includes personal costs for additional staff to answer taxpayer questions, postage to notify taxpayers of the change in the severance tax structure, and computer programming.

Cost Components	FY 2018-19	FY 2019-20
Personal Services	\$42,819	
FTE	0.9	
Operating Expenses and Capital Outlay Costs	5,088	
Computer Programing (GenTax)	43,927	
Mailing and Postage	13,818	
Centrally Appropriated Costs*	11,036	
TOTAL	\$116,688	\$0

* Centrally appropriated costs are not included in the measure's appropriation.

The measure changes the distribution to the Department of Natural Resources and the Department of Local Affairs, and creates the Severance Tax Stabilization Fund. Money is transferred from the fund to the Colorado Department of Education, the Colorado Department of Public Health and Environment, and a newly created Perpetual Base Account.

Department of Natural Resources (DNR). Statutory transfers and appropriations in DNR will increase by \$3.7 million in FY 2018-19 and \$51.5 million in FY 2019-20. The measure changes the distribution to DNR so they receive 22 percent of severance taxes on oil and gas starting January 1, 2019. Revenue to DNR is distributed equally between the Severance Tax Perpetual Base Fund and the Operational Fund. The disbursement of revenue from these funds is set in current law.

Department of Local Affairs (DOLA). DOLA's severance tax revenue is credited to the Local Government Severance Tax Fund and distributed to local governments. The measure changes the distribution into the fund starting January 1, 2019, when the fund will receive 22 percent of oil and gas severance tax revenue. DOLA cash fund transfers and expenditures will increase by \$3.7 million in FY 2018-19 and \$51.5 million in FY 2019-20.

Department of Education (CDE). The measure creates a statutory appropriation to the Colorado Department of Education to expand full-day kindergarten and increase funding for K-12 education. The appropriation is equal to 50 percent of oil and gas severance tax revenue in the newly created Severance Tax Operational account and starts January 1, 2019. The measure is silent about which cash fund within the department will receive the revenue. Cash fund revenue within the Colorado Department of Education will increase by up to \$95.4 million in FY 2018-19 and up to \$165.5 million in FY 2019-20. Implementing legislation will be needed to specify how this money is used.

Department of Public Health and Environment (CDPHE). The measure creates a statutory appropriation within the Colorado Department of Public Health and Environment starting January 1, 2019 to fund medical care for people suffering negative health impacts caused by oil and gas production. The measure is silent about which fund or program will receive the revenue. Funding and expenditures will increase by up to \$95.4 million starting in FY 2018-19 and up to

\$165.5 million in FY 2019-20. Implementing legislation will be needed to determine how claims are made, which conditions are caused by oil and gas development, how the revenue is distributed, and to authorize administrative costs for the department.

New perpetual base account. The measure creates a new Perpetual Base, which receives 10 percent of the revenue to the Severance Tax Stabilization Fund. Funds in the account are not appropriated until the Perpetual Base Account exceeds 125 percent of the previous year's operational account expenditures. Perpetual Base Account revenue will total \$21.2 million in FY 2018-19 and \$36.8 million in FY 2019-20; however, this revenue will not be spent until the balance in the account exceeds 125 percent of operational account expenditures.

Table 7 shows increased cash fund expenditures under Initiative 2017-2018 #70.

Table 7. Cash Fund Expenditures Under Initiative 2017-2018 #70		
Fund	FY 2018-19	FY 2019-20
Department of Natural Resources (22%)	\$3,721,005	\$51,522,884
Perpetual Base Fund (50% of DNR)	1,860,502	25,761,442
Operational Fund (50% of DNR)	1,860,502	25,761,442
Department of Local Affairs (22%)	\$3,721,005	\$51,522,884
Severance Tax Stabilization Fund (56%)	\$212,045,271	\$367,761,754
Operational Account (90% of Stabilization Fund)	\$190,840,744	\$330,985,579
K-12 Education (CDE) (50% of Operational Account)	95,420,372	165,492,789
Medical Care (CDPHE) (50% of Operational Account)	95,420,372	165,492,789
Perpetual Base Account (10% of Stabilization Fund)*	21,204,527	36,776,175
Total Cash Fund Expenditures	\$198,282,754	\$434,031,347
TOTAL	\$219,487,281	\$470,807,522

* Money in the Perpetual Base Account is not spent until the balance in the account exceeds 125 percent of operational account expenditures.

Local Government Impact

Local governments will receive increased local government impact grants administered by DOLA. In addition, some of the new expenditures in the measure may increase revenue to school districts and county health agencies depending on implementing legislation.

Economic Impact

This measure increases severance taxes paid by the oil and gas industry, increasing the cost of oil and gas development in Colorado. The fiscal impact statement does not attempt to estimate a behavioral change from the oil and gas industry in response to the increased oil and gas severance tax.

To the extent that the tax increase decreases oil and gas development in Colorado, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for oil and gas companies. The severance tax rate

is only one consideration for the industry when deciding where to develop oil and gas; other factors include the cost of extracting oil and gas, the existence of supporting infrastructure, the ability to market extracted oil and gas, existing business commitments, and prevailing prices.

The new tax revenue will be spent on state and local government services, including K-12 education and the treatment of associated medical conditions. The additional spending may increase access to these services and may reduce the amount of money households need to budget for these services. To the extent that households have more money available in their budgets, they can increase other household purchases, savings, or investments.

Effective Date

If approved by voters, the ballot initiative takes effect upon proclamation of the Governor within 30 days of the official canvas of votes at the 2018 general election. The new tax rates and structure apply starting January 1, 2019.

