SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203 ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107 (2) **Petitioners:** Andrew J. O'Connor and Mary E. Henry, v. **Respondent:** Chad Vorthman, and **Colorado Ballot Title Setting Board:** Suzanne Staiert, Shannon Eubanks and David Blake.	DATE FILED: May 3, 2017 ▲ COURT USE ONLY ▲ FILED IN THE SUPREME COURT MAY 03 2017 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk
Attorney for Petitioners: Andrew J. O'Connor 1220 W. Devonshire Court Lafayette, CO 80226 Phone Number: (303) 499-4585 Email: oconnorandrew@hotmail.com	Case Number: 17 SA 85

PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING BOARD CONCERNING PROPOSED INITITIAVE 2017-2018 NO. 20

Pursuant to section 1-40-107 (2), Andrew J. O'Connor (hereinafter "Petitioner") and Mary E. Henry, through undersigned counsel, respectfully petitions this Court to review the wrongful and unconstitutional actions of the Colorado Title Setting Board (the "Title Board") including, but not limited to, acting in an arbitrary and capricious manner by denying Petitioners due process, denying Petitioners a fair and impartial rehearing, demonstrating bias and prejudice against Petitioners and reversing itself by refusing jurisdiction and setting title on Proposed Initiative 2017-2018 # 20 (the "Initiative") after accepting jurisdiction and setting title on April 19, 2017.

I. WRONGFUL ACTIONS OF THE TITLE BOARD

The Title Board conducted its initial public hearing on the Initiative on April 19, 2017 and accepted jurisdiction and set title on the Initiative. The Title Board found that the Initiative satisfied the single subject requirement of Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105 (4) and set title. Respondent made specious arguments regarding lack of jurisdiction, substantive changes and misspellings, all of which were summarily rejected by the Title Board. On April 26, 2017, Respondent filed motion for rehearing which contained and repeated the same exact arguments that were summarily rejected by the Title Board. On April 28, 2017, the Title Board reversed itself and unanimously declined jurisdiction and refused to set title on the Initiative.

On April 25, 2017, Suzanne Staiert, Deputy Secretary of State and one of the three members on the Title Board, gave an interview to Denver television station KUSA, in which she falsely accused Petitioner of being dangerous and a security threat. Ms. Staiert told KUSA that the rehearing would have to be delayed in order to find a space in a secure building with metal detectors stating: *"From this point on, that will be a security obligation that we are obligated to take."* (See copy of KUSA interview dated 4/25/17, attached and marked as Exhibit A). On April 26, 2017, Steven Ward with the Secretary of State's Office contacted Petitioner notifying him that Respondent filed a Motion for Rehearing and that the location of the rehearing was moved from the Secretary of State's Office to the Supreme Court Building. When Petitioner asked Mr. Ward for an explanation of why the location for rehearing was being moved from the Secretary of State's Office to the Supreme Court Building he responded with only a vague reference to security concerns which he refused to clarify. Ms. Staiert statements and actions

demonstrated that she suspected Petitioner of committing a crime and clearly, Suzanne Staiert, Deputy Secretary of State violated the Colorado Rules of Professional Conduct

On April 26, 2016, Petitioner filed: Objections to Moving Rehearing from Secretary of State's Office in Violation of Section 1-40-106(1) C.R.S.; Motion for Telephone Hearing; Motion for Continuance and Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions. (See copies of pleadings attached and marked as Exhibits B, C, D and E, respectively).

At a minimum, Suzanne Staiert should have recused herself from sitting on the Title Board on the rehearing after making improper public comments falsely portraying Petitioner as being dangerous and a security threat and accusing him of committing a crime and then demonizing Petitioner by moving the rehearing from the Secretary of State's Office to the Supreme Court Building. Under the aforementioned circumstances, it was impossible for Petitioners to receive a fair and impartial rehearing. The Title Board acted wrongfully and unconstitutionally including, but not limited to, acting in an arbitrary and capricious manner by denying Petitioners due process, denying Petitioners a fair and impartial rehearing, publicly character assassinating Petitioner, Suzanne Staiert, Deputy Secretary of State violated the Colorado Rules of Professional Conduct demonstrating bias and prejudice against Petitioners and reversing itself by refusing jurisdiction and setting title on the Initiative despite the fact that they accepted jurisdiction and set title on the Initiative on April 19, 2017.

II. ISSUES PRESENTED FOR REVIEW

A. Whether the Title Board erred on April 28, 2017, in reversing itself by declining to accept jurisdiction and refusing to set title despite the fact that on April 19, 2017, it accepted jurisdiction and set title on the exact same Initiative.

B. Whether the Title Board acted wrongfully and unconstitutionally including, but not limited to, acting in an arbitrary and capricious manner by denying Petitioners due process, denying Petitioners a fair and impartial rehearing, demonstrating bias and prejudice against Petitioners by the actions of Suzanne Staiert in publicly accusing Petitioner of being dangerous and a security threat and blaming the Petitioner for moving the rehearing from the Secretary of State's Office to the Supreme Court Building.

III. SUPPORTING DOCUMENTATION

As required by section 1-40-107(2), attached is a certified copy of the final action by the Title Board and Petitioner's Motion for Rehearing (attached and marked as Exhibits F and G, respectively) along with Exhibits A, B, C, D and E.

IV. RELIEF REQUESTED

Petitioners respectfully request that the Court reverse the Title Board's denial of jurisdiction and refusal to set title on the Initiative and find that the actions of the Title Board were wrongful and unconstitutional and that the Title Board acted arbitrarily and capriciously by denying Petitioners due process, denying Petitioners a fair and impartial rehearing, demonstrating bias and prejudice against Petitioners by the actions of Suzanne Staiert in publicly accusing Petitioner of a crime and of being dangerous and a security threat and further demonizing Petitioners by moving the rehearing from the Secretary of State's Office to the Supreme Court Building and refusing to consider Petitioners' motions and find that Suzanne Staiert, Deputy Secretary of State violated the Colorado Rules of Professional Conduct and grant any such further relief as the Court deems appropriate.

Respectfully submitted on May 3, 2017.

Respectfully submitted,
ANDREW J. O'CONNOR

By: 

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May 2017, a true and correct copy of **PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING BOARD CONCERNING PROPOSED INITITIAVE 2017-2018 NO. 20** was hand delivered, 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.
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Attorneys for Respondent

Lee Ann Morrill
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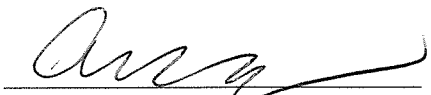
Attorneys for Title Board

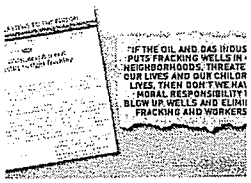


Andrew J. O'Connor

Exhibit A

Man suggests blowing up wells, 'eliminating fracking wo Boulder Daily Camera editorial

Next with Kyle Clark and Brandon Rittiman, KUSA *10:07 PM. MDT April 25, 2017*



BOULDER - Would you like to know what the fracking conversation in Colorado has come to? Well, you'll notice extra security at a state meeting this week to discuss an anti-fracking ballot question. That question is being pushed by a guy who says it's morally responsible to blow up oil wells and "eliminate" energy workers.

Call this observation biased, if you want, but if you're hinting at killing your opponents, you've probably lost the argument.

Anyway...

The Boulder Daily Camera published a letter to the editor (http://www.dailycamera.com/letters/ci_30930903/andrew-j-oconnor-moral-responsibility-fight-fracking) from a man named Andrew O'Connor, who finished his argument against fracking with this:

"If the oil and gas industry puts fracking wells in our neighborhoods, threatening our lives and our children's lives, then don't we have a moral responsibility to blow up wells and eliminate fracking and workers?"

"Those workers are the same people who will be in the room at the title-setting process," says Deputy Secretary of State Suzanne Staiert. She has to set up a meeting where O'Connor and the oil industry will both be there, arguing over a tax increase that O'Connor wants to put on the ballot.

That meeting would normally happen at a downtown Denver office building that houses the Secretary of State's office, but Staiert says they have to delay that meeting and find space in a secure building with metal detectors, because of the what O'Connor wrote.

"From this point on, that will be a security obligation that we're obligated to take," Staiert says.

Next talked to O'Connor by phone and said he was not advocating for blowing up people, just the oil wells.

> "The only one who would argue that is some Republican, some conservative a**hole from oil and gas ... the Secretary of State is being ridiclous drama queens it doesn't mean that at all."

