

NOTICE OF ELECTION TO INCREASE TAXES ON A CITIZEN PETITION

STATEWIDE ELECTION DAY IS

Tuesday, November 2, 2004

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 18, 2004)



ANALYSIS OF THE 2004 BALLOT PROPOSALS

Legislative Council
of the
Colorado General Assembly

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***A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and a
NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.***

Referendum A State Personnel System

The proposed amendment to the Colorado Constitution:

exempts about 140 additional state employees from the state civil service system, also known as the state personnel system;

changes testing and hiring procedures for filling vacancies in the state personnel system;

transfers certain oversight responsibilities from the State Personnel Board to the executive director of the Department of Personnel and Administration;

allows the legislature to change certain state personnel policies and procedures by law; and

expands veterans' hiring preferences to include members of the National Guard.

Background

What is the state personnel system? Colorado voters amended the state constitution in 1918 to create the state personnel system. It requires that state employees be hired and promoted according to merit. This proposal makes a number of changes to the constitution and in certain instances gives the legislature the authority to change the personnel system.

Currently, there are about 31,000 state employees in the state personnel system. Most are employees of the state's 19 departments, and some are employees of state higher education institutions. About 29,000 additional state employees are exempt from the state personnel system, including department heads, faculty of public universities, and employees of the legislature, the Governor's Office, and the state courts. This proposal exempts an additional 0.45 percent of the number of employees in the state personnel system, or about 140 senior state officers and support staff combined. Table 1 shows the personnel system employment requirements under the constitution and this proposal.

Table 1: Current and Proposed State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Hiring and Promotions	Prohibits discrimination based on race, religion, and political affiliation.	Adds prohibitions on discrimination based on sex and age, unless otherwise permitted by law.
Residency	Requires state employees to reside in Colorado.	Allows the legislature to make exceptions to the Colorado residency requirement, provided employees are United States residents.
Discipline	Sets criteria for disciplining an employee in the constitution.	Allows the legislature to address certain disciplinary policies in law.
Temporary Employees	Limits temporary employment to six months.	Limits temporary employment to nine months in any 12-month period.

How is the state personnel system governed? The five-member State Personnel Board sets the policy for the state personnel system, and the executive director of the Department of Personnel and Administration takes care of day-to-day operations. Table 2 describes the current duties of the board and the executive director and the proposed changes.

Table 2: Oversight of State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Board Membership	Limits members' terms to five years. Prohibits state employees from serving on the board.	Limits members' terms to two five-year terms. Allows state employees to serve on the board.
Board Duties	Requires the board to make rules governing the state personnel system and to hear appeals from employees and job applicants.	Transfers the board's rule-making authority over hiring, job classifications, compensation, performance standards, and voluntary departures to the executive director. Retains the board's powers over grievances, discipline, involuntary dismissals, and appeals. Allows the legislature to transfer duties between the board and executive director.
Executive Director Duties	Manages the state personnel system and approves temporary employment of up to six months.	Expands the executive director's duties to include rule-making over hiring, job classifications, compensation, performance standards, and voluntary departures.

How are job applicants hired? Current law identifies how employees are hired and promoted. Table 3 describes current law pertaining to testing and hiring procedures and the proposed changes.

Table 3: Hiring of State Personnel System Employees

Issue	The Current Personnel System:	The Proposed Personnel System:
Testing	Requires applicants for jobs in the state personnel system to be hired based on competitive testing.	Requires job applicants to be hired based on a comparison of qualifications. Requires the legislature to determine the methods for comparing applicants.
Interview Eligibility List	Limits the eligibility list to the three highest scoring applicants.	Increases the eligibility list to six applicants.
Veterans' Preference	Adds preference points to the passing test scores of veterans who served during war time.	Extends the preference to National Guard veterans who served during war time. Requires that all veterans who served during war time be interviewed if scored testing is not used.

How will this proposal be implemented? During the 2004 legislative session, a state law was passed that defines procedures and sets limits on issues addressed in this proposal. Most of the law will go into effect only if this proposal is adopted. Among other provisions, the bill prohibits more than 15 exempt officers and employees in any department and changes the laws regulating contracts for services. Table 4 shows the current limits on such contracts and the new requirements.

Table 4: Contracts for Services

Issue	Current Service Contract Law:	House Bill 04-1373:
Service Contracts	Permits contracting only for state government functions not traditionally performed by employees in the state personnel system. Prohibits contracts that eliminate a position within the state personnel system.	Repeals current law pertaining to when the state may use contracts for services. Allows contracts for all state government functions as long as the security of state, local, and national information systems are not compromised. Allows positions to be eliminated as long as employees are moved to new positions within the state personnel system.
Notice and Appeal	Not addressed in law.	Requires notification of the public and affected employees prior to eliminating jobs in the state personnel system. Allows employees to request a review of the contract by the executive director of the Department of Personnel and Administration and the courts.
Contract Oversight	Requires contract approval by the Department of Personnel and Administration executive director.	Requires approval by the contracting department's executive director.
Foreign Contractors	Not addressed in law.	Permits, if the contract maintains quality of service, protects privacy, and discloses work performed outside the United States.

Arguments For

1) The constitution needs to be updated to allow the state's workforce to keep pace with the work environment of the 21st Century. The state personnel system has not changed significantly in the past 85 years. This proposal increases the flexibility of the personnel system by eliminating unnecessary detail from the constitution and allowing the legislature to adjust the system to respond to changing circumstances. Colorado is one of only 15 states whose personnel system is tied to the state constitution. Requiring a vote of the people every time an aspect of the system becomes outdated or unworkable is inefficient.

2) Taxpayer money should be used to hire the best candidate for a job. The current personnel system favors people who are the best test takers, not necessarily the most qualified candidates. This proposal helps ensure that the best candidate is hired by expanding the pool of eligible candidates and allowing a more effective comparison of desired job qualifications.

