

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
TDD 303-866-3472



Sharon L. Eubanks, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

### MEMORANDUM

**TO:** Andrew O'Connor and Mary Henry  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** October 13, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #63, concerning Severance Taxes on Oil and Gas

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #20, 2017-2018 #38, 2017-2018 #44, 2017-2018 #46, and 2017-2018 #54 were the subject of memoranda dated April 5, 2017, July 17, 2017, August 21, 2017, September 1, 2017, and September 20, 2017, which were discussed at public meetings on April 7, 2017, July 19, 2017, August 23, 2017, September 7, 2017, and September 22, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed

initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. For tax years that begin on and after January 1, 2019, to make the following changes to the oil and gas severance tax:
  - a. To increase the tax rate by 5 percent;
  - b. To halve the production amounts that qualify for the stripper well exemption; and
  - c. To eliminate the credit allowed against the severance tax for property taxes paid;
2. To modify the allocation of the oil and gas severance tax by requiring a portion of the revenue to be used exclusively for establishing all-day kindergarten and public school funding and for a new program that provides 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
3. To require 50 percent of the severance tax revenue from the severance tax on minerals and mineral fuels other than oil and gas to be deposited in the general fund.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Under the proposed initiative, the allocation of oil and gas severance tax revenues is designated in the newly created section 39-29-108 (2.3), C.R.S., and the allocation for all other severance taxes continues to be governed by section 39-29-108 (2)(b), C.R.S. In the version of section 39-29-108 (2)(b), C.R.S., in the proposed initiative, you omit the requirement in current law that, of the total gross receipts realized, "fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109...." The effect of this omission is that fifty percent of the severance taxes on minerals and mineral fuels, excluding oil and gas severance tax revenues, are unallocated by section

39-29-108 (2)(b), C.R.S. In the absence of a specified allocation, this revenue would be deposited in the general fund under section 24-75-201 (1), C.R.S.

- a. Is it your intention to eliminate this allocation to the state severance tax trust fund and instead require the money to be deposited in the general fund?<sup>1</sup> If so, then it would be easier for voters to see this change if you amend the existing provision to make this change explicit.
- b. If you do not intend to eliminate this allocation to the state severance tax trust fund, do you have any other substantive changes to section 39-29-108 (2)(b), C.R.S.? If not, then it is unnecessary to include section 39-29-108 (2)(b), C.R.S., in the proposed initiative as only existing provisions of law that are amended need to be included in an initiative. (If you remove section 39-29-108 (2)(b), C.R.S., then you would likewise remove the reference to "and (2)" in the amending clause for section 4 of the proposed initiative.)
- c. If you do have changes to section 39-29-108 (2)(b), C.R.S., then additions should be shown in SMALL CAPS and deletions in ~~strike type~~ to the current language of section 39-29-108 (2)(b), C.R.S., which was reproduced for your convenience on page 3 of the September 20, 2018 review and comment memo for proposed initiative 2017-2018 #54.

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The highlighting on pages 1 and 2 of the proposed initiative has no known legal effect and should be removed.

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<sup>1</sup> The third purpose in the Purposes section on page 2 of this memorandum is based on the assumption that this omission was intentional.