When he wrote about "eliminating" workers, O'Connor says he meant putting them out of work, not hurting them.

The Boulder Daily camera edited that line of letter, to remove the reference to blowing up things, and the opinion editor there says it was a mistake to publish it the first time. The editor's note says this:

> *Editor's note: This letter was edited to delete references that may have been construed to expressly advocate violence or property destruction. The Camera does not condone or endorse violence or property destruction of any kind. However, the letter presents a philosophical question the Camera believes is worthy of community conversation in the context of the ongoing discussion over fracking.*

Editor Dave Krieger, who wrote a column (http://www.dailycamera.com/columnists/ci_30938193/dave-krieger-editing-fracking-and-civil-disobedience) about this line slipping into the editorial section, also gave Next this statement:

> *The short version is I screwed up. I process a lot of reader submissions and the final few words of this one just got by me. When something doesn't register in your brain, it's hard to go back later and determine why. It just didn't. No excuses; I screwed up. I acknowledged the mistake in my column and said I regretted it profoundly, which I do.*
>
> *As to leaving the edited version up, as I mentioned in the column, we took note of the fact that the state Senate considered a bill to increase penalties for tampering with oil and gas facilities. The Lafayette City Council considered an ordinance that would have made illegal acts in defense of the environment legal. With legislative bodies clearly anticipating such activities might take place, the question we wrestled with was whether we should prohibit people from discussing them in our open forum. The answer we arrived at was we should permit discussion of such activities on a philosophical level, but not threats to undertake them. Admittedly a tough line to draw, but when public officials are anticipating the possibility of such things, we couldn't see how it made sense to prohibit discussing them.*

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LEAVE A COMMENT ()

Exhibit 13

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 # 20

OBJECTIONS TO MOVING REHEARING FROM SECRETARY OF STATE'S OFFICE IN VIOLATION OF SECTION 1-40-106 (1) C.R.S.

On behalf of Andrew J. O'Connor, co-sponsor of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Objection to Moving Rehearing from Secretary of State's Office in violation of Section 1-40-106 (1), C.R.S., and as grounds therefore states as follows:

1. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause,* 872 P.2d 689 (Colo. 1994)

2. It is a violation of Section1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)

3. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend as there is substantial public interest in Ballot Initiative 2017-2018 #20.

4. The Secretary of State's Office refuses to or is unable to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.

5. The co-sponsor on ballot initiative #20 Mary Henry works as a para-educator for Boulder Valley School District and does not finish her workday until 3:15pm; consequently, it is impossible for her to make the 12:00pm time on April 28, 2017. The co-sponsors respectfully request a rehearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00pm on April 28, 2017, or, in the alternative, the rehearing for Ballot Initiative 2017-2018 #20 to be placed last on the agenda in order to allow co-sponsors time to drive from Lafayette to Denver.

6. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and respectfully request that the rehearing be held via a telephone conference thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, Co-sponsor Andrew J. O'Connor, respectfully requests that rehearing be held at the Secretary of State's Office and that the re-hearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00 pm on April 28, 2017, and/or be placed last on the agenda or in the alternative that the rehearing be conducted via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 26th day of April, 2017.

/s/ Andrew J. O'Connor
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Exhibit C

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 # 20

MOTION FOR TELEPHONE HEARING

On behalf of Andrew J. O'Connor, co-sponsor of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion for Telephone Hearing and as grounds therefore states as follows:

1. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause,* 872 P.2d 689 (Colo. 1994)

2. It is a violation of Section1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)

3. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend as there is substantial public interest in Ballot Initiative 2017-2018 #20.

4. The Secretary of State's Office refuses to or is unable to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.

5. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and respectfully request that the rehearing be held via a telephone conference thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, Co-sponsor Andrew J. O'Connor, respectfully requests that rehearing be held via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 26th day of April, 2017.

/s/ Andrew J. O'Connor
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Exhibit D

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 # 20

MOTION FOR CONTINUANCE

On behalf of Andrew J. O'Connor and Mary E. Henry, co-sponsors (hereinafter "co-sponsors") of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion for Continuance and as grounds therefore states as follows:

1. On April 26, 2017, co-sponsors were notified of rehearing scheduled for April 28, 2017. Two days' notice is not reasonable or adequate notice for co-sponsors to prepare for re-hearing and severely prejudices co-sponsors.

2. The co-sponsor on ballot initiative #20 Mary Henry works as a para-educator for Boulder Valley School District and does not finish her workday until 3:15pm; consequently, it is impossible for her to make the 12:00pm time on April 28, 2017. The co-sponsors respectfully request a rehearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00pm on April 28, 2017, or, in the alternative, the rehearing for Ballot Initiative 2017-2018 #20 to be placed last on the agenda in order to allow co-sponsors time to drive from Lafayette to Denver.

3. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause,* 872 P.2d 689 (Colo. 1994)

4. It is a violation of Section1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)

5. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend because there is substantial public interest in Ballot Initiative 2017-2018 #20.

6. The Secretary of State's Office failed to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.

7. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and has respectfully requested that the rehearing be held via a telephone conference in prior Motion fotr Telephone Hearing filed on April 26, 2017, thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, co-sponsors Andrew J. O'Connor and Mary E. Henry, respectfully request that Motion for Continuance be granted and that rehearing be rescheduled and held via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 27th day of April, 2017.

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Exhibit B

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 # 20

MOTION TO DISMISS FRIVOLOUS MOTION FOR REHEARING AND REQUEST FOR SANCTIONS

On behalf of Andrew J. O'Connor and Mary E. Henry, co-sponsors of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions and as grounds therefore states as follows:

1. On April 26, 2017, counsel for Objector (hereinafter "counsel") filed a frivolous Motion for Rehearing which is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S.

2. Section 13-17-101 C.R.S., provides for award of attorney's fees and costs when a claim or defense is substantially frivolous, groundless and vexatious and is not supported by credible evidence. Counsel's Motion for Rehearing is basically an appeal of the Title Board action of April 7, 2017, granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., a coherent assertion of lack of jurisdiction and error by the Title Board supported by legal authority. As a result, it is appropriate to assess attorney's fees and costs against counsel prosecuting the Motion for Rehearing. *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

3. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., 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).

4. Counsel's Motion for Rehearing is substantially frivolous, groundless and vexatious because it challenges the validity and constitutionality of Ballot Initiative 2017-2018 #20. 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).

5. The Title Board's action on April 7, 2017, and Ballot Initiative 2017-2018 #20, 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).

6. On April 5, 2017, Colorado Legislative Counsel and the Office of Legislative Legal Services filed Memorandum in order to review and comment on Proposed Ballot Initiative 2017-2018 #20, pursuant to Section 1-40-105 (1) C.R.S. Co-sponsors reviewed comments and worked with staff at the Title Board and made suggested edits and corrections and submitted final version. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and rejected counsel's arguments that any substantive changes were made. Counsel is attempting to re-litigate issues in their Motion for Rehearing that they lost on April 7, 2017. Said Motion for Rehearing was filed in bad faith and is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S. (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).)

7. The Co-sponsors substantial complied with the requirements of Section 1-40-107, C.R.S., and the Title Board acted properly on April 7, 2017, by granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious and counsel should be sanctioned accordingly. C.R.S. § 13-17-102; *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

8. This Title Board can and should consider the frivolous, groundless and vexatious and bad faith misconduct of counsel under C.R.S. § 13-17-102 as follows:

a. the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted;
b. the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and
c. the availability of facts to assist a party in determining the validity of a claim or defense. C.R.S. § 13-17-102; *Bilawsky v. Faseehudin*, 916 P. 2d 586 (Colo. App.1995).

9. Counsel acted in bad faith, deceptively and unethically in violation of Colorado Rules of Professional Conduct and should be sanctioned for making material misrepresentations regarding mediation and for filing a frivolus Motion for Rehearing. Counsel's misconduct is frivolous, groundless and vexatious. *Int'l Tech. Instruments, Inc. v. Eng'g Measurements, Inc.*, 678 P.2d 558 (Colo. App. 1983).

10. Counsel's aforementioned misconduct, material misrepresentations, pleadings and bad faith arguments made in Motion for Rehearing are frivolous, groundless and vexatious and counsel should be sanctioned accordingly. A vexatious claim is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or

disrespectful of truth. *Bockar v. Patterson,* 899 P.2d 233 (Colo. App. 1994).

11. Counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious pursuant to C.R.S. § 13-17-103 and was filed in violation of C.R.C.P., Rule 11. Counsel should be sanctioned and Motion for Rehearing should be dismissed and an award of attorney's fees and costs should be entered in favor of Co-sponsors because of counsel's violation of Rule 11 and imposition of sanctions are within the Title Board's discretion. *Carder, Inc., v. Cash*, 97 P.3d 174 (Colo. App. 2003).

Based upon the foregoing, Co-sponsors Andrew J. O'Connor and Mary E. Henry, respectfully requests that Motion for Rehearing be dismissed and that counsel be sanctioned including, but not limited to, an award of attorney's fees and costs.

Respectfully submitted this 26th day of April, 2017.

/s/ Andrew J. O'Connor
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EXHIBIT F

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 filed text, initial fiscal impact statement, abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #20 '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 3rd day of May, 2017.

Wayne W. Williams

SECRETARY OF STATE

2017-2018 #20 - Final

S.WARD 1:13 P.M.

RECEIVED

APR 07 2017

Colorado Secretary of State

PROPOSED INITITIAVE MEASURE 2017-2018 #20

SEVERANCE TAX

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

SECTION 1. In Colorado Revised Statutes, 39-29-101, **amend** as follows:

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE IS APPROVED BY A VOTE OF THE PEOPLE AT THE 2017 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; SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; RENEWABLE AND CLEAN ENERGY PROJECTS; 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; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. 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 2017 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 (1) (b), **amend** 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, BUT PRIOR TO JANUARY 1, 2018, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state: except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

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

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2018, 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%

$300,000 AND OVER	10% OF TOTAL GROSS INCOME

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

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

SECTION 4. In Colorado Revised Statutes, 39-29-108 **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) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of the this article after June 30, 1981, EXCEPTING THOSE REVENUES LEVIED, COLLECTED, AND PAID BY OPERATION OF SECTION 39-29-105 (1) (C), fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATING 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 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. **"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 DEPRIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONIES 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 MONIES IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL MONIES 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 MONIES IN THE SEVERANCE TAX STABILIZATION TRUST FUND 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 CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED THEREON SHALL BE RETAINED IN THE PERPETUAL BASE ACCOUNT. THE MAXIMUM BALANCE IN THE PERPETUAL BASE ACCOUNT SHALL BE ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND PURSUANT TO SECTION 39-29-108 (2.3). IN ANY YEAR IN WHICH THE BALANCE OF THE PERPETUAL BASE ACCOUNT EXCEEDS ONE HUNDRED AND TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S REVENUE TO THE SEVERANCE TAX STABILIZATION TRUST FUND, THE INTEREST GENERATED BY THE PERPETUAL BASE ACCOUNT AND MONIES 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 MONIES 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 MONIES IN THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE DISTRIBUTED AS FOLLOWS:

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

(III) TWENTY PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIORNMENT FOR THE EXCLUSIVE PURPOSE OF MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS, 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;

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

RECEIVED
APR 07 2017
Colorado Secretary of State
S.WARD
1:07 P.M.

2017-2018 #20 - Amended

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

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

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE IS APPROVED BY A VOTE OF THE PEOPLE AT THE 2017 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; SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; RENEWABLE AND CLEAN ENERGY PROJECTS; 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; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. 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 2017 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3), C.R.S.

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

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2018, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state: except that oil produced from any wells that

produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

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

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2018, 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%

$300,000 AND OVER 10% OF TOTAL GROSS INCOME

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

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

SECTION 4. 39-29-108 (2), Colorado Revised Statutes, is amended to read:

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

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATING 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 CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND CREATED BY SECTION 39-29-110.5.

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

39-29-110.5. Severance tax stabilization trust fund---creation---administration. (1) (a) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER THE SEVERANCE TAX STABILIZATION TRUST FUND. ALL INCOME DEPRIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS IN THE SEVERANCE TAX STABILIZATION TRUST FUND SHALL BE CREDITED TO THE SEVERANCE TAX STAILIZATION 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 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 CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED TYHEREON 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) THIRTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF ETABLISHING 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) THIRTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., AND LOCAL DISTRICT COLEGES AS DEFINED BY SECTION 23-72-121.5, C.R.S., AND LOCAL DISTRICT COLLEGES AS DEFINED BY SECTION 23-72-212.5, C.R.S., TO BE KNOWN AS COLORADO PROMISE SCHOLARSHIPS, AND SHALL BE DIRECTED TOWARDS MAKING HIGHER EDUCATION AFFORDABLE FOR COLORADO RESIDENTS FROM LOWER AND MIDDLE INCOME FAMILIES. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL ESTABLISH GIUDELINES AND POLICIES SETTING FORTH THE ELIGIBILITY CRITERIA FOR SCHOLARSHIPS FUNDED BY THIS PROVISION, TO INCLUDE CONSIDERATION OF SUCH FACTORS AS HOUSEHOLD INCOME, FAMILY SIZE AND ELIGIBILITY FOR OTHER SOURCES OF FINANCIAL ASSISTANCE, AND THE INSTITUTION THE STUDENT ATTENDS. THE COMMISSION SHALL ESTABLISDH ACADEMIC PERFORMANCE CRITERIA FOR OBTAINING AND MAINTAINING A COLORADO PROMISE SCHOLARSHIP.

(III) TWENTY PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH FOR THE EXCLUSIVE PURPOSE OF MEDICAL CARE AND

TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS, 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;

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

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

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

24-75-1201. Clean energy fund-creation-use of fund-definitions. (1) (a) The clean energy fund is created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund at the end of the 2017-18 state fiscal year and at the end of each succeeding state fiscal year from the limited gaming fund created in section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701 (5), C.R.S., from moneys received by the governor's energy office pursuant to section 39-29-109 (1.5), C.R.S., in accordance with section 39-29-108 (1.5) (h) (VII), C.R.S., AND FROM MONEYS RECEIVED PURSUANT TO SECTION 39-29-110.5 (2) (III), C.R.S. Interest and income earned on the deposit and investment of moneys in the clean energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund.

2017-2018 #20 - Original

RECEIVED
APR 07 2017
Colorado Secretary of State
S.WARD
12:50 P.M.

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

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

39-29-101. Legislative declaration. (4) IT IS THE INTENT OF THE PEOPLE OF THIS STATE THAT THE ADDITIONAL REVENUE GENERATED BY ELIMINATING THE TAX CREDIT GIVEN TO OIL AND GAS PRODUCERS FOR PROPERTY TAXES PAID AND CHANGING THE SEVERANCE TAX STRUCTURE IS APPROVED BY A VOTE OF THE PEOPLE AT THE 2017 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; SCHOLARSHIPS FOR STUDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES; RENEWABLE AND CLEAN ENERGY PROJECTS; 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; AND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS. 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 2017 GENERAL ELECTION, WHICH IS REFLECTED IN THE DISTRIBUTION SET FORTH IN SECTION 39-29-108 (2.3), C.R.S.

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

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2018, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state: except that oil produced from any wells that

produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. Nothing in this paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for oil and gas shall be at the following rates of the gross income:

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

(c) IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2018, 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:

$300,000 AND OVER	10% OF TOTAL GROSS INCOME

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

(3) THE PROCEEDS OF THIS TAX RECEIVED IN ACCORDANCE WITH THE PROVOSIONS OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION AND INVESTMENT INCOME THEREON SHALL BE COLLECTED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY

SPENDING LIMITATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, OR ANY OTHER LAW, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE STATE OR ANY DISTRICT.

SECTION 4. 39-29-108 (2), Colorado Revised Statutes, is amended to read:

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

(2.3) OF THE TOTAL REVENUES LEVIED, COLLECTED, AND PAID BY OPERATING 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 CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND CREATED BY SECTION 39-29-110.5.