3) This proposal allows a governor's administration to select about 140 more individuals who share the governor's values to carry out the administration's policies. The state personnel system has grown from about 1,000 employees in 1916 to over 31,000 in 2004. However, the ability of a governor and the administration to appoint high-level state administrators has not changed. With this proposal, future governors will be able to get off to a quick start on their policy initiatives because senior personnel from past administrations can be easily replaced.

4) The state will spend taxpayer money wisely if it can hire well-qualified employees and improve the use of service contracts, resulting in an efficient personnel system that provides high quality services. Further, all state contracts will continue to be subject to current purchasing, financial, employee conduct, and disclosure requirements. These requirements protect the new system against awarding contracts as political favors.

Arguments Against

1) This proposal gives governors and their appointees too much power to control state government. Each administration will be given about 140 additional appointments. Also, the governor-appointed executive director of the Department of Personnel and Administration will now have policy-making authority over areas of the personnel system that the State Personnel Board has traditionally overseen. Those areas include hiring, job classifications, compensation, performance standards, and voluntary departures. The proposal also allows the legislature to shift further power from the State Personnel Board to the executive director. Making the personnel system subject to annual changes by the legislature could disrupt the personnel system. These changes combined may make the state personnel system less predictable and vulnerable to abuse.

2) Comparing applicant qualifications, rather than testing, could be manipulated to allow state employees to be hired based on their political connections and not on merit. Testing candidates to determine the best candidate for a job is the most efficient and fair way to hire employees.

3) More contracting with private companies could shift jobs out of Colorado to other states and countries. Also, there is no guarantee that unregulated contract workers will provide services to the state in the most cost-effective manner. State contracts awarded by appointees may lead to abuses if contracts are used as political favors.

4) This proposal could result in more political appointees. More political appointees in management positions may not lead to better state government. Instead, institutional knowledge will be lost as experienced senior personnel system employees are displaced by appointees who may not have the necessary skills to perform the job.

Estimate of Fiscal Impact

This proposal is not expected to significantly affect state or local expenditures.

Referendum B Obsolete Constitutional Provisions

The proposed amendment to the Colorado Constitution:

removes provisions that are obsolete;

strikes references to one-time events that have already occurred; and

removes voting requirements found unconstitutional by the Colorado Supreme Court in 1972.

Background

Obsolete provisions. A requirement that the Superintendent of Public Instruction serve as the state librarian is deleted because the superintendent position no longer exists. The Commissioner of Education replaced the Superintendent of Public Instruction in 1948. A provision concerning the eligibility of a person living in a poorhouse to vote or run for office is also deleted. Poorhouses, or publicly supported homes for the poor, no longer exist in Colorado.

References to one-time events. The constitution required all agencies of state government to be divided among no more than 20 state departments by June 30, 1968. This requirement stemmed from a major reorganization of state government in the 1960s. The proposal removes the reference to June 30, 1968, but does not change the limit on the number of departments. The proposal also removes language regarding the expiration of terms for former State Board of Land Commissioners since they are no longer in office.

Unconstitutional provisions. The proposal strikes a requirement in one section of the constitution that citizens live in the state for three months before being eligible to vote and a requirement in another section that citizens live in the state for at least one year before being eligible to vote. The Colorado Supreme Court held in 1972 that voting is a fundamental right that cannot be limited by imposing a three-month residency requirement. The court based its ruling on a U.S. Supreme Court decision that a

similar residency requirement violated the U.S. Constitution. State law currently establishes a 30-day residency requirement for voters for all elections.

Argument For

1) The proposal continues an effort to update the constitution by deleting unconstitutional and outdated language. Unconstitutional language can be confusing and misleading to readers who do not know the language has been nullified by a court. Outdated language clutters the constitution.

Argument Against

1) All provisions of the constitution have historical significance. Removing these provisions may diminish the historical character of the constitution and make research of constitutional provisions and state laws more difficult.

Estimate of Fiscal Impact

The proposal does not affect state or local revenues or expenditures.

TITLES AND TEXT

Amendment 34 Construction Liability

Ballot Title: An amendment to the Colorado constitution concerning recovery of damages relating to construction of real property improvements, and, in connection therewith, prohibiting laws that limit or impair a property owner's right to recover damages caused by a failure to construct an improvement in a good and workmanlike manner; defining "good and workmanlike manner" to include construction that is suitable for its intended purposes; and permitting exceptions for laws that limit punitive damages, afford governmental immunity, or impose time limits of specified minimum lengths on filing lawsuits.

Text of Proposed Amendment:

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

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 15. Protection of property owner's right to workmanlike construction. NO LAW SHALL LIMIT OR IMPAIR A PUBLIC OR PRIVATE PROPERTY OWNER'S RIGHT TO RECOVER DAMAGES, OTHER THAN PUNITIVE DAMAGES, CAUSED BY THE FAILURE TO CONSTRUCT AN IMPROVEMENT TO REAL PROPERTY IN A GOOD AND WORKMANLIKE MANNER. STATUTES OF LIMITATIONS OF NOT LESS THAN TWO YEARS AND STATUTES OF REPOSE OF NOT LESS THAN SIX YEARS, AS WELL AS LAWS AFFORDING GOVERNMENTAL IMMUNITY, SHALL BE PERMITTED. CONSTRUCTION IN A "GOOD AND WORKMANLIKE MANNER" SHALL INCLUDE, WITHOUT LIMITATION, CONSTRUCTION SO THAT THE IMPROVEMENT TO REAL PROPERTY IS SUITABLE FOR ITS INTENDED PURPOSES. THIS SECTION SHALL BE STRICTLY ENFORCED.