State and Local Government Contacts

Counties
Municipalities
Public Health and Environment

Education
Revenue

Local Affairs
Natural Resources

Abstract of Initiative 70: Severance Taxes on Oil and Gas

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of November 2017, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State Expenditures. In FY 2018-19, the measure increases state expenditures by \$116,688 and 0.9 FTE from the General Fund and increases cash fund expenditures by up to \$196.4 million. In FY 2019-20, cash fund expenditures will increase by up to \$408.3 million, with ongoing increased cash fund expenditures in future years.

State revenue. This measure will increase oil and gas severance tax revenue by \$219.5 million in FY 2018-19, \$470.8 million in FY 2019-20, with ongoing increases in future years.

Local government revenue, expenditures, taxes, or fiscal liabilities. Several of the programs that receive additional revenue under the measure increase grants to local government agencies.

Economic impacts. This measure increases severance taxes paid by the oil and gas industry, increasing the cost of oil and gas development in Colorado. To the extent that the tax increase decreases oil and gas development in Colorado, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for oil and gas companies. The new tax revenue will be spent on state and local government services, including K-12 education and treatment of medical conditions. The new tax revenue will be spent on state and local government services, including K-12 education, and the treatment of associated medical conditions. To the extent that households have more money available in their budgets, they can increase other household purchases, savings, or investments.



**Colorado
Legislative
Council
Staff**

Initiative #70

**INITIAL FISCAL
IMPACT STATEMENT**

Date: November 14, 2017

Fiscal Analyst: Larson Silbaugh (303-866-4720)

LCS TITLE: SEVERANCE TAXES ON OIL AND GAS

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020
State Revenue	\$219.4 million	\$470.8 million
Cash Funds	\$219.4 million	\$470.8 million
State Transfers	\$219.4 million	\$470.8 million
Department of Natural Resources	3.7 million	51.5 million
Department of Local Affairs	3.7 million	51.5 million
Severance Tax Stabilization Fund	212.0 million	367.8 million
State Expenditures	\$198.5 million	\$434.1 million
General Fund	0.2 million	
Cash Funds	\$198.3 million	\$434.1 million
Perpetual Base Fund (DNR)	1.9 million	25.8 million
Operational Fund (DNR)	1.9 million	25.8 million
Department of Local Affairs	3.7 million	51.5 million
K-12 Education (CDE)	95.4 million	165.5 million
Medical Care (CDPHE)	95.4 million	165.5 million

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff will revise this estimate for the Blue Book Voter Guide as new information becomes available.

Summary of Measure

Beginning January 1, 2019, the measure increases the oil and gas severance tax rate by 5 percentage points for all operators, eliminates the existing property tax credit, and halves the threshold for the stripper well exemption. Oil and gas severance taxes under the measure are exempt from the spending limits in the state constitution. Starting in 2019, oil and gas severance tax revenue is allocated to the following funds:

- 22 percent to the Severance Tax Trust fund within the Department of Natural Resources;
- 22 percent to the Local Government Severance Tax Fund within the Department of Local Affairs; and
- 56 percent to a newly created Severance Tax Stabilization Trust Fund which is distributed to the Department of Education and Department of Public Health and Environment.

State Revenue

This measure will increase oil and gas severance tax revenue by \$219.4 million in FY 2018-19 and \$470.8 million in FY 2019-20, with ongoing increases in future years. The measure begins January 1, 2019, half way through FY 2018-19.

Oil and severance tax revenue. Starting in tax year 2019, the measure increases oil and gas severance tax rates for all oil and gas producers as shown in Table 1.

Gross Income	Current Law Tax Rate	Proposed Tax Rate
Under \$25,000	2%	7%
\$25,000 and under \$100,000	3%	8%
\$100,000 and under \$300,000	4%	9%
\$300,000 and over	5%	10%

The new tax rates are a 5 percentage point increase for all oil and gas producers, regardless of gross income level.

The measure also eliminates the property tax credit and halves the stripper well exemption starting in 2019. Under current law, oil and gas producers are allowed to claim a credit against their severance tax liability equal to the amount they paid in property taxes to local governments in the prior year. In addition, current law exempts from taxation the value of production from oil and gas wells that produce either fewer than 15 barrels of oil per day or fewer than 90,000 cubic feet of natural gas per day. The measure reduces the threshold for the exemption to 7.5 barrels of oil per day or 45,000 cubic feet of natural gas per day. Table 2 shows the revenue associated with each change in the oil and gas severance tax structure .

	FY 2018-19	FY 2019-20
Current Law Forecast*	\$159.2 million	\$185.9 million
New Revenue	\$219.4 million	\$470.8 million
Increased Tax Rates	\$80.0 million	\$186.9 million
Elimination of Ad Valorem Credit	\$103.6 million	\$210.7 million
Halve Stripper Well Exemption	\$35.8 million	\$73.2 million
Total Oil and Gas Severance Tax Revenue	\$378.6 million	\$656.7 million

*September 2017 Legislative Council Staff Oil and Gas Severance Tax Forecast.

The revenue impact in this fiscal impact statement is based on the September 2017 Legislative Council Staff oil and gas severance tax forecast. The price of oil and gas is volatile, introducing significant forecast error into the revenue forecast.

State Transfers

The measure changes the distribution of oil and gas revenue to the Department of Natural Resources (DNR) and the Department of Local Affairs (DOLA), and creates an allocation to the new Severance Tax Stabilization Fund starting January 1, 2019. Table 3 shows the current law distributions of oil and gas severance taxes and the distributions under the measure.

Transfer	Current Law	Initiative #70
Department of Natural Resources (DNR)	50%	22%
Department of Local Affairs (DOLA)	50%	22%
Severance Tax Stabilization Fund	-	56%
Total	100%	100%

Table 4 shows the current law transfers of oil and gas severance tax revenue, the transfers under the measure, and the net change for FY 2018-19 and FY 2019-20.