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

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

STAILIZATION 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 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 CREDITED TO THE SEVERANCE TAX STABILIZATION TRUST FUND AND THE INTEREST GENERATED TYHEREON 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) THIRTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF ETABLISHING 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) THIRTY PERCENT SHALL BE APPROPRIATED FOR THE EXCLUSIVE PURPOSE OF SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED BY SECTION 23-18-102 (10) (a), C.R.S., AND LOCAL DISTRICT COLEGES AS DEFINED BY SECTION 23-72-121.5, C.R.S., AND LOCAL DISTRICT COLLEGES AS DEFINED BY SECTION 23-72-212.5, C.R.S., TO BE KNOWN AS COLORADO PROMISE SCHOLARSHIPS, AND SHALL BE DIRECTED TOWARDS MAKING HIGHER EDUCATION AFFORDABLE FOR COLORADO RESIDENTS FROM LOWER AND MIDDLE INCOME FAMILIES. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL ESTABLISH GIUDELINES AND POLICIES SETTING FORTH THE ELIGIBILITY CRITERIA FOR SCHOLARSHIPS FUNDED BY THIS PROVISION, TO INCLUDE CONSIDERATION OF SUCH FACTORS AS HOUSEHOLD INCOME, FAMILY SIZE AND ELIGIBILITY FOR OTHER SOURCES OF FINANCIAL ASSISTANCE, AND THE INSTITUTION THE STUDENT ATTENDS. THE COMMISSION SHALL ESTABLISDH ACADEMIC PERFORMANCE CRITERIA FOR OBTAINING AND MAINTAINING A COLORADO PROMISE SCHOLARSHIP.

(III) TWENTY PERCENT SHALL BE APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH FOR THE EXCLUSIVE PURPOSE OF MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS, 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;

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

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

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

24-75-1201. Clean energy fund-creation-use of fund-definitions. (1) (a) The clean energy fund is created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund at the end of the 2017-18 state fiscal year and at the end of each succeeding state fiscal year from the limited gaming fund created in section 12-47.1-701 (1), C.R.S., in accordance with section 12-47.1-701 (5), C.R.S., from moneys received by the governor's energy office pursuant to section 39-29-109 (1.5), C.R.S., in accordance with section 39-29-108 (1.5) (h) (VII), C.R.S., AND FROM MONEYS RECEIVED PURSUANT TO SECTION 39-29-110.5 (2) (III), C.R.S. Interest and income earned on the deposit and investment of moneys in the clean energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund.

Abstract of Initiative 20: Severance Taxes on Oil and Gas

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 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. The measure increases state spending on local government impact grants, water related programs, clean and renewable energy development, soil conservation, and invasive species control programs by $104.3 million in FY 2017-18. The measure expands the programs that receive oil and gas severance tax revenue in FY 2018-19 to include K-12 education, higher education scholarships, healthcare, and clean water. State spending will increase by $377.3 million in FY 2018-19.

State revenue. Oil and gas severance tax revenue will increase by $138.9 million in FY 2018-19 and $438.0 million in FY 2019-20. The measure includes a distribution of the revenue to various programs across the state.

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, which increases the cost of oil and gas development in Colorado by the amount of the tax increase. To 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. The new tax revenue will be spent on state and local government services, including K-12 education, scholarships for higher education, and treatment of 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 purchase other household goods, increase savings, or increase investments.

Colorado Legislative Council Staff

Initiative # 20

INITIAL FISCAL IMPACT STATEMENT

Date: April 18, 2017 **Fiscal Analyst:** Larson Silbaugh (303-866-4720)

LCS TITLE: SEVERANCE TAXES ON OIL AND GAS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	**$138,943,717**	**$438,013,673**
Cash Funds	138,943,717	438,013,673
State Expenditures	**$104,354,815**	**$377,334,579**
Cash Funds	104,207,788	377,334,579
General Fund	147,027	

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

Summary of Measure

Beginning in 2017, the measure increases the oil and gas severance tax by 5 percentage points. Beginning in 2018, the measure eliminates the property tax credit and halves the stripper well exemption. The additional tax revenue from the severance tax increase is exempt from the spending limits in the state constitution. New 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.

State Revenue

This measure will increase oil and gas severance tax revenue by $138.9 million in FY 2017-18, $438.0 million in FY 2018-19, with ongoing increases in future years.

State Revenue. Starting in tax year 2017, the measure increases oil and gas severance tax rates for the gross income of oil and gas producers in Table 1.

Initiative # 20

Table 1: Tax Rates on Oil and Gas Producers Under Initiative 2017-18 #20		
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 to each level of gross income of oil and gas producers.

In tax year 2018, the measure eliminates the property tax credit and halves the stripper well exemption. Under current law, oil and gas producers are allowed to claim a credit against severance taxes for property taxes paid to local governments. The stripper well exemption exempts from taxation the value of production from oil wells that produce fewer than 15 barrels of oil per day and wells that produce fewer than 90,000 cubic feet of natural gas per day. The measure reduces the exemption to 7.5 barrels of oil per day or 45,000 cubic feet of natural gas per day.

The measure changes the statute so the tax rate increase applies to tax years 2000 through 2017. The fiscal impact statement assumes that the measure only applies to severance taxes paid for tax year 2017, which are filed in April of 2018. The revenue impact is consistent with the March 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.

New Revenue Allocation. The measure allocates the new severance tax revenue to various funds and agencies for specific purposes, as shown in Table 2. In FY 2018-19, the measure creates the Severance Tax Stabilization Fund and allocates severance tax revenue into the fund. Money is distributed from this new fund to several state agencies.

Table 2. Allocations of New Severance Tax Revenue Under Initiative #20		
Transfers	**FY 2017-18**	**FY 2018-19**
Department of Natural Resources (22%)	$69,471,859	$56,259,089
Perpetual Base Fund	34,735,929	28,129,544
Operational Fund	34,735,929	28,129,544
Department of Local Affairs (22%)	$69,471,859	$56,259,089
Severance Tax Stabilization Fund (56%)		$325,495,496
Perpetual Base Account		32,549,550
Operational Account		$292,945,946
K-12 Education (CDE)		117,178,379
Scholarships (CCHE)		87,883,784
Medical Care (CDPHE)		58,589,189
Water Quality (CDPHE)		29,294,595
TOTAL	**$138,943,718**	**$438,013,674**

Initiative # 20

State Expenditures

In FY 2017-18, the measure increases state expenditures by $147,027 and 1.7 FTE from the General Fund and increases cash fund expenditures by $104.3 million. In FY 2018-19, cash fund expenditures will increase by $377.3 million. New expenses are described below.

Department of Revenue. Department of Revenue General Fund expenditures will increase by $147,027 and 1.7 FTE in FY 2017-18 as shown in Table 2. 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 3. Expenditures Under Initiative #20

Cost Components	FY 2017-18	FY 2018-19
Personal Services	$72,116	
FTE	1.7	
Operating Expenses and Capital Outlay Costs	9,384	
Computer Programing (GenTax)	29,000	
Mailing and Postage	6,738	
Centrally Appropriated Costs*	29,789	
TOTAL	**$147,027**	**$0**

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

Department of Natural Resources (DNR). Statutory appropriations in DNR will increase by $34.7 million in FY 2017-18 and $28.1 million in FY 2018-19. The measure changes the distribution into the Severance Tax Perpetual Base Fund starting in FY 2018-19, when the fund will receive 11 percent of oil and gas severance tax revenue. The measure changes the distribution into the Operational Fund starting in FY 2018-19, when the fund will receive 11 percent of oil and gas severance tax revenue.

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 in FY 2018-19, when the fund will receive 22 percent of oil and gas severance tax revenue. DOLA cash funds and expenditures will increase by $69.5 million in FY 2017-18 and $56.3 million in FY 2018-19.

Department of Education. The measure creates a statutory appropriation for the Colorado Department of Education to expand fill-day kindergarten and increase funding for K-12 education equal to 20.1 percent of oil and gas severance tax revenue starting in FY 2018-19. Cash funds and expenditures will increase by $117.2 million in FY 2018-19.

Colorado Commission of Higher Education. The measure creates a statutory appropriation for the Colorado Commission of Higher Education for a scholarship program to Colorado public colleges and universities equal to 15.1 percent of oil and gas severance tax revenue starting in FY 2018-19. Cash funds and expenditures will increase by $87.9 million starting in FY 2018-19.

Initiative # 20

Department of Public Health and Environment. The measure creates two statutory appropriations within the Colorado Department of Public Health and Environment starting in FY 2018-19. The measure directs that 10.1 percent of oil and gas severance tax revenue be used to provide medical care for people suffering negative health impacts caused by oil and gas production. Funding and expenditures will increase by $58.6 million starting in FY 2018-19. In addition, the measure directs that 5.0 percent of oil and gas severance tax revenue be used for domestic wastewater and treatment grants. Funding and expenditures will increase by $29.3 million in FY 2018-19.

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, county health agencies, and water districts.