TITLES AND TEXT

Amendment 35
Tobacco Tax Increase for Health-Related Purposes

Ballot Title: STATE TAXES SHALL BE INCREASED \$175 MILLION ANNUALLY THROUGH ADDITIONAL TOBACCO TAXES IMPOSED FOR HEALTH RELATED PURPOSES, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO INCREASE STATEWIDE TAXES ON THE SALE OF CIGARETTES BY WHOLESALERS OF THREE AND TWO-TENTHS CENTS PER CIGARETTE AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF OTHER TOBACCO PRODUCTS BY DISTRIBUTORS AT THE RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE; INCREASING SUCH TOBACCO TAXES EFFECTIVE JANUARY 1, 2005; REQUIRING ANNUAL APPROPRIATIONS OF SPECIFIED PERCENTAGES OF THE ADDITIONAL TOBACCO TAX REVENUES TO EXPAND ELIGIBILITY FOR AND INCREASE ENROLLMENT IN THE CHILDREN'S BASIC HEALTH PLAN, TO FUND COMPREHENSIVE PRIMARY MEDICAL CARE THROUGH CERTAIN COLORADO QUALIFIED PROVIDERS, TOBACCO EDUCATION PROGRAMS, AND PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES, TO COMPENSATE THE STATE GENERAL FUND, THE OLD AGE PENSION FUND, AND LOCAL GOVERNMENTS FOR TOBACCO TAX LOSSES RESULTING FROM REDUCED SALES OF CIGARETTES AND TOBACCO PRODUCTS; SPECIFYING THAT THE APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES SHALL BE IN ADDITION TO AND NOT SUBSTITUTED FOR APPROPRIATIONS FOR SUCH PROGRAMS ON JANUARY 1, 2005; ALLOWING THE USE OF ADDITIONAL TOBACCO TAX REVENUES FOR ANY HEALTH RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AS OF JANUARY 1, 2005, UPON A DECLARATION OF A STATE FISCAL EMERGENCY BY TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE GENERAL ASSEMBLY AND THE GOVERNOR; PROHIBITING THE REPEAL OR REDUCTION OF EXISTING TAXES IMPOSED ON CIGARETTES AND OTHER TOBACCO PRODUCTS; EXCLUDING ALL ADDITIONAL TOBACCO TAX REVENUES FROM FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; AND EXEMPTING APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES FROM THE STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR ANY OTHER EXISTING SPENDING LIMITATION.

Text of Proposal:

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

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

Section 21. Tobacco Taxes for Health Related Purposes.

(1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND THAT TOBACCO ADDICTION IS THE LEADING CAUSE OF PREVENTABLE DEATH IN COLORADO, THAT COLORADO SHOULD DETER CHILDREN AND YOUTH FROM STARTING SMOKING, THAT CIGARETTE AND TOBACCO TAXES ARE EFFECTIVE AT PREVENTING AND REDUCING TOBACCO USE AMONG CHILDREN AND YOUTH, AND THAT TOBACCO TAX REVENUES WILL BE USED TO EXPAND HEALTH CARE FOR CHILDREN AND LOW INCOME POPULATIONS, TOBACCO EDUCATION PROGRAMS AND THE PREVENTION AND TREATMENT OF CANCER AND HEART AND LUNG DISEASE.

(2) THERE ARE HEREBY IMPOSED THE FOLLOWING ADDITIONAL CIGARETTE AND TOBACCO TAXES:

(a) STATEWIDE CIGARETTE TAX, ON THE SALE OF CIGARETTES BY WHOLESALERS, AT THE RATE OF THREE AND TWO-TENTHS CENTS PER CIGARETTE (64 CENTS PER PACK OF TWENTY); AND

(b) A STATEWIDE TOBACCO PRODUCTS TAX, ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS, AT THE RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE.

(3) THE CIGARETTE AND TOBACCO TAXES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER CIGARETTE AND TOBACCO TAXES EXISTING AS OF THE EFFECTIVE DATE OF THIS SECTION ON THE SALE OR USE OF CIGARETTES BY WHOLESALERS AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS. SUCH EXISTING TAXES AND THEIR DISTRIBUTION SHALL NOT BE REPEALED OR REDUCED BY THE GENERAL ASSEMBLY.

(4) ALL REVENUES RECEIVED BY OPERATION OF SUBSECTION (2) SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND THE CORRESPONDING SPENDING LIMITS UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

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(5) THE REVENUES GENERATED BY OPERATION OF SUBSECTION (2) SHALL BE APPROPRIATED ANNUALLY BY THE GENERAL ASSEMBLY ONLY IN THE FOLLOWING PROPORTIONS AND FOR THE FOLLOWING HEALTH RELATED PURPOSES:

(a) FORTY-SIX PERCENT (46%) OF SUCH REVENUES SHALL BE APPROPRIATED TO INCREASE THE NUMBER OF CHILDREN AND PREGNANT WOMEN ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN ABOVE THE AVERAGE ENROLLMENT FOR STATE FISCAL YEAR 2004, ADD THE PARENTS OF ENROLLED CHILDREN, AND EXPAND ELIGIBILITY OF LOW INCOME ADULTS AND CHILDREN WHO RECEIVE MEDICAL CARE THROUGH THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 19 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, OR THROUGH THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(b) NINETEEN PERCENT (19%) OF SUCH REVENUES SHALL BE APPROPRIATED TO FUND COMPREHENSIVE PRIMARY CARE THROUGH ANY COLORADO QUALIFIED PROVIDER, AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT," ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, THAT MEETS EITHER OF THE FOLLOWING CRITERIA:

(I) IS A COMMUNITY HEALTH CENTER AS DEFINED IN SECTION 330 OF THE U.S. PUBLIC HEALTH SERVICES ACT, OR ANY SUCCESSOR ACT; OR

(II) AT LEAST 50% OF THE PATIENTS SERVED BY THE QUALIFIED PROVIDER ARE UNINSURED OR MEDICALLY INDIGENT AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT," ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, OR ARE ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN OR THE COLORADO MEDICAL ASSISTANCE PROGRAM, OR SUCCESSOR PROGRAMS.

SUCH REVENUES SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR SUCCESSOR AGENCY, AND SHALL BE DISTRIBUTED ANNUALLY TO ALL ELIGIBLE QUALIFIED PROVIDERS THROUGHOUT THE STATE PROPORTIONATE TO THE NUMBER OF UNINSURED OR MEDICALLY INDIGENT PATIENTS SERVED.