FY 2018-19			
Transfers	Current Law	Initiative #70	Net Change
Department of Natural Resources	\$79,582,495	\$83,303,499	\$3,721,004
Department of Local Affairs	\$79,582,495	\$83,303,499	\$3,721,004
Severance Tax Stabilization Fund	-	\$212,045,271	\$212,045,271
TOTAL	\$159,164,990	\$378,652,269	\$219,487,279
FY 2019-20			
Transfers	Current Law	Initiative #70	Net Change
Department of Natural Resources	\$92,954,948	\$144,477,832	\$51,522,884
Department of Local Affairs	\$92,954,948	\$144,477,832	\$51,522,884
Severance Tax Stabilization Fund	-	\$367,761,754	\$367,761,754
TOTAL	\$185,909,896	\$656,717,418	\$470,807,522

State Expenditures

In FY 2018-19, the measure increases state expenditures by \$116,688 and 0.9 FTE from the General Fund for the Department of Revenue to administer the new tax structure, and increases cash fund expenditures by up to \$198.3 million. In FY 2019-20, cash fund expenditures will increase by up to \$434.0 million. Table 5 summarizes expenditures for each agency under Initiative #70 and more detail is provided below.

Agency	FY 2018-19	FY 2019-20
Department of Revenue	\$116,688	
General Fund Total	\$116,688	
Department of Natural Resources	\$3,721,005	\$51,522,884
Department of Local Affairs	\$3,721,005	\$51,522,884
Department of Education	\$95,420,372	\$165,492,789
Department of Public Health and Environment	\$95,420,372	\$165,492,789
Cash Fund Total	\$198,282,754	\$434,031,346
TOTAL	\$198,399,442	\$434,031,346

Department of Revenue. Department of Revenue General Fund expenditures will increase by \$116,688 and 0.9 FTE in FY 2018-19 as shown in Table 6. This amount includes personal costs for additional staff to answer taxpayer questions, postage to notify taxpayers of the change in the severance tax structure, and computer programing.

Table 6. General Fund Expenditures Under Initiative 2017-2018 #70		
Cost Components	FY 2018-19	FY 2019-20
Personal Services	\$42,819	
FTE	0.9	
Operating Expenses and Capital Outlay Costs	5,088	
Computer Programing (GenTax)	43,927	
Mailing and Postage	13,818	
Centrally Appropriated Costs*	11,036	
TOTAL	\$116,688	\$0

* Centrally appropriated costs are not included in the measure's appropriation.

The measure changes the distribution to the Department of Natural Resources and the Department of Local Affairs, and creates the Severance Tax Stabilization Fund. Money is transferred from the fund to the Colorado Department of Education, the Colorado Department of Public Health and Environment, and a newly created Perpetual Base Account.

Department of Natural Resources (DNR). Statutory transfers and appropriations in DNR will increase by \$3.7 million in FY 2018-19 and \$51.5 million in FY 2019-20. The measure changes the distribution to DNR so they receive 22 percent of severance taxes on oil and gas starting January 1, 2019. Revenue to DNR is distributed equally between the Severance Tax Perpetual Base Fund and the Operational Fund. The disbursement of revenue from these funds is set in current law.

Department of Local Affairs (DOLA). DOLA's severance tax revenue is credited to the Local Government Severance Tax Fund and distributed to local governments. The measure changes the distribution into the fund starting January 1, 2019, when the fund will receive 22 percent of oil and gas severance tax revenue. DOLA cash fund transfers and expenditures will increase by \$3.7 million in FY 2018-19 and \$51.5 million in FY 2019-20.

Department of Education (CDE). The measure creates a statutory appropriation to the Colorado Department of Education to expand full-day kindergarten and increase funding for K-12 education. The appropriation is equal to 50 percent of oil and gas severance tax revenue in the newly created Severance Tax Operational account and starts January 1, 2019. The measure is silent about which cash fund within the department will receive the revenue. Cash fund revenue within the Colorado Department of Education will increase by up to \$95.4 million in FY 2018-19 and up to \$165.5 million in FY 2019-20. Implementing legislation will be needed to specify how this money is used.

Department of Public Health and Environment (CDPHE). The measure creates a statutory appropriation within the Colorado Department of Public Health and Environment starting January 1, 2019 to fund medical care for people suffering negative health impacts caused by oil and gas production. The measure is silent about which fund or program will receive the revenue. Funding and expenditures will increase by up to \$95.4 million starting in FY 2018-19 and up to

\$165.5 million in FY 2019-20. Implementing legislation will be needed to determine how claims are made, which conditions are caused by oil and gas development, how the revenue is distributed, and to authorize administrative costs for the department.

New perpetual base account. The measure creates a new Perpetual Base, which receives 10 percent of the revenue to the Severance Tax Stabilization Fund. Funds in the account are not appropriated until the Perpetual Base Account exceeds 125 percent of the previous year's operational account expenditures. Perpetual Base Account revenue will total \$21.2 million in FY 2018-19 and \$36.8 million in FY 2019-20; however, this revenue will not be spent until the balance in the account exceeds 125 percent of operational account expenditures.

Table 7 shows increased cash fund expenditures under Initiative 2017-2018 #70.

Table 7. Cash Fund Expenditures Under Initiative 2017-2018 #70		
Fund	FY 2018-19	FY 2019-20
Department of Natural Resources (22%)	\$3,721,005	\$51,522,884
Perpetual Base Fund (50% of DNR)	1,860,502	25,761,442
Operational Fund (50% of DNR)	1,860,502	25,761,442
Department of Local Affairs (22%)	\$3,721,005	\$51,522,884
Severance Tax Stabilization Fund (56%)	\$212,045,271	\$367,761,754
Operational Account (90% of Stabilization Fund)	\$190,840,744	\$330,985,579
K-12 Education (CDE) (50% of Operational Account)	95,420,372	165,492,789
Medical Care (CDPHE) (50% of Operational Account)	95,420,372	165,492,789
Perpetual Base Account (10% of Stabilization Fund)*	21,204,527	36,776,175
Total Cash Fund Expenditures	\$198,282,754	\$434,031,347
TOTAL	\$219,487,281	\$470,807,522

* Money in the Perpetual Base Account is not spent until the balance in the account exceeds 125 percent of operational account expenditures.