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 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 tax rate is only one component of industry decisions about where to develop oil and gas; other factors include the cost to extract oil and gas, existing infrastructure that supports oil and gas development, 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, scholarships for higher education, and treatment of 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 purchase other household goods, increase savings, or increase 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 2017 November election.

State and Local Government Contacts

Counties	Education	Higher Education
Local Affairs	Municipalities	Natural Resources
Revenue		

Initiative # 20

Abstract of Initiative 20: Severance Taxes on Oil and Gas

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 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. The measure increases state spending on local government impact grants, water related programs, clean and renewable energy development, soil conservation, and invasive species control programs by $104.3 million in FY 2017-18. The measure expands the programs that receive oil and gas severance tax revenue in FY 2018-19 to include K-12 education, higher education scholarships, healthcare, and clean water. State spending will increase by $377.3 million in FY 2018-19.

State revenue. Oil and gas severance tax revenue will increase by $138.9 million in FY 2018-19 and $438.0 million in FY 2019-20. The measure includes a distribution of the revenue to various programs across the state.

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, which increases the cost of oil and gas development in Colorado by the amount of the tax increase. To 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. The new tax revenue will be spent on state and local government services, including K-12 education, scholarships for higher education, and treatment of 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 purchase other household goods, increase savings, or increase investments.

Ballot Title Setting Board

Proposed Initiative 2017 2018 #20[1]

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

STATE TAXES SHALL BE INCREASED $438,000,000 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 EXISTING SEVERANCE TAX RATES ON OIL AND GAS BY 5%; ELIMINATING A CREDIT AGAINST THE TAX BASED ON PROPERTY TAXES PAID BY PRODUCERS AND INTEREST OWNERS; LOWERING THE AMOUNT OF PRODUCTION THAT EXEMPTS A WELL FROM THE TAX; EXEMPTING OF THE TAX REVENUE AND RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED TO (1) THE STATE SEVERANCE TAX TRUST FUND, (2) THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (3) A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 40% IS TO BE USED TO FUND PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, 30% TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 20% TO FUND MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS, AND 10% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS.

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

SHALL STATE TAXES BE INCREASED $438,000,000 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 EXISTING SEVERANCE TAX RATES ON OIL AND GAS BY 5%; ELIMINATING A CREDIT AGAINST THE TAX BASED ON PROPERTY TAXES PAID BY PRODUCERS AND INTEREST OWNERS; LOWERING THE AMOUNT OF PRODUCTION THAT EXEMPTS A WELL FROM THE TAX; EXEMPTING OF THE TAX REVENUE AND

[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.

RELATED INVESTMENT INCOME FROM STATE AND LOCAL GOVERNMENT SPENDING LIMITS; AND REQUIRING THE TAX REVENUES TO BE CREDITED TO (1) THE STATE SEVERANCE TAX TRUST FUND, (2) THE LOCAL GOVERNMENT SEVERANCE TAX FUND, AND (3) A NEW SEVERANCE TAX STABILIZATION TRUST FUND, OF WHICH 40% IS TO BE USED TO FUND PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, 30% TO FUND SCHOLARSHIPS FOR COLORADO RESIDENTS ATTENDING STATE COLLEGES AND UNIVERSITIES, 20% TO FUND MEDICAL CARE AND TREATMENT FOR PEOPLE SUFFERING NEGATIVE HEALTH IMPACTS, AND 10% TO FUND COMMUNITY DRINKING WATER AND WASTEWATER TREATMENT GRANTS?

Hearing April 19, 2017:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:07 a.m.

RECEIVED
APR 26 2017
Colorado Secretary of State
S.WARD
12:27 P.M.

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 #20

MOTION FOR REHEARING

On behalf of Chad Vorthmann, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2017-2018 #20 pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. THE TITLE BOARD LACKS JURISDICTION BECAUSE OF NUMEROUS ERRORS IN THE PROPOSED MEASURE, INCLUDING THE FAILURE TO DENOTE CHANGES THE MEASURE WOULD MAKE TO EXISTING LAW.

The Title Board should deny jurisdiction to consider this measure because it fails to show the central, and most substantial, change being made to current law, and grossly fails to meet the drafting requirements of section 1-40-105(4). Without a new draft being submitted for review and comment, the proposed measure will without question mislead voters about the statutory changes being made and confuse them about the measure's ultimate effects. *See* C.R.S. § 1-40-105(3) ("To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters."); C.R.S. § 1-40-105(4) (noting that the final draft is the one submitted to the Secretary of State for printing).[1]

a. The proposed measure fails to show changes to existing law.

The heart of this measure is to dramatically increase (by 100% - 350%) the severance tax rate on oil and gas production. But neither the original draft submitted for review and comment nor the final version submitted to the Title Board show this change. Both the original and final version simply state in section 39-29-105(1)(b) of Section 2:

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

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[1] At the April 19, 2017 Title Board hearing, the Title Board considered a number of these errors but eventually voted 2-1 in favor of jurisdiction to set title.

$300,000 and over	10%

Unlike the measure's other proposed changes that are indicated in capital letters, the drafts do not mark or otherwise indicate that the tax rates listed above have been significantly increased from 2%, 3%, 4% and 5%, respectively. Not only are these increases significant, ranging from 100% to 350%, 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 to know that the percentage rates listed are being changed because the changes simply are not marked in any way.

In addition, the tax rates added in section 39-29-105(1)(c) of Section 2 of the final draft are new and were not part of the original draft, but likewise are not marked in any way as such (through capital letters or otherwise). Thus, again, a person asked to sign the signature petition or a voter considering the measure will not know that the measure adds these new tax rates to law. In fact, because the text is not in capital letters, unlike the text for the other changes the measure makes to existing statutes, a voter is *more likely* to think that these percentage rates already exist in statute.

Indeed, the confusion created by these drafting errors (whether intentional or otherwise) played out at Title Board's April 19 hearing.[2] The draft of the title presented at the hearing stated that measure would increase "the existing severance tax on oil and gas by 5%." One of the Proponents argued that the title should say "10%" instead. Because the drafts of the measure did not show what changes were made to the rates, the Title Board struggled to determine what number to place in the title. In fact, the issue was clarified only when one Title Board member resorted to looking up the rates in current statute and confirmed that the measure would increase the existing rates by 5 percentage points (not 5%).[3]

Because the heart of this measure is the increase in severance tax rates, the failure to properly mark these proposed changes and additions to the rates will inevitably mislead voters and cause confusion. Voters reading the current draft of the proposed measure cannot accurately determine what changes would be made to the percentage rates of gross income. Therefore, because the text of the measure does not denote the changes to, and additions of, percentage rates of income that

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[2] Audio of this discussion begins at 1:04:40 in "Title Board – April 19, 2017 – 9:30 a.m." in this link: https://www.sos.state.co.us/pubs/info_center/audioArchives.html

[3] A similar confusion occurred at the review and comment hearing, where legislative council questioned the Proponents' intent for the tax rate changes because legislative council did not know, absent a strikethrough, what the Proponents wanted the tax rates to be. Audio of this discussion begins at 24:15 in "Initiative 2017-2018 #20 Review and Comment Hearing" in this link: http://leg.colorado.gov/committee/granicus/964136.

form the basis for the oil and gas tax, the measure should be returned for further drafting.

b. The proposed measure's amended draft fails to comply with Section 1-40-105(4).

The Proposed Measure's amended draft fails to comply with section 1-40-105(4)'s requirement that, after the review and comment hearing, the Proponents must submit "a copy of the amended draft with changes highlighted or otherwise indicated." Although the Proponents literally highlighted in the amended draft the sections where some of the changes were made between the proposed measure's original draft and its final draft, the amended draft does not indicate in any manner what changes were actually made. Moreover, the Proponents did not highlight sections where other changes were made, and the final draft still contains numerous typographical errors. Therefore, as one Title Board member voted at the April 19 hearing, the Title Board lacks jurisdiction and this proposed measure should be returned for further drafting.

First, section 1-40-105(4) expressly requires that changes made from the original draft to the final draft must be "highlighted or otherwise indicated" in an amended draft submitted to the Title Board. The necessity of this requirement is obvious: the Title Board and the public must be able to discern what changes were made after the review and comment hearing to ensure that the measure being considered by the Title Board has been subjected to the review and comment process. Although the Proponents literally highlighted the places in the draft where some of the changes were made, the changes actually made were not shown in such a way that anyone reading the amended draft would reasonably know the exact changes made between drafts. Therefore, the Proponents failed to meet both the text of, and the purpose behind, section1-40-105(4).