(c) SIXTEEN PERCENT (16%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR SCHOOL AND COMMUNITY-BASED AND STATEWIDE TOBACCO EDUCATION PROGRAMS DESIGNED TO REDUCE INITIATION OF TOBACCO USE BY CHILDREN AND YOUTH, PROMOTE CESSATION OF TOBACCO USE AMONG YOUTH AND ADULTS, AND REDUCE EXPOSURE TO SECOND-HAND SMOKE. SUCH REVENUES SHALL BE APPROPRIATED THROUGH THE "TOBACCO EDUCATION, PREVENTION AND CESSATION ACT", PART 8 OF ARTICLE 3.5 OF TITLE 25, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(d) SIXTEEN PERCENT (16%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR THE PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES. SUCH REVENUES SHALL BE APPROPRIATED TO THE PREVENTION SERVICES DIVISION OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR SUCCESSOR AGENCY, AND SHALL BE DISTRIBUTED STATEWIDE WITH OVERSIGHT AND ACCOUNTABILITY BY THE COLORADO STATE BOARD OF HEALTH CREATED BY ARTICLE 1 OF TITLE 25, COLORADO REVISED STATUTES.

(e) THREE PERCENT (3%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR HEALTH RELATED PURPOSES TO PROVIDE REVENUE FOR THE STATE'S GENERAL FUND, OLD AGE PENSION FUND, AND MUNICIPAL AND COUNTY GOVERNMENTS TO COMPENSATE PROPORTIONATELY FOR TAX REVENUE REDUCTIONS ATTRIBUTABLE TO LOWER CIGARETTE AND TOBACCO SALES RESULTING FROM THE IMPLEMENTATION OF THIS TAX.

(6) REVENUES APPROPRIATED PURSUANT TO PARAGRAPHS (a), (b), AND (d) OF SUBSECTION (5) SHALL BE USED TO SUPPLEMENT REVENUES THAT ARE APPROPRIATED BY THE GENERAL ASSEMBLY FOR HEALTH RELATED PURPOSES ON THE EFFECTIVE DATE OF THIS SECTION, AND SHALL NOT BE USED TO SUPPLANT THOSE APPROPRIATED REVENUES.

(7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY MAY USE REVENUE GENERATED UNDER THIS SECTION FOR ANY HEALTH RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AT THEIR RESPECTIVE LEVELS OF ENROLLMENT ON THE EFFECTIVE DATE OF THIS SECTION. SUCH USE OF REVENUE MUST BE PRECEDED BY A DECLARATION OF A STATE FISCAL EMERGENCY, WHICH SHALL BE ADOPTED ONLY BY A JOINT RESOLUTION, APPROVED BY A TWO-THIRDS MAJORITY VOTE OF THE MEMBERS OF BOTH HOUSES OF THE GENERAL ASSEMBLY AND THE GOVERNOR. SUCH DECLARATION SHALL APPLY ONLY TO A SINGLE FISCAL YEAR.

(8) REVENUES APPROPRIATED PURSUANT TO SUBSECTIONS (5) AND (7) OF THIS SECTION SHALL NOT BE SUBJECT TO THE STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR ANY OTHER SPENDING LIMITATION EXISTING IN LAW.

(9) THIS SECTION IS EFFECTIVE JANUARY 1, 2005.

Amendment 36
Selection of Presidential Electors

Ballot Title: An amendment to the Colorado constitution concerning popular proportional selection of presidential electors, and, in connection therewith, creating procedures for allocating Colorado's electoral votes for president and vice-president of the United States, based on the proportion of ballots that are cast in this state for each presidential ticket; making the terms of the proposed amendment effective so that popular proportional selection of presidential electors applies to the 2004 general election; setting forth procedures and timelines that govern the certification of election results and the potential recounting of votes in elections for presidential electors and in the election on this proposed amendment; granting the Colorado supreme court original jurisdiction for the adjudication of all contests concerning presidential electors and requiring that such matters be heard and decided on an expedited basis; and authorizing the general assembly to enact legislation to change the manner of selecting presidential electors or any of the procedures contained in this amendment.

Text of Proposal:

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

ARTICLE VII OF THE CONSTITUTION is amended BY THE ADDITION OF A NEW SECTION, to read:

Section 13. Popular proportional selection of presidential electors.

(1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THE UNITED STATES CONSTITUTION DELEGATES TO EACH STATE THE METHOD OF CHOOSING PRESIDENTIAL ELECTORS WHO ARE CHARGED WITH CASTING VOTES IN THE ELECTORAL COLLEGE FOR THE OFFICES OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES;

(b) THE COLORADO CONSTITUTION RESERVES TO THE PEOPLE OF THIS STATE THE RIGHT TO ACT IN THE PLACE OF THE STATE LEGISLATURE IN ANY LEGISLATIVE MATTER, AND THROUGH ENACTMENT OF THIS SECTION, THE PEOPLE DO HEREBY ACT AS THE LEGISLATURE OF COLORADO FOR THE PURPOSE OF CHANGING THE MANNER OF ELECTING PRESIDENTIAL ELECTORS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE II, SECTION 1 OF THE UNITED STATES CONSTITUTION;

(c) THE RIGHT TO VOTE FOR PRESIDENT OF THE UNITED STATES IS A FUNDAMENTAL RIGHT AND EACH PERSON'S VOTE IS ENTITLED TO EQUAL DIGNITY AND SHOULD COUNT EQUALLY;

(d) THE PRESENT WINNER-TAKE-ALL METHOD OF AWARDING PRESIDENTIAL ELECTORS IN COLORADO PERMITS A PRESIDENTIAL TICKET TO RECEIVE ALL OF THIS STATE'S ELECTORAL VOTES EVEN THOUGH IT WINS LESS THAN A MAJORITY OF THE BALLOTS CAST IN THIS STATE;