Local Government Impact

Local governments will receive increased local government impact grants administered by DOLA. In addition, some of the new expenditures in the measure may increase revenue to school districts and county health agencies depending on implementing legislation.

Economic Impact

This measure increases severance taxes paid by the oil and gas industry, increasing the cost of oil and gas development in Colorado. The fiscal impact statement does not attempt to estimate a behavioral change from the oil and gas industry in response to the increased oil and gas severance tax.

To the extent that the tax increase decreases oil and gas development in Colorado, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for oil and gas companies. The severance tax rate

is only one consideration for the industry when deciding where to develop oil and gas; other factors include the cost of extracting oil and gas, the existence of supporting infrastructure, the ability to market extracted oil and gas, existing business commitments, and prevailing prices.

The new tax revenue will be spent on state and local government services, including K-12 education and the treatment of associated medical conditions. The additional spending may increase access to these services and may reduce the amount of money households need to budget for these services. To the extent that households have more money available in their budgets, they can increase other household purchases, savings, or investments.

Effective Date

If approved by voters, the ballot initiative takes effect upon proclamation of the Governor within 30 days of the official canvas of votes at the 2018 general election. The new tax rates and structure apply starting January 1, 2019.

State and Local Government Contacts

Counties
Municipalities
Public Health and Environment

Education
Revenue

Local Affairs
Natural Resources

Abstract of Initiative 70: Severance Taxes on Oil and Gas

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of November 2017, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State Expenditures. In FY 2018-19, the measure increases state expenditures by \$116,688 and 0.9 FTE from the General Fund and increases cash fund expenditures by up to \$196.4 million. In FY 2019-20, cash fund expenditures will increase by up to \$408.3 million, with ongoing increased cash fund expenditures in future years.

State revenue. This measure will increase oil and gas severance tax revenue by \$219.5 million in FY 2018-19, \$470.8 million in FY 2019-20, with ongoing increases in future years.

Local government revenue, expenditures, taxes, or fiscal liabilities. Several of the programs that receive additional revenue under the measure increase grants to local government agencies.

Economic impacts. This measure increases severance taxes paid by the oil and gas industry, increasing the cost of oil and gas development in Colorado. To the extent that the tax increase decreases oil and gas development in Colorado, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for oil and gas companies. The new tax revenue will be spent on state and local government services, including K-12 education and treatment of medical conditions. The new tax revenue will be spent on state and local government services, including K-12 education, and the treatment of associated medical conditions. To the extent that households have more money available in their budgets, they can increase other household purchases, savings, or investments.



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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2017-2018 #70

MOTION FOR REHEARING

On behalf of Jeff Wasden, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2017-2018 #70 pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

- I. THE TITLE BOARD LACKS JURISDICTION BECAUSE THE PROPOSED MEASURE FAILS TO DESIGNATE AS A CHANGE TO EXISTING LAW THE CRITICAL PART OF THE MEASURE.**

The Title Board should deny jurisdiction to consider this measure because it fails to indicate that its central, and most substantial, feature is a change to the current law. The heart of this measure is to dramatically increase (by 100% to 350%) the severance tax rate on oil and gas production beginning on January 1, 2019. Although all other changes and additions to the current law are clear because they are in capital letters or denoted with a strike-through, the final text submitted to the Title Board does not convey the new tax rates in capital letters or with any other indication. Rather, the new tax rates in section 39-29-105(1)(c) of Section 2 of the measure read:

Under \$25,000	7%
\$25,000 and under \$100,000	8%
\$100,000 and under \$300,000	9%
\$300,000 and over	10%

Therefore, the text of the measure does not indicate that the tax rates listed above have been dramatically increased from their current rates of 2%, 3%, 4% and 5%, respectively. Not only are these increases significant, ranging from doubling to more than quadrupling current severance tax rates, but they are indisputably the central feature of the measure and result in a tax increase of hundreds of millions of dollars annually. And yet, a voter reading the proposed measure would have no way of confirming that the percentage rates listed are being changed without comparing the measure to the current tax rates.

II. THE TITLE BOARD LACKS JURISDICTION TO SET A TITLE BECAUSE THE PROPOSED MEASURE IS SO VAGUE AND CONFUSING THAT IT CANNOT BE UNDERSTOOD.

Initiative #70 is an updated version of Initiative #20, which is a measure that the Title Board declined to set title for on the grounds that it lacked jurisdiction. Although Initiative #70 did not go through review and comment because Legislative Council determined that it had already expressed its concerns to the Proponents during previous review and comment hearings,¹ at the review and comment hearing for Initiative #20 Legislative Council was compelled to ask a variety of clarifying questions to understand the measure. The Proponents either did not answer these questions or answered them in such a manner as to cause more confusion. The concerns mentioned in the following examples have not been addressed by Initiative #70:

1. Question 6 in Initiative #20's Review and Comment Memorandum asked, with respect to section 39-29-105(3), whether the Proponents intended for (a) the state to retain all of the oil and gas severance tax revenue collected after January 1, 2018 as a voter-approved revenue change to the fiscal year spending limit in TABOR, or (b) the state may retain the increased revenue as a voter-approved revenue change. When asked that question at the review and comment hearing, the Proponent said "I like (b) better than (a)," but, after the staff stated that they think it is (a), he changed his answer and agreed with Legislative Council that the answer is (a).² Section 39-29-105(3) in Initiative #70 contains the exact same language as it did in Initiative #20. Therefore, whether the measure "deBruces" all or some of the tax revenue remains a significant issue that must be included in the title, but only if the measure can be clearly understood. It cannot.
2. Question 8 in Initiative #20's Review and Comment Memorandum asked: "Can the voters from the state, which is one district for purposes of TABOR, approve a voter-approved revenue change for the other districts?"³ When asked that question at the review and comment hearing, the Proponent responded that he "d[oesn't] know what that question meant,"

¹ See Proposed Initiative #70's Waiver Letter at <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/70WaiverLetter.pdf>. Initiative #70 is the Proponent's *eighth version* of this measure for 2017-2018, and the only one not to have gone through review and comment.

² See discussion starting at 35:20 of Initiative #20's review and comment hearing at <http://leg.colorado.gov/committee/granicus/964136>.

³ See discussion starting at 37:45 of Initiative #20's review and comment hearing at <http://leg.colorado.gov/committee/granicus/964136>.

but then later said “yes.” This answer raises “deBrucing” concerns at the district level because the state vote could impact district-level spending limits without the question being put to the district voters. However, Initiative #70 does not address these concerns. Such an important effect needs to be in the title, but again, only if it can be understood.

3. Question 12 in Initiative #20’s Review and Comment Memorandum asked: “Does the limit on the 125% of revenue in the perpetual base account apply beginning in the second fiscal year? And if so, what year is that fiscal year?” When asked that question at the review and comment hearing, the Proponent did not provide a definitive answer.⁴ This question remains unanswered in Initiative #70.
4. Question 13 in Initiative #20’s Review and Comment Memorandum asked: “Is there any circumstance that you intend the corpus of the perpetual base account to be used?” When asked that question at the review and comment hearing, the Proponent responded by asking “what is the answer here?” and then agreed with Legislative Council’s suggested answer of “no.”⁵ Initiative #70, again, does not provide a definitive answer to this question.

In light of these and other questions that were not definitively answered and/or addressed in Initiative #70, there remain too many unresolved issues for the Title Board to set a title.

III. INITIATIVE #70 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

Although the Proponents have stated that the single subject of their measure is a “severance tax,” the measure actually contains multiple separate subjects because it (1) changes the severance tax, (2) modifies the allocation of revenue from that tax, and (3) exempts state-level spending limits from TABOR and “deBruces” district-level limits by allowing voters from the state to approve a voter-approved revenue change for individual districts.

TABOR prohibits state and local governments from raising tax rates or increase spending limits without voter approval. If Initiative #70 were to be on the ballot and pass, it will have received voter approval for increasing state-level spending limits. However, the district-level spending limits would not have been

⁴ See discussion starting at 44:20 of Initiative #20’s review and comment hearing at <http://leg.colorado.gov/committee/granicus/964136>.

⁵ See discussion starting at 45:00 of Initiative #20’s review and comment hearing at <http://leg.colorado.gov/committee/granicus/964136>.

passed by voters in the local districts that would receive severance tax revenue under Section 39-29-108(2.3) of Section 4 of the measure. We are unaware of any ballot initiative that has attempted to “deBruce” district-level limits without a vote at the district level. Moreover, such a practice may be contrary to TABOR’s requirement that voters approve any tax raise or increase to spending limits.

By “deBrucing” district-level limits, Initiative #70 would affect local governments and alter how voters raise taxes and increase spending limits. *See In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 448 (Colo. 2002) (holding that “[p]rohibiting municipal legislation from being referred to that city’s registered electors when the success of such referendum would ‘reduce private property rights,’ represents a significant invasion of this fundamental constitutional right” and is a second subject). Voters would be surprised to learn that by voting for a measure purporting to raise the severance tax on oil and gas production, they also would be increasing district-level spending limits without a local vote.⁶ *See id.* (noting that “voters would be surprised to learn that by voting for an initiative purporting to deal with the procedural aspects of the right to petition, they had excluded zoning matters that ‘reduce private property rights’ from the right of referendum”). Therefore, this feature of the measure constitutes a separate subject from changing the severance tax and modifying the allocation of revenue from that tax. *See id.* at 447 (holding that a measure repealing TABOR contains violates the single-subject requirement because TABOR itself has multiple subjects).

IV. THE TITLE IS MISLEADING AND CONTAINS AN IMPERMISSIBLE CATCHPHRASE.

a. The title is misleading because it fails to capture the magnitude of the severance tax increase.

The title states that Initiative #70 will “increas[e] the severance tax rates by 5 percentage points.” This description of the measure’s central feature fails to adequately convey the extent of the rate increase on the oil and gas industry. Because “5 percentage points” seems miniscule, a voter reading the title likely would think that the measure minimally increases the severance tax. Only by comparing the rates in the measure to the current statutory rates (in part, because the measure fails to show that the rate increases are changes to current statute) would a voter grasp the full significance of the tax increase.

Instead, the title should state that the measure will “increase[e] the severance tax rates by 100% to 350%.” Such a statement more accurately

⁶ For example, voters are accustomed to voting on oil and gas issues, such as fracking, at the local level.

encapsulates the magnitude of the severance tax increase and avoids misunderstanding.

b. The title contains an impermissible catchphrase.