Second, the amended draft fails to indicate that the following substantive changes, as opposed to mere typographical changes, were made to the measure's final draft:

- The deletion of "C.R.S., AND LOCAL DISTRICT COLEGES [SIC] AS DEFINED BY SECTION 23-72-121.5, C.R.S, AND LOCAL DISTRICT COLLEGES AS DEFINED BY SECTION 23-72-212.5," in Section 5 of the proposed measure, and

- The addition of "AND ENVIORNMENT [SIC]" in Section 5 of the proposed measure;

Likewise, new subsection titles that changed from the original draft to the final draft and 11 corrected typographical errors are not indicated in capital letters or marked as changed in the amended draft.

Third, there are at least 4 typographical errors that still need correction, including the misspellings of "establishing," "guidelines," and "environment," and a missing comma in section 39-29-110.5(2)(III) of Section 5 of the measure.

Therefore, when taken collectively, if not individually, the proposed measure's numerous violations of section 1-40-105(4) unquestionably warrant a return of the proposed measure to the Proponents to correct these deficiencies and for a new review and comment hearing before being reconsidered by this board.

c. Changes made after the review and comment hearing are so substantial that the final draft constitutes a new measure not subjected to review and comment.

Section 1-40-105(1) requires that the original draft of a proposed measure must be submitted for review and comment.[4] The Colorado Supreme Court has interpreted this statutory section to mean that when "the adoption of language in a subsequent draft of a proposal [] substantially alters the intent and meaning of central features of the initial proposal," "the revised document in effect constitutes an entirely different proposal" and "must be submitted to the legislative offices for comment."[5] . The Court elaborated on the purpose behind this requirement:

> The public's right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the

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[4] This requirement is different than the requirement in C.R.S. § 1-40-105(2), which states that "[i]f any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment in accordance with subsection (1) of this section." Objector Vorthmann is arguing here that the changes made to the measure's final draft are so substantial that they constitute an entirely new measure that must be resubmitted to for review and comment. He is not arguing that these changes are not in direct response to comments made at the review and comment hearing.

[5] *See In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d 963, 968 (Colo. 1992) (noting that the proposed measure at issue was originally intended to permit limited gaming only in the city of Idaho Springs until the subsequent draft substantially altered this central feature to apply to cities outside of Idaho Springs).

> Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices.

Id.

Like the subsequent draft in *In re Limited Gaming*, the final draft for Initiative #20 contains substantial alterations that fundamentally modify the measure and thus require a new review and comment hearing. The final draft of Initiative #20 adds various new taxes on oil and gas that are to apply starting January 1, 2018. The tax rates on oil and gas are not simply a "central feature," they are the heart of the measure. The addition of these new tax rates constitute a substantial change from the original draft, which substantially increased the tax on oil and gas for gross incomes under $300,000 before January 1, 2018, but did not tax oil and gas at all for those gross income levels starting on January 1, 2018. The measure's original draft included only a tax rate for gross income of $300,000 and over starting on January 1, 2018. In other words, a small oil or gas producer who read the original draft and saw that its tax rate was zero starting on January 1, 2018, would be more than surprised to learn that the final draft completely reversed course and states that its tax for after January 1, 2018 could be more than triple its current tax rate. This substantial change requires that the measure be returned for additional review and comment.

d. Other changes made to the proposed measure after the review and comment hearing are substantial and not in direct response to comments made at the hearing.

Section 1-40-105(2) specifies that "[i]f any substantial amendment is made to the petition [after the review and comment hearing], other than an amendment in direct response to the comments of the directors of the Legislative Council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment . . . ." Initiative #20 violates this subsection because its final draft removes a proposed addition to section 24-75-1201 that would place some of the money from the severance tax into a clean energy fund.

At the review and comment hearing[6] and in Question 21 of the review and comment memorandum, the proponents were told that that section 24-75-1201 was repealed, but that there is a similar clean energy provision in section 24-38.5-102.4(1)(a)(I). The memorandum specifically asks: "Does the proponent wish to amend this existing section?" But rather than simply correcting this statutory cross-reference, the Proponents deleted the reference altogether, and instead

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[6] *See* starting 52:38 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

elected to increase by 10 percentage points education funding in section 39-29110.5(2)(I) of Section 5 in the final draft. That change cannot be said to be in direct response to the comment that merely proposed changing the statutory citation to the correct clean energy provision. Instead, it constitutes a fundamental change to the measure and to the programs funded by the tax increase. Thus, the measure must be returned for additional review and comment and the public notice provided thereby.

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

The proposed measure is simply so vague and confusing that the Title Board cannot reasonably understand it and set a title it without guessing what it means. For example, after the percentage rates of gross income listed in Section 2 of the proposed measure under C.R.S. § 39-29-105(1)(c) is a percentage rate in all capital letters that states "$300,000 AND OVER 10% OF TOTAL GROSS INCOME." Just above that text are the percentage rates, the last of which states "$300,000 and over 10%." Based on its appearance, this duplication in language suggests that the proposed measure would change the rate to apply to "TOTAL GROSS INCOME," rather than just "gross income" mentioned in the body of C.R.S. § 39-29-105(1)(c), because "TOTAL GROSS INCOME" in capitalized. This likely voter interpretation, however, is incorrect. The proposed measure merely states the percentage rate for gross income $300,000 and over is 10% twice, and this duplication necessarily will cause voter confusion. Moreover, the fact that "$300,000 AND OVER 10% OF TOTAL GROSS INCOME" is capitalized, but the rest of the percentage rates are not, suggests that the rest of the percentage rates are not changed from the current statute, when in fact they would be added to statute.

Legislative Council likewise struggled to understand the measure and asked a variety of clarifying questions. The Proponents either did not answer these questions or answered them in such a manner as to cause even greater confusion. For example:

1. Question 3.a asked: "The tax that is levied under [section 39-29-105(1)(b)] will apply for tax years that begin prior to January 1, 2018. Is this correct?" The Proponent responded by stating that if the question is whether this applies retroactively, the answer is "no," but later stated that he "want[s] [the measure] to apply to 2017."

2. Question 3.c. asked: "If voters approve the measure in November 2017 and it becomes effective after January 1, 2018, then would the change be

retrospectively changing the taxes for 2017?"[7] The Proponent first responded "no," but then changed his answer to "would it?" After Legislative Council responded that the measure's language indicated that the measure would in fact retrospectively change taxes starting in 2000, the Proponent changed his answer to "yes." Whether the measure would retrospectively change taxes is a vitally important question, and if the measure would retrospectively change taxes, then the Title Board should have included the measure's retrospective effect in the title (as discussed further below).

3. Question 6 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. 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).[8] Whether the measure "deBruces" all or some of the tax revenue is a significant issue that must be included in the title, but only if the measure can be clearly understood. It cannot.

4. Question 8 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?[9] The Proponent responded that he "d[oesn't] know what that question meant," 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. Such an important effect needs to be in the title, but again, only if it can be understood.

5. Question 12 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?" The Proponent said he thinks the answer is 2018, but he did not provide a definitive answer.

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[7] *See* starting 31:30 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.
[8] *See* starting 35:20 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.
[9] *See* starting 37:45 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

6. Question 13 asked: "Is there any circumstance that you intend the corpus of the perpetual base account to be used?"[10] The Proponent responded by asking "what is the answer here?" and then agreed with Legislative Council's suggested answer of "no."

In light of these and other questions that were not definitively answered and/or addressed through later drafting, there remain too many unresolved issues for the Title Board to set a title. In fact, at least one of the Title Board members mentioned at the April 19, 2017 Title Board hearing that she used as a basis the title of a similar measure from 2008 in suggesting the addition of "interest owners" to the part of the title concerning a tax credit and in suggesting other revisions to the title, which indicates that the Title Board struggled in determining how to draft a title for this incomprehensible measure.[11]

III. INITIATIVE #20 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The Proponent stated at the April 19, 2017 Title Board hearing that the single subject of the measure is a "severance tax." But the measure actually contains multiple separate subjects including at least the following:

1. Changing the severance tax.

2. Establishing minimum amounts of education funding. The Proponent stated during the review and comment hearing that the revenue from the increased severance tax would supplement existing funding and would establish minimum amounts of funding for public education and higher education.[12] This would force the funding provided to schools through the Public School Finance Act of 1994 to be held constant, which is a substantial change that constitutes a second subject.