(e) THE WILL OF THE COLORADO ELECTORATE IS BEST REFLECTED BY THE POPULAR PROPORTIONAL ALLOCATION OF ELECTORAL COLLEGE REPRESENTATIVES, BASED ON THE NUMBER OF BALLOTS CAST FOR THE RESPECTIVE PRESIDENTIAL TICKETS IN THIS STATE; AND

(f) IN THE STRONGEST POSSIBLE TERMS, THE VOTERS OF COLORADO DECLARE THAT, BY APPROVING THIS INITIATIVE, THEY UNDERSTAND, DESIRE, AND EXPECT THAT THE POPULAR PROPORTIONAL SELECTION OF PRESIDENTIAL ELECTORS IS INTENDED TO APPLY RETROACTIVELY AND THUS DETERMINE THE MANNER IN WHICH OUR STATE'S PRESIDENTIAL ELECTORS ARE CHOSEN AND OUR STATE'S ELECTORAL VOTES ARE CAST FOR THE GENERAL ELECTION OF 2004.

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(2) THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED SHALL BE DIVIDED AMONG THE PRESIDENTIAL TICKETS ON THE GENERAL ELECTION BALLOT, BASED UPON THE POPULAR PROPORTIONAL SHARE OF THE TOTAL STATEWIDE BALLOTS CAST FOR EACH PRESIDENTIAL TICKET, SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION. EACH PRESIDENTIAL ELECTOR SHALL VOTE FOR THE PRESIDENTIAL CANDIDATE AND, BY SEPARATE BALLOT, VICE-PRESIDENTIAL CANDIDATE ON THE PRESIDENTIAL TICKET OF THE POLITICAL PARTY OR POLITICAL ORGANIZATION THAT NOMINATED THAT PRESIDENTIAL ELECTOR.

(3) THE ALLOCATION OF A PRESIDENTIAL TICKET'S POPULAR PROPORTION OF THIS STATE'S ELECTORAL VOTES SHALL BE IN WHOLE NUMBERS AND SHALL BE MADE IN THE FOLLOWING MANNER:

(a) THE TOTAL NUMBER OF BALLOTS CAST IN THIS STATE FOR EACH PRESIDENTIAL TICKET AT A GENERAL ELECTION SHALL BE DIVIDED BY THE TOTAL NUMBER OF BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS THAT RECEIVE VOTES AT THAT GENERAL ELECTION; AND

(b) THE PROPORTION OF A PRESIDENTIAL TICKET'S POPULAR VOTE, AS DETERMINED IN PARAGRAPH (a) OF THIS SUBSECTION, SHALL BE MULTIPLIED BY THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED.

(4) THE NUMBER OF ELECTORAL VOTES THAT IS ATTRIBUTABLE TO THE BALLOTS CAST FOR ANY PRESIDENTIAL TICKET, AS DETERMINED IN SUBSECTION (3) OF THIS SECTION, SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER, SUBJECT TO THE FOLLOWING LIMITATIONS.

(a) NO PRESIDENTIAL TICKET SHALL RECEIVE ANY ELECTORAL VOTES FROM THIS STATE IF ITS PROPORTION OF THE TOTAL BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS WOULD REFLECT LESS THAN A FULL ELECTORAL VOTE AFTER ROUNDING TO THE NEAREST WHOLE NUMBER.

(b) IF THE SUM OF ELECTORAL VOTES ALLOCATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION IS GREATER THAN THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED:

(I) THE ALLOCATION OF ELECTORAL VOTES TO THE PRESIDENTIAL TICKET RECEIVING AT LEAST ONE ELECTORAL VOTE AND THE FEWEST NUMBER OF BALLOTS CAST SHALL BE REDUCED BY WHOLE ELECTORAL VOTES UNTIL ONLY THAT NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED; AND

(II) THE PROCESS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE REPEATED IF, AFTER THE REDUCTION OF ELECTORAL VOTES AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE TOTAL NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS REMAINS GREATER THAN THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH THIS STATE IS ENTITLED, AND SUCH PROCESS SHALL BE APPLIED TO THE PRESIDENTIAL TICKET RECEIVING AT LEAST ONE ELECTORAL VOTE AND THE NEXT FEWEST NUMBER OF BALLOTS CAST UNTIL THE TOTAL NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS IS EQUAL TO THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH THIS STATE IS ENTITLED.

(c) IF THE SUM OF ALL ELECTORAL VOTES ALLOCATED WOULD BE LESS THAN THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED, THE PRESIDENTIAL TICKET RECEIVING THE GREATEST NUMBER OF BALLOTS CAST SHALL RECEIVE ANY UNALLOCATED ELECTORAL VOTES UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED.

(d) IF TWO OR MORE PRESIDENTIAL TICKETS RECEIVE THE IDENTICAL TOTAL NUMBER OF BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS AND THE ALLOCATION OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED CANNOT

BE PROPORTIONALLY ALLOCATED IN WHOLE ELECTORAL VOTES TO THESE PRESIDENTIAL TICKETS, THE SECRETARY OF STATE SHALL DETERMINE BY LOT WHICH OF THESE PRESIDENTIAL TICKETS WILL HAVE THEIR NUMBER OF ELECTORAL VOTES INCREASED OR DECREASED BY A WHOLE ELECTORAL VOTE UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED.

(5) (a) A RECOUNT OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE SHALL BE ORDERED BY THE SECRETARY OF STATE IF THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE IS LESS THAN OR EQUAL TO ONE-HALF OF ONE PERCENT OF THE HIGHEST NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS INITIATIVE. WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE HIGHEST NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS INITIATIVE, A RECOUNT IN CONNECTION WITH THIS INITIATIVE MAY BE REQUESTED BY A PETITION REPRESENTATIVE IDENTIFIED WITH THIS INITIATIVE OR THE REGISTERED AGENT OF AN ISSUE COMMITTEE OPPOSING THIS INITIATIVE; PROVIDED, HOWEVER, THAT ANY SUCH PERSON OR THE COMMITTEE WITH WHICH HE OR SHE IS ASSOCIATED SHALL PAY THE COST OF SUCH RECOUNT BEFORE THE SECRETARY MAY BEGIN THE RECOUNT, BUT IF THE PREVAILING SIDE IN THE ELECTION IS CHANGED THEREBY, SUCH AMOUNT SHALL BE REFUNDED.

(b) A RECOUNT SHALL BE ORDERED BY THE SECRETARY OF STATE IF:

(I) THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR ANY TWO PRESIDENTIAL TICKETS IS LESS THAN OR EQUAL TO ONE-HALF OF ONE PERCENT OF THE BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES OF THE TWO PRESIDENTIAL TICKETS IN QUESTION; AND

(II) AT LEAST ONE OF THE TWO PRESIDENTIAL TICKETS, AS A RESULT OF SUCH RECOUNT, COULD QUALIFY FOR ONE OR MORE ADDITIONAL ELECTORAL VOTES.

WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR THE TWO PRESIDENTIAL TICKETS IN QUESTION IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES AS BETWEEN THOSE TWO TICKETS, A RECOUNT FOR PRESIDENTIAL ELECTORS MAY BE REQUESTED BY A PRESIDENTIAL TICKET OR THE POLITICAL PARTY OR POLITICAL ORGANIZATION ASSOCIATED WITH SUCH TICKET; PROVIDED, HOWEVER, THAT ANY SUCH TICKET OR POLITICAL PARTY OR ORGANIZATION WITH WHICH IT IS ASSOCIATED SHALL PAY THE COST OF SUCH RECOUNT BEFORE THE

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SECRETARY MAY BEGIN THE RECOUNT, BUT IF THE ELECTION RESULT IS CHANGED THEREBY AND AN ADDITIONAL ELECTORAL VOTE OR VOTES IS AWARDED TO THAT PRESIDENTIAL TICKET, SUCH AMOUNT SHALL BE REFUNDED.

(c) ANY RECOUNT AUTHORIZED PURSUANT TO THIS SUBSECTION SHALL BE ORDERED OR REQUESTED NOT LATER THAN 5:00 P.M ON THE TWENTY-THIRD DAY AFTER THE GENERAL ELECTION AT WHICH SUCH BALLOTS ARE CAST AND SHALL BE COMPLETED AND THE RESULT SHALL BE CERTIFIED BY THE SECRETARY OF STATE NOT LATER THAN CLOSE OF BUSINESS ON THE THIRTIETH DAY AFTER THE GENERAL ELECTION AT WHICH SUCH BALLOTS ARE CAST.

(6) FOR PURPOSES OF THIS SECTION ONLY AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION:

(a) THE RESULTS OF THE ELECTION ON THIS INITIATIVE SHALL BE OFFICIALLY DECLARED BY PROCLAMATION OF THE GOVERNOR WHICH SHALL BE ISSUED AFTER THE VOTES THEREON HAVE BEEN CANVASSED BUT BEFORE NOON ON:

(I) THE TWENTY-FOURTH DAY FOLLOWING THE GENERAL ELECTION, IF NO RECOUNT IS ORDERED OR REQUESTED; OR

(II) THE THIRTY-FIRST DAY FOLLOWING THE GENERAL ELECTION, IF A RECOUNT IS ORDERED OR REQUESTED.

(b) THE SECRETARY OF STATE SHALL CERTIFY THE ELECTION OF PRESIDENTIAL ELECTORS, AS DETERMINED PURSUANT TO THIS SECTION, BUT IN NO EVENT SHALL SUCH CERTIFICATION BE ISSUED LATER THAN 2:00 P.M. ON:

(I) THE TWENTY-FOURTH DAY FOLLOWING THE GENERAL ELECTION, IF NO RECOUNT IS ORDERED OR REQUESTED AS TO SUCH ELECTION; OR

(II) THE THIRTY-FIRST DAY FOLLOWING THE GENERAL ELECTION, IF A RECOUNT IS ORDERED OR REQUESTED AS TO SUCH ELECTION.

(c) THE ELECTION CERTIFICATION PROCESS REFERRED TO IN PARAGRAPH (b) OF THIS SUBSECTION SHALL APPLY TO THE BALLOTS CAST FOR PRESIDENTIAL TICKETS AT THE NOVEMBER 2, 2004 GENERAL ELECTION AND AT GENERAL ELECTIONS HELD AFTER 2004 AT WHICH PRESIDENTIAL TICKETS ARE ON THE STATEWIDE BALLOT.

(7) THE SECRETARY OF STATE SHALL DETERMINE BY LOT WHICH PRESIDENTIAL ELECTORS, NOMINATED IN CONJUNCTION WITH A PRESIDENTIAL TICKET THAT QUALIFIES FOR AT LEAST ONE ELECTORAL VOTE PURSUANT TO THIS SECTION, SHALL BE ENTITLED TO CAST ELECTORAL VOTES. FOR EACH PRESIDENTIAL