The phrase at the end of the title—“negative health impacts proximately caused by oil and gas production”—is an impermissible catchphrase. The Colorado Supreme Court has made clear that phrases that “work in favor of a proposal without contributing to voter understanding” must be avoided. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000, No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). The words chosen by the Title Board “should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words’ appeal to emotion.” *Id.*

Here, the phrase is a catchphrase because it does not add to voter understanding. The average voter does not know what “proximately caused” means, and the phrase assumes that negative health effects from oil and gas production exist. *See In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 650 (Colo. 2010) (noting that phrases that mask basic policy questions underlying an initiative are impermissible catchphrases). Therefore, the phrase is a slogan likely to appeal to voters’ emotions regarding ongoing state and local policy conversations on the effects of oil and gas production. *In re # 258(A)*, 4 P.3d at 1100 (noting that the Court “determine[s] the existence of a catch phrase or slogan in the context of contemporary political debate”). “Slogans are catch phrases tailored for political campaigns—brief striking phrases for use in advertising or promotion,” and “[t]hey encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposal’s merits.” *Id.* The phrase is thus not neutral and must be stricken from the title.

V. THE ABSTRACT IS MISLEADING UNDER SECTION 1-40-107(1)(a)(II)(B).

a. The abstract is misleading because it does not accurately describe who will bear the severance tax increase.

The proposed measure’s abstract implies that only oil and gas companies will bear the severance tax increase when, in fact, all non-governmental persons, including individuals, with a revenue interest in the production will bear the increase. For example, the Fiscal Impact Statement, to which the abstract is attached, states that “the measure increases the oil and gas severance tax rate by 5 percentage points for all operators.” (Emphasis added). Therefore, the abstract is misleading under section 1-40-107(1)(a)(II)(B), and the Title Board should amend it.

b. The abstract is misleading because it does not mention the proposed measure's elimination of the tax credit.

The proposed measure's abstract does not mention the elimination of the tax credit or explain its fiscal impact. This is another reason why the abstract is misleading under section 1-40-107(1)(a)(II)(B). The Title Board should amend the abstract to include reference to the tax credit elimination.

VI. THE ABSTRACT FAILS TO PROPERLY DETAIL THE MEASURE'S ECONOMIC IMPACTS AND THUS DOES NOT COMPLY WITH THE REQUIREMENTS SET FORTH IN SECTION 1-40-105.5(3).

An abstract must include “[a]n estimate of the measure’s economic benefits for all Coloradans.” C.R.S. § 1-40-105.5(3)(b) (emphasis added). The proposed measure’s abstract, however, includes only vague statements as to what some of the potential economic impacts could be.

For example, the abstract states that “[t]o the extent the tax increase limits oil and gas development, there will be less oil and gas employment, less demand for associated services, reduced rent and royalty income to mineral owners, and reduced profits for oil and gas companies.” These statements lack specificity and provide no meaningful information for voters regarding the magnitude of lower employment and economic activity, which could be significant given the size of the proposed severance tax rate increases. Rather than a statement that there will be “less” oil and gas employment to the extent that the tax decreases oil and gas development, the abstract should provide possible scenarios, or if a definitive answer is not possible, what ranges are more likely given their economic analysis. Instead, the Fiscal Impact Statement to which the abstract is attached simply avoids the issue by stating that it “does not attempt to estimate a behavioral response to the increased oil and gas severance tax,” which is reflected in the abstract.

Under basic concepts of supply and demand, the severance tax increases certainly will cause behavioral responses (*i.e.*, higher severance taxes will affect business decisions, which will affect employment), and any meaningful fiscal impact statement and abstract must factor in these responses or at least provide likely scenarios. Indeed, that is the entire point of the requirement. Because the abstract fails to comply with section 1-40-105.5(3)(b), it must be returned to Legislative Council for reconsideration.

CONCLUSION

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 22nd day of November, 2017.

/s/ Jason R. Dunn
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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 # 70

RESPONSE IN OPPOSITION TO MOTION FOR REHEARING

On behalf of Andrew J. O'Connor and Mary E. Henry, proponents of Ballot Initiative 2017-2018 #70, the undersigned hereby submits this Response in Opposition to Motion for Rehearing pursuant to Section 1-40-106, C.R.S., and respectively request that the Motion for Rehearing be denied and as grounds therefore states as follows:

I. THE MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE TITLE BOARD HAS JURISDICTION AND THE TITLE, SUMMARY AND SUBMISSION CLAUSE REFLECT THE INTENT OF THE INITIATIVE

The Title Board should deny the Motion for Hearing because the title and submission clause set by the Title Board on November 15, 2017, are sufficient and fairly express the true meaning and intent of the proposed state law. The proposed initiative clearly reflects the intent of the initiative. It is well established in Colorado that it is in the interest of public policy for the Title Board to confer jurisdiction on citizen ballot initiatives. Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this more important privilege. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

The Motion for Rehearing should be denied because the petitioner impermissibly argues that the Title Board's function is to interpret the initiative. It is not the function of the supreme court in the review proceeding, nor is it the board's function, to determine the meaning of the language of the initiative. *Spelts v. Klausling*, 649 P.2d 303 (Colo. 1982). Furthermore, the Motion for Rehearing should be denied because it impermissibly argues about the merits of the proposed initiative. Court will not address the merits of the proposed initiative nor interpret the meaning of proposed language. It is beyond the scope of the court's review to interpret or construe the language of a proposed initiative. *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 11227 (Colo. 1996). The Motion for Rehearing should be denied because it erroneously raises a myriad of possible future problems and ignores the limitation of review which is whether the intent of the initiative is properly reflected. On review, the supreme court can only consider whether the titles, summary, and submission clause reflects the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the language of the initiative. *In re Proposed Initiative on Transf. of Real Estate*, 200 Colo. 40, 611 p.2d 981 (1982).