3. Exempting not only state-level spending limits from TABOR but also "deBrucing" district-level limits by allowing voters from the state to approve a voter-approved revenue change for individual districts.

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[10] *See* starting 45:00 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

[11] Audio of this discussion begins at 1:09:20 in "Title Board – April 19, 2017 – 9:30 a.m." in this link: https://www.sos.state.co.us/pubs/info_center/audioArchives.html

[12] *See* starting 19:42 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

IV. THE TITLE MISDESCRIBES THE MOST IMPORTANT ASPECT OF THE MEASURE, INCLUDES MISLEADING STATEMENTS, AND IS INACCURATE BECAUSE OF ERRORS IN THE FISCAL IMPACT STATEMENT.

1. The title states that it "increase[es] the existing severance tax rates on oil and gas by 5%." This statement is misleading. The measure actually increases the tax rates by 100% - 350%, depending on production, and should state as such.

2. The title fails to mention the proposed measure's apparent retroactive effect, including that the measure would retrospectively change taxes for the years 2000-2017, as noted both by the legislative staff and in the Fiscal Impact Statement.

V. THE ESTIMATE IN 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. Therefore, the abstract is misleading under section 1-40-107(1)(a)(II)(B), and 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 DOES NOT FACTOR IN THE FULL EXTENT OF THE MEASURE'S RETROACTIVE EFFECT.

a. The abstract does adequately detail the proposed measure's economic impacts.

Section 1-40-105.5(3)(b) requires that the abstract must include "[a]n estimate of the measure's economic benefits for all Coloradans." (Emphasis added). The proposed measure's abstract, however, includes only vague statements as to what some of the potential economic impacts "may" or may not be. For example, the abstract states that additional government spending "may increase access to [local government] services and may reduce the amount of money households need to budget for these services." Or, apparently, it may not. The public is not told which is correct or even more likely to be correct. The Title Board should demand more.

Additionally, 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 reduce profits for oil and gas companies." These statements are hypotheticals and provide no meaningful information for voters. Rather than a statement that there could be less oil and gas employment, the abstract should state whether there actually will

be less oil and gas employment or provide possible scenarios, or if a definitive answer is not possible, what outcome is more likely given their economic analysis. Instead, the Fiscal Impact Statement 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. The severance tax increases certainly will cause behavioral responses, 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 the Legislative Council for reconsideration.

b. The abstract does not factor in the full extent of the proposed measure's retroactive effect.

The Proponents, Legislative Council, and the drafters of the Fiscal Impact Statement all agree that the measure would retrospectively change taxes for the years 2000-2017, which presumably would require the State to collect the increased amount. Despite this consensus, the Fiscal Impact Statement oddly goes on to state that it "assume that the measure only applies to severance taxes paid for the tax year 2017 which are filed in April of 2018." The drafters Fiscal Impact Statement may have made this assumption based on a judgment of constitutionality, but such an assumption is inappropriate at this stage. The Fiscal Impact Statement should have factored in the retrospective change, which would have significantly altered its estimates. Therefore, not only are the abstract's estimates inaccurate but the abstract fails to comply with section 1-40-105.5(3)(b)'s requirements because, by not including the retrospective effect, the abstract does not "estimate[] the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted." It must be returned to the Title Board for revisions with the help of the director of research of the legislative council.

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 26th day of April, 2017.

/s/ Jason R. Dunn
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Ballot Title Setting Board

Proposed Initiative 2017 2018 #20[1]

Rehearing April 28, 2017:
Motion for Rehearing granted. Title setting denied on the grounds that the Board lacks jurisdiction to set titles because changes made after review and comment were not highlighted or otherwise indicated in the amended draft contrary to 1-40-105(4), C.R.S.
Hearing adjourned 4:30 p.m.

Hearing April 19, 2017:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:07 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.

EXHIBIT G

RECEIVED
APR 26 2017
Colorado Secretary of State

S. WARD
12:27 P.M.

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2017-2018 #20

MOTION FOR REHEARING

On behalf of Chad Vorthmann, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2017-2018 #20 pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

I. THE TITLE BOARD LACKS JURISDICTION BECAUSE OF NUMEROUS ERRORS IN THE PROPOSED MEASURE, INCLUDING THE FAILURE TO DENOTE CHANGES THE MEASURE WOULD MAKE TO EXISTING LAW.

The Title Board should deny jurisdiction to consider this measure because it fails to show the central, and most substantial, change being made to current law, and grossly fails to meet the drafting requirements of section 1-40-105(4). Without a new draft being submitted for review and comment, the proposed measure will without question mislead voters about the statutory changes being made and confuse them about the measure's ultimate effects. *See* C.R.S. § 1-40-105(3) ("To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters."); C.R.S. § 1-40-105(4) (noting that the final draft is the one submitted to the Secretary of State for printing).[1]

a. The proposed measure fails to show changes to existing law.

The heart of this measure is to dramatically increase (by 100% - 350%) the severance tax rate on oil and gas production. But neither the original draft submitted for review and comment nor the final version submitted to the Title Board show this change. Both the original and final version simply state in section 39-29-105(1)(b) of Section 2:

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

[1] At the April 19, 2017 Title Board hearing, the Title Board considered a number of these errors but eventually voted 2-1 in favor of jurisdiction to set title.

$300,000 and over	10%

Unlike the measure's other proposed changes that are indicated in capital letters, the drafts do not mark or otherwise indicate that the tax rates listed above have been significantly increased from 2%, 3%, 4% and 5%, respectively. Not only are these increases significant, ranging from 100% to 350%, 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 to know that the percentage rates listed are being changed because the changes simply are not marked in any way.

In addition, the tax rates added in section 39-29-105(1)(c) of Section 2 of the final draft are new and were not part of the original draft, but likewise are not marked in any way as such (through capital letters or otherwise). Thus, again, a person asked to sign the signature petition or a voter considering the measure will not know that the measure adds these new tax rates to law. In fact, because the text is not in capital letters, unlike the text for the other changes the measure makes to existing statutes, a voter is *more likely* to think that these percentage rates already exist in statute.

Indeed, the confusion created by these drafting errors (whether intentional or otherwise) played out at Title Board's April 19 hearing.[2] The draft of the title presented at the hearing stated that measure would increase "the existing severance tax on oil and gas by 5%." One of the Proponents argued that the title should say "10%" instead. Because the drafts of the measure did not show what changes were made to the rates, the Title Board struggled to determine what number to place in the title. In fact, the issue was clarified only when one Title Board member resorted to looking up the rates in current statute and confirmed that the measure would increase the existing rates by 5 percentage points (not 5%).[3]

Because the heart of this measure is the increase in severance tax rates, the failure to properly mark these proposed changes and additions to the rates will inevitably mislead voters and cause confusion. Voters reading the current draft of the proposed measure cannot accurately determine what changes would be made to the percentage rates of gross income. Therefore, because the text of the measure does not denote the changes to, and additions of, percentage rates of income that

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[2] Audio of this discussion begins at 1:04:40 in "Title Board – April 19, 2017 – 9:30 a.m." in this link: https://www.sos.state.co.us/pubs/info_center/audioArchives.html

[3] A similar confusion occurred at the review and comment hearing, where legislative council questioned the Proponents' intent for the tax rate changes because legislative council did not know, absent a strikethrough, what the Proponents wanted the tax rates to be. Audio of this discussion begins at 24:15 in "Initiative 2017-2018 #20 Review and Comment Hearing" in this link: http://leg.colorado.gov/committee/granicus/964136.

form the basis for the oil and gas tax, the measure should be returned for further drafting.

b. The proposed measure's amended draft fails to comply with Section 1-40-105(4).

The Proposed Measure's amended draft fails to comply with section 1-40-105(4)'s requirement that, after the review and comment hearing, the Proponents must submit "a copy of the amended draft with changes highlighted or otherwise indicated." Although the Proponents literally highlighted in the amended draft the sections where some of the changes were made between the proposed measure's original draft and its final draft, the amended draft does not indicate in any manner what changes were actually made. Moreover, the Proponents did not highlight sections where other changes were made, and the final draft still contains numerous typographical errors. Therefore, as one Title Board member voted at the April 19 hearing, the Title Board lacks jurisdiction and this proposed measure should be returned for further drafting.

First, section 1-40-105(4) expressly requires that changes made from the original draft to the final draft must be "highlighted or otherwise indicated" in an amended draft submitted to the Title Board. The necessity of this requirement is obvious: the Title Board and the public must be able to discern what changes were made after the review and comment hearing to ensure that the measure being considered by the Title Board has been subjected to the review and comment process. Although the Proponents literally highlighted the places in the draft where some of the changes were made, the changes actually made were not shown in such a way that anyone reading the amended draft would reasonably know the exact changes made between drafts. Therefore, the Proponents failed to meet both the text of, and the purpose behind, section1-40-105(4).

Second, the amended draft fails to indicate that the following substantive changes, as opposed to mere typographical changes, were made to the measure's final draft:

- The deletion of "C.R.S., AND LOCAL DISTRICT COLEGES [SIC] AS DEFINED BY SECTION 23-72-121.5, C.R.S, AND LOCAL DISTRICT COLLEGES AS DEFINED BY SECTION 23-72-212.5," in Section 5 of the proposed measure, and

- The addition of "AND ENVIORNMENT [SIC]" in Section 5 of the proposed measure;

Likewise, new subsection titles that changed from the original draft to the final draft and 11 corrected typographical errors are not indicated in capital letters or marked as changed in the amended draft.

Third, there are at least 4 typographical errors that still need correction, including the misspellings of "establishing," "guidelines," and "environment," and a missing comma in section 39-29-110.5(2)(III) of Section 5 of the measure.

Therefore, when taken collectively, if not individually, the proposed measure's numerous violations of section 1-40-105(4) unquestionably warrant a return of the proposed measure to the Proponents to correct these deficiencies and for a new review and comment hearing before being reconsidered by this board.

c. Changes made after the review and comment hearing are so substantial that the final draft constitutes a new measure not subjected to review and comment.

Section 1-40-105(1) requires that the original draft of a proposed measure must be submitted for review and comment.[4] The Colorado Supreme Court has interpreted this statutory section to mean that when "the adoption of language in a subsequent draft of a proposal [] substantially alters the intent and meaning of central features of the initial proposal," "the revised document in effect constitutes an entirely different proposal" and "must be submitted to the legislative offices for comment."[5] . The Court elaborated on the purpose behind this requirement:

> The public's right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the

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[4] This requirement is different than the requirement in C.R.S. § 1-40-105(2), which states that "[i]f any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment in accordance with subsection (1) of this section." Objector Vorthmann is arguing here that the changes made to the measure's final draft are so substantial that they constitute an entirely new measure that must be resubmitted to for review and comment. He is not arguing that these changes are not in direct response to comments made at the review and comment hearing.

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Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices.

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Like the subsequent draft in *In re Limited Gaming*, the final draft for Initiative #20 contains substantial alterations that fundamentally modify the measure and thus require a new review and comment hearing. The final draft of Initiative #20 adds various new taxes on oil and gas that are to apply starting January 1, 2018. The tax rates on oil and gas are not simply a "central feature," they are the heart of the measure. The addition of these new tax rates constitute a substantial change from the original draft, which substantially increased the tax on oil and gas for gross incomes under $300,000 before January 1, 2018, but did not tax oil and gas at all for those gross income levels starting on January 1, 2018. The measure's original draft included only a tax rate for gross income of $300,000 and over starting on January 1, 2018. In other words, a small oil or gas producer who read the original draft and saw that its tax rate was zero starting on January 1, 2018, would be more than surprised to learn that the final draft completely reversed course and states that its tax for after January 1, 2018 could be more than triple its current tax rate. This substantial change requires that the measure be returned for additional review and comment.

d. Other changes made to the proposed measure after the review and comment hearing are substantial and not in direct response to comments made at the hearing.

Section 1-40-105(2) specifies that "[i]f any substantial amendment is made to the petition [after the review and comment hearing], other than an amendment in direct response to the comments of the directors of the Legislative Council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment . . . ." Initiative #20 violates this subsection because its final draft removes a proposed addition to section 24-75-1201 that would place some of the money from the severance tax into a clean energy fund.

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[9] *See* starting 37:45 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

6. Question 13 asked: "Is there any circumstance that you intend the corpus of the perpetual base account to be used?"[10] The Proponent responded by asking "what is the answer here?" and then agreed with Legislative Council's suggested answer of "no."

In light of these and other questions that were not definitively answered and/or addressed through later drafting, there remain too many unresolved issues for the Title Board to set a title. In fact, at least one of the Title Board members mentioned at the April 19, 2017 Title Board hearing that she used as a basis the title of a similar measure from 2008 in suggesting the addition of "interest owners" to the part of the title concerning a tax credit and in suggesting other revisions to the title, which indicates that the Title Board struggled in determining how to draft a title for this incomprehensible measure.[11]

III. INITIATIVE #20 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The Proponent stated at the April 19, 2017 Title Board hearing that the single subject of the measure is a "severance tax." But the measure actually contains multiple separate subjects including at least the following:

1. Changing the severance tax.

2. Establishing minimum amounts of education funding. The Proponent stated during the review and comment hearing that the revenue from the increased severance tax would supplement existing funding and would establish minimum amounts of funding for public education and higher education.[12] This would force the funding provided to schools through the Public School Finance Act of 1994 to be held constant, which is a substantial change that constitutes a second subject.

3. Exempting not only state-level spending limits from TABOR but also "deBrucing" district-level limits by allowing voters from the state to approve a voter-approved revenue change for individual districts.

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[10] *See* starting 45:00 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

[11] Audio of this discussion begins at 1:09:20 in "Title Board – April 19, 2017 – 9:30 a.m." in this link: https://www.sos.state.co.us/pubs/info_center/audioArchives.html

[12] *See* starting 19:42 during the review and comment hearing at http://leg.colorado.gov/committee/granicus/964136.

IV. THE TITLE MISDESCRIBES THE MOST IMPORTANT ASPECT OF THE MEASURE, INCLUDES MISLEADING STATEMENTS, AND IS INACCURATE BECAUSE OF ERRORS IN THE FISCAL IMPACT STATEMENT.

1. The title states that it "increase[es] the existing severance tax rates on oil and gas by 5%." This statement is misleading. The measure actually increases the tax rates by 100% - 350%, depending on production, and should state as such.

2. The title fails to mention the proposed measure's apparent retroactive effect, including that the measure would retrospectively change taxes for the years 2000-2017, as noted both by the legislative staff and in the Fiscal Impact Statement.

V. THE ESTIMATE IN 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. Therefore, the abstract is misleading under section 1-40-107(1)(a)(II)(B), and 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 DOES NOT FACTOR IN THE FULL EXTENT OF THE MEASURE'S RETROACTIVE EFFECT.

a. The abstract does adequately detail the proposed measure's economic impacts.

Section 1-40-105.5(3)(b) requires that the abstract must include "[a]n estimate of the measure's economic benefits for all Coloradans." (Emphasis added). The proposed measure's abstract, however, includes only vague statements as to what some of the potential economic impacts "may" or may not be. For example, the abstract states that additional government spending "may increase access to [local government] services and may reduce the amount of money households need to budget for these services." Or, apparently, it may not. The public is not told which is correct or even more likely to be correct. The Title Board should demand more.

Additionally, 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 reduce profits for oil and gas companies." These statements are hypotheticals and provide no meaningful information for voters. Rather than a statement that there could be less oil and gas employment, the abstract should state whether there actually will

be less oil and gas employment or provide possible scenarios, or if a definitive answer is not possible, what outcome is more likely given their economic analysis. Instead, the Fiscal Impact Statement 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. The severance tax increases certainly will cause behavioral responses, 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 the Legislative Council for reconsideration.

b. The abstract does not factor in the full extent of the proposed measure's retroactive effect.

The Proponents, Legislative Council, and the drafters of the Fiscal Impact Statement all agree that the measure would retrospectively change taxes for the years 2000-2017, which presumably would require the State to collect the increased amount. Despite this consensus, the Fiscal Impact Statement oddly goes on to state that it "assume that the measure only applies to severance taxes paid for the tax year 2017 which are filed in April of 2018." The drafters Fiscal Impact Statement may have made this assumption based on a judgment of constitutionality, but such an assumption is inappropriate at this stage. The Fiscal Impact Statement should have factored in the retrospective change, which would have significantly altered its estimates. Therefore, not only are the abstract's estimates inaccurate but the abstract fails to comply with section 1-40-105.5(3)(b)'s requirements because, by not including the retrospective effect, the abstract does not "estimate[] the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted." It must be returned to the Title Board for revisions with the help of the director of research of the legislative council.

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 26th day of April, 2017.

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