TICKET, THE SECRETARY OF STATE SHALL THEN DETERMINE BY LOT THE ORDER OF NOMINATED PRESIDENTIAL ELECTORS FOR THAT PRESIDENTIAL TICKET TO SERVE AS ALTERNATES IF ANY VACANCIES OCCUR IN THE OFFICE OF PRESIDENTIAL ELECTOR FOR THAT PRESIDENTIAL TICKET BECAUSE OF DEATH, REFUSAL TO ACT, ABSENCE OR OTHER CAUSE. SUCH DETERMINATIONS BY LOT PERFORMED BY THE SECRETARY OF STATE SHALL BE MADE BEFORE 3:00 P.M. OF THE TWENTY-FOURTH DAY FOLLOWING THE ELECTION IF NO RECOUNT IS ORDERED OR REQUESTED AND BEFORE 3:00 P.M. OF THE THIRTY-FIRST DAY FOLLOWING SUCH ELECTION IF A RECOUNT IS ORDERED OR REQUESTED. IF THE NUMBER OF NOMINATED PRESIDENTIAL ELECTORS FOR A PRESIDENTIAL TICKET IS INSUFFICIENT TO ALLOW THE SECRETARY OF STATE TO FILL A VACANCY IN THE OFFICE OF PRESIDENTIAL ELECTOR BY LOT, THE POLITICAL PARTY OR POLITICAL ORGANIZATION OF THE PRESIDENTIAL TICKET FOR WHICH THE VACANCY REMAINS SHALL NOMINATE THE NUMBER OF ADDITIONAL PRESIDENTIAL ELECTORS NECESSARY TO FILL THE VACANCY. THE SECRETARY OF STATE SHALL PREPARE A CERTIFICATE OF ELECTION FOR EACH PRESIDENTIAL ELECTOR ENTITLED TO CAST AN ELECTORAL VOTE. THE GOVERNOR SHALL SIGN AND AFFIX THE SEAL OF THE STATE TO THE CERTIFICATES AND DELIVER ONE CERTIFICATE TO EACH ELECTOR ON THE FIRST MONDAY AFTER THE SECOND WEDNESDAY OF DECEMBER FOLLOWING A GENERAL ELECTION.

(8) THE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION FOR THE ADJUDICATION OF ALL CONTESTS CONCERNING PRESIDENTIAL ELECTORS AND SHALL PRESCRIBE RULES FOR PRACTICE AND PROCEEDINGS FOR SUCH CONTESTS. CONTESTS CONCERNING THE ELECTION OF PRESIDENTIAL ELECTORS SHALL BE GIVEN THE HIGHEST PRIORITY ON THE COURT'S CALENDAR AND SHALL BE EXPEDITED IN ALL RESPECTS, INCLUDING HEARING AND DECISION. THE COURT SHALL RENDER ITS FINAL DECISION IN ANY CONTEST CONCERNING PRESIDENTIAL ELECTORS NOT LATER THAN THE FIRST FRIDAY AFTER THE SECOND WEDNESDAY OF DECEMBER FOLLOWING A GENERAL ELECTION. NO JUSTICE OF THE COURT WHO IS A CONTESTOR IN THE ELECTION CONTEST SHALL BE PERMITTED TO HEAR AND DETERMINE THE MATTER.

(9) THIS SECTION SHALL BE EFFECTIVE ON AND AFTER NOVEMBER 3, 2004.

(10) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO ACHIEVE POPULAR PROPORTIONAL ALLOCATION OF PRESIDENTIAL ELECTORS AT THE 2004 GENERAL ELECTION.

(11) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO CHANGE THE MANNER OF SELECTING PRESIDENTIAL ELECTORS OR ANY OF THE PROCEDURES RELATED THERETO.

(12) FOR PURPOSES OF THIS SECTION:

(a) "PRESIDENTIAL TICKET" MEANS CANDIDATES FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES WHO RUN FOR THEIR RESPECTIVE OFFICES JOINTLY IN COLORADO.

(b) "ROUNDED TO THE NEAREST WHOLE NUMBER" MEANS:

(I) INCREASED TO THE NEXT WHOLE NUMBER IF THE FRACTIONAL PROPORTION OF AN ELECTORAL VOTE ALLOCATED IS EQUAL TO OR GREATER THAN .5; AND

(II) DECREASED TO THE PRECEDING WHOLE NUMBER IF THE FRACTIONAL PROPORTION OF AN ELECTORAL VOTE ALLOCATED IS LESS THAN .5.

(c) "THIS INITIATIVE" MEANS THE VOTER-INITIATED CONSTITUTIONAL AMENDMENT, APPROVED AT THE NOVEMBER 2, 2004 GENERAL ELECTION, PROVIDING FOR POPULAR PROPORTIONAL SELECTION OF PRESIDENTIAL ELECTORS.

(d) "WHOLE NUMBER" MEANS A POSITIVE INTEGER, INCLUDING ZERO.

(13) IF ANY PROVISION OF THIS SECTION OR ANY PART THEREOF IS, FOR ANY REASON, HELD TO BE INVALID OR UNCONSTITUTIONAL, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED, BUT SHALL REMAIN IN FULL FORCE AND EFFECT, AND TO THIS END, THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

Amendment 37
Renewable Energy Requirement

Ballot Title: An amendment to the Colorado revised statutes concerning renewable energy standards for large providers of retail electric service, and, in connection therewith, defining eligible renewable energy resources to include solar, wind, geothermal, biomass, small hydroelectricity, and hydrogen fuel cells; requiring that a percentage of retail electricity sales be derived from renewable sources, beginning with 3% in the year 2007 and increasing to 10% by 2015; requiring utilities to offer customers a rebate of \$2.00 per watt and other incentives for solar electric generation; providing incentives for utilities to invest in renewable energy resources that provide net economic benefits to customers; limiting the retail rate impact of renewable energy resources to 50 cents per month for residential customers; requiring public utilities commission rules to establish major aspects of the measure; prohibiting utilities from using condemnation or eminent domain to acquire land for generating facilities used to meet the standards; requiring utilities with requirements contracts to address shortfalls from the standards; and specifying election procedures by which the customers of a utility may opt out of the requirements of this amendment.