The Title Board's action on November 15, 2017, in setting title and Ballot Initiative 2017-2018 #70, are presumed to be valid by operation of law. In fact, a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956). No discretion rests with administrative officials to pass on the validity of an act proposed by the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956). The burden of proving procedural noncompliance rests with the petitioner, not with the proponents of the initiative. A presumption exists that the secretary of state properly determined the sufficiency of the filing of a petition to initiate a measure. *In re Petition on Campaign and Political Finance*, 877 P.2d 311 (Colo. 1994). The petitioner has failed to meet its burden of proof and accordingly, the Motion for Rehearing should be denied.

II. THE MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE TITLE BOARD HAS JURISDICTION AND THE PROPOSED MEASURE IS DEFINITE, CLEAR AND UNDERSTANDABLE

The language of Initiative 70 is definite, clear and understandable and is different and distinct from the language of Initiative 20. Initiative 70 is not an updated version of Initiative 20 despite the petitioner's material misrepresentations to the contrary. Accordingly, any and all references and comparisons to Initiative 20 are irrelevant and are a distraction and should not be considered by the Title Board. The Motion for Rehearing the petitioner impermissibly argues claim preclusion and law of case principles. In fact, Section 1-40-107 provides a special statutory process that overrides claim preclusion or law of case principles. Consequently, the title board and supreme court must review an initiative challenged under this section even if its language is identical to the language of a previous initiative. *In re Ballot Title 2005-2006 No. 55*, 138 P.3d 273 (Colo. 2006).

Pursuant to Section 1-40-105 (1.5) C.R.S., proponents attended review and comment hearings on April 7, 2017, July 19, 2017, August 23, 2017, September 7, 2017, September 22, 2017 and October 25, 2017. The proponents attended said hearings, reviewed comments and worked with Legislative Council Staff and made suggested edits and corrections and on October 25, 2017, proponents submitted the final version of Initiative 2017-2018 # 70. On October 26, 2017, the Directors of the Office of Legislative Services and Legislative Council sent proponents a waiver letter pursuant to Section 1-40-105 (2) C.R.S., notifying them that Proposed Initiative 2017-2018 # 70 did not raise any additional comments and that another review and comment hearing was not necessary. Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. *In re Ballot Title 1999-2000 No. 256*, 12 P.3d 246 (Colo. 2000). The petitioner has failed to meet its burden of proof and accordingly, the Motion for Rehearing should be denied.

III. THE MOTION FOR REHEARING SHOULD BE DENIED BECAUSE PROPOSED INITIATIVE 2017-2018 #70 COMPLIES WITH THE SINGLE-SUBJECT REQUIREMENT PURSUANT TO SECTION 1-40-106.5 C.R.S.

The Motion for Rehearing should be denied because Proposed Initiative 2017-2018 #70, contains a single-subject which is Severance Taxes on Oil and Gas pursuant to 1-40-106 C.R.S. Proposed Initiative 2017-2018 #70, is simply a severance tax on oil and gas and provides details relating to its implementation. The single-subject requirement is not violated simply because it an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. *Matter of Ballot Title 1997-98 No. 74*, 962 P.2d 927 (Colo. 1998); *In re Ballot Title 199-2000 No. 255*, 4 P.3d 485 (Colo. 2000). Again, the stated purpose of Proposed Initiative 2017-2018 #70 is to raise severance taxes on hydraulic fracturing (fracking) operations in Colorado: nothing more, nothing less.

Why does Colorado subsidize the World's most profitable industry? The oil and gas industry pollutes our air, land and water, devastates the safety, health and welfare of Colorado communities, in 2017, incinerated two Coloradans in Firestone, insists on putting fracking wells next to schools and homes over the objections of concerned parents, children and communities and refuses to pay its fair share. In Colorado, the oil and gas industry pays an effective severance tax of only 1.9% through ad valorem deductions and stripper well exemptions. In fact, the oil and gas industry pays no severance taxes on 75% of the State's oil and gas wells. In neighboring states of Wyoming and New Mexico, oil and gas industry pays 5.5 % and 6.9% respectively in severance taxes; however, Colorado leaves billions on the table and between 2002 and 2006, Colorado failed to assess \$1.3 billion in severance taxes. The additional revenue that Proposed Initiative 2017-2018 #70, will bring into Colorado's coffers will be used to redress the negative health, social and environmental impacts of fracking and fund elementary education in Colorado which now rivals Mississippi at the bottom of the public investment ladder.

TABOR does not apply here nor do "deBrucing" concerns despite opposing counsel's material misrepresentations to the contrary. Proposed Initiative 2017-2018 #70, does not raise tax rates on the public nor does it increase spending limits because it only raises taxes on oil and gas in order to redress the negative health, social and environmental impacts of fracking and fund elementary education. The petitioner intentionally conflates TABOR and "deBrucing" which are inapplicable and irrelevant to Proposed Initiative 2017-2018 #70. Furthermore, the petitioner impermissibly attempts to interpret and construe the language of Proposed Initiative 2017-2018 #70 and erroneously attempts to predict possible problems that may arise in the future. On review, the supreme court can only consider whether the titles, summary, and submission clause reflects the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the language of the initiative. *In re Proposed Initiative on Transf. of Real Estate*, 200 Colo. 40, 611 p.2d 981 (1982). The petitioner has failed to meet its burden of proof and accordingly, the Motion for Rehearing should be denied.

IV. THE MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE TITLE IS NOT MISLEADING NOR DOES IT CONTAIN AN IMPERMISSIBLE CATCH PHRASE

The Motion for Rehearing should be denied because the Title of Proposed Initiative 2017-2018 #70, is not misleading nor does it contain an impermissible catchphrase despite the petitioner's material misrepresentations to the contrary. In fact, the description more than adequately conveys to a voter the extent of the severance tax increase on the oil and gas industry. The Text of Proposed Initiative 2017-2018 #70 reads that: "*State taxes shall be increased \$470,800.00 annually by a change to the Colorado Revised Statutes concerning the severance tax on oil and gas extracted in the State, and; in connection therewith, increasing the severance tax by 5 percent points...*" Said language fairly and succinctly advises the import of the proposed law. The purpose of the title-setting process is to ensure that both the persons reviewing an initiative petition and the voters are fairly and succinctly advised of the import of the proposed law. *In re Proposed Initiative on Education Tax Refund*, 823 P.2d 1353 (Colo. 1991); *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994). It is opposing counsel that is attempting to mislead by falsely implying that this measure raises taxes on Coloradans when the truth of the matter is that it only raises taxes on the oil and gas industry.

The Proposed Initiative 2017-2018 #70 provides for "*medical care and treatment to people suffering negative health impacts proximately caused by oil and gas production.*" Said language is not an impermissible catch phrase despite opposing counsel's material misrepresentations to the contrary. In fact, said language clearly states the intention to the initiative to require that the oil and gas industry fund medical care for the harm, destruction deaths that their lethal industry causes to Coloradans and communities negatively impacted by oil and gas production. In a similar case, the Court found that the "*Right of health care choice*" is not an impermissible catch phrase because the phrase is a descriptive term that presents to voters in a straightforward manner. *In re Title Board Title, Sub. C1. For 2009-2010 No. 45*, 234 P.3d 642 (Colo. 2010). Similarly, the above referenced language is necessary to describe the negative health impacts caused by fracking operations. In fact, fracking results in air, water and soil contamination; species extinction; ozone depletion; climate change and necessitates medical treatment for skyrocketing cases of asthma, cancer, immune system diseases, cognitive deficiencies, miscarriages and birth defects. So, while the profits from fracking go to the oil and drilling companies, the costs of cleanup, adverse environmental and health consequences will be borne by the people of Colorado. Again, it is opposing counsel that is attempting to mislead and deflect by falsely stating that the above referenced language contains an impermissible catchphrase. The Title in Proposed Initiative 2017-2018 #70 is clear and it fairly and sufficiently advises voters about the import of the severance tax. A sufficiently clear title enables the electorate whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal. *In re Ballot Title 2011-2012*, No. 45, 2012 CO 26, 274 P.3d 576. The petitioner has failed to meet its burden of proof and accordingly, the Motion for Rehearing should be denied.

V. THE MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE ABSTRACT ADEQUATELY DESCRIBES THAT THE OIL AND GAS INDUSTRY WILL BEAR THE SEVERANCE TAX INCREASE AND PROPERLY DETAILS THE ECONOMIC IMPACTS THEREBY COMPLYING WITH SECTION 1-40-105.5 (3)

The Motion for Rehearing should be denied because the Abstract of Proposed Initiative 2017-2018 #70, adequately describes that the oil and gas industry will bear the severance tax increase and properly details the economic impacts thereby complying with Section 1-40-105.5 (3). In fact, the abstract is very clear and is not misleading under Section 1-40-107 (1)(a)(II)(B), despite the petitioner's material misrepresentations to the contrary. The petitioner impermissibly argues about the meaning or application of the severance tax. The Board is not required to consider and resolve potential or theoretical disputes or determine the meaning or application of proposed amendment. *Matter of Title, Ballot Title & S. Clause*, 875 P.2d 207 (Colo. 1994).

The abstract is not misleading because it does not mention elimination of the tax credit. The petitioner impermissibly argues about potential economic impacts and possible interpretations of the language of Proposed Initiative 2017-2018 #70. It is not function of the Board to disclose every possible interpretation of the language of the initiative. *In Re Prop. Init. "Fair Fishing"*, 877 P.2d 1355 (Colo. 1994). The petitioner has failed to meet its burden of proof and accordingly, the Motion for Rehearing should be denied.

CONCLUSION

Based upon the foregoing, proponents Andrew J. O'Connor and Mary E. Henry, respectfully requests that Motion for Rehearing be denied and grant any such further relief that the Title Board deems appropriate.

Respectfully submitted this 23rd day of November, 2017.

/s/ Andrew J. O'Connor and Mary E. Henry

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October 26, 2017

Andrew O'Connor & Mary Henry
1220 W. Devonshire Court
Lafayette, CO 80026

Re: Proposed Initiative Measure #70, Concerning Severance Taxes on Oil and Gas

Dear Mr. O'Connor and Ms. Henry:

Pursuant to section 1-40-105 (2), C.R.S., we hereby notify you that the above proposed measure does not raise any additional comments from our offices that have not been raised in earlier memoranda or hearings on your proposed measure on this topic. Section 1-40-105 (2), C.R.S., provides in part:

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (2) . . . If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

Rule 12 of the *Rules for Staff of Legislative Council and Office of Legislative Legal Services: Review and Comment Filings*, adopted by the Legislative Council on September 6, 2000, requires that such determination and notification be made no later than 72 hours after the filing. Your measure was received by our office on October 25, 2017.

This letter serves as the written notice required by section 1-40-105 (2), C.R.S. It is our understanding that pursuant to that section, no review and comment hearing pursuant to section 1-40-105 (1), C.R.S., is required.

Very truly yours,

Sharon Eubanks, Director
Office of Legislative Legal Services

Mike Mauer, Director
Legislative Council

DEC 18 2017

Ballot Title Setting Board

Proposed Initiative 2017-2018 #70¹

OF THE STATE OF COLORADO
Cheryl L. Stevens, Clerk

*Hearing November 15, 2017:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:20 a.m.*

*Rehearing December 6, 2017:
Motion for Rehearing granted on the grounds that the measure does not constitute a single subject.
Title setting denied.
Hearing adjourned 11:13 a.m.*

¹ Unofficially captioned “**Severance Taxes on Oil and Gas**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.