Text of Proposal:

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

SECTION 1. Legislative declaration of intent:

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

SECTION 2. Article 2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**ARTICLE 2
Renewable Energy Standard**

40-2-124. Renewable Energy Standard. (1) EACH PROVIDER OF RETAIL ELECTRIC SERVICE IN THE STATE OF COLORADO THAT SERVES OVER 40,000 CUSTOMERS SHALL BE CONSIDERED A QUALIFYING RETAIL UTILITY AND SHALL BE SUBJECT TO THE RULES ESTABLISHED UNDER THIS ARTICLE BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO (COMMISSION). NO ADDITIONAL REGULATORY AUTHORITY OF THE COMMISSION OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR IMPLIED. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON OR BEFORE APRIL 1, 2005, THE COMMISSION SHALL INITIATE ONE OR MORE RULEMAKING PROCESSES TO ESTABLISH THE FOLLOWING:

(A) DEFINITIONS OF ELIGIBLE RENEWABLE ENERGY RESOURCES THAT CAN BE USED TO MEET THE STANDARDS. ELIGIBLE RENEWABLE ENERGY RESOURCES ARE SOLAR, WIND, GEOTHERMAL, BIOMASS, AND HYDROELECTRICITY WITH A NAMEPLATE RATING OF 10 MEGAWATTS OR LESS. THE COMMISSION SHALL DETERMINE, FOLLOWING AN EVIDENTIARY HEARING, THE EXTENT THAT SUCH ELECTRIC GENERATION TECHNOLOGIES UTILIZED IN AN OPTIONAL PRICING PROGRAM MAY BE USED TO COMPLY WITH THIS STANDARD. A FUEL CELL USING

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HYDROGEN DERIVED FROM THESE ELIGIBLE RESOURCES IS ALSO AN ELIGIBLE ELECTRIC GENERATION TECHNOLOGY. FOSSIL AND NUCLEAR FUELS AND THEIR DERIVATIVES ARE NOT ELIGIBLE RESOURCES. FURTHER, "BIOMASS" SHALL BE DEFINED TO MEAN:

(I) NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF AGRICULTURAL CROPS, URBAN WOOD WASTE, MILL RESIDUE, SLASH, OR BRUSH;

(II) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES; OR

(III) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE TREATMENT OF WASTEWATER RESIDUALS.

(B) STANDARDS FOR THE DESIGN, PLACEMENT AND MANAGEMENT OF ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES TO ENSURE THAT THE ENVIRONMENTAL IMPACTS OF SUCH FACILITIES ARE MINIMIZED.

(C) (I) ELECTRIC RESOURCE STANDARDS FOR RENEWABLE ENERGY RESOURCES. THE ELECTRIC RESOURCE STANDARD SHALL REQUIRE EACH QUALIFYING RETAIL UTILITY TO GENERATE, OR CAUSE TO BE GENERATED, ELECTRICITY FROM ELIGIBLE RENEWABLE ENERGY RESOURCES IN THE FOLLOWING MINIMUM AMOUNTS:

(A) 3% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2007 THROUGH 2010;

(B) 6% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2011 THROUGH 2014;

(C) 10% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2015 AND THEREAFTER.

(II) OF THE AMOUNTS IN SUBPART (C)(I), AT LEAST 4% SHALL BE DERIVED FROM SOLAR ELECTRIC GENERATION TECHNOLOGIES. AT LEAST ONE-HALF OF THIS 4% SHALL BE DERIVED FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON-SITE AT CUSTOMERS' FACILITIES.

(III) EACH KILOWATT-HOUR OF RENEWABLE ELECTRICITY GENERATED IN COLORADO SHALL BE COUNTED AS 1.25 KILOWATT-HOURS FOR THE PURPOSES OF COMPLIANCE WITH THIS STANDARD.

(IV) TO THE EXTENT THAT THE ABILITY OF A QUALIFYING RETAIL UTILITY TO ACQUIRE ELIGIBLE RENEWABLE ELECTRIC GENERATION IS LIMITED BY A REQUIREMENTS CONTRACT WITH A WHOLESALE ELECTRIC SUPPLIER, THE

QUALIFYING RETAIL UTILITY SHALL ACQUIRE THE MAXIMUM AMOUNT ALLOWED BY THE CONTRACT. FOR ANY SHORTFALLS TO THE AMOUNTS ESTABLISHED BY THE COMMISSION PURSUANT TO PART (C)(I), THE QUALIFYING RETAIL UTILITY SHALL ACQUIRE AN EQUIVALENT AMOUNT OF EITHER (I) RENEWABLE ENERGY CREDITS, (II) DOCUMENTED AND VERIFIED ENERGY SAVINGS THROUGH ENERGY EFFICIENCY AND CONSERVATION PROGRAMS, OR (III) A COMBINATION OF BOTH. ANY CONTRACT ENTERED INTO BY A QUALIFYING RETAIL UTILITY AFTER THE EFFECTIVE DATE OF THIS ARTICLE SHALL NOT CONFLICT WITH THIS ARTICLE.

(D) A SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A QUALIFYING RETAIL UTILITY TO COMPLY WITH THIS STANDARD. THE COMMISSION SHALL ALSO ANALYZE THE EFFECTIVENESS OF UTILIZING ANY REGIONAL SYSTEM OF RENEWABLE ENERGY CREDITS IN EXISTENCE AT THE TIME OF ITS RULEMAKING PROCESS AND DETERMINE IF THE SYSTEM IS GOVERNED BY RULES THAT ARE CONSISTENT WITH THE RULES ESTABLISHED FOR THIS ARTICLE.

(E) A STANDARD REBATE OFFER PROGRAM. EACH QUALIFYING RETAIL UTILITY SHALL MAKE AVAILABLE TO ITS RETAIL ELECTRICITY CUSTOMERS A STANDARD REBATE OFFER OF A MINIMUM OF \$2.00 PER WATT FOR THE INSTALLATION OF ELIGIBLE SOLAR ELECTRIC GENERATION ON CUSTOMERS' PREMISES UP TO A MAXIMUM OF ONE-HUNDRED KILOWATTS PER INSTALLATION. SUCH OFFER SHALL ALLOW CUSTOMER'S RETAIL ELECTRICITY CONSUMPTION TO BE OFFSET BY THE SOLAR ELECTRICITY GENERATED. TO THE EXTENT THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S CONSUMPTION DURING A BILLING MONTH, SUCH EXCESS ELECTRICITY SHALL BE CARRIED FORWARD AS A CREDIT TO THE FOLLOWING MONTH'S CONSUMPTION. TO THE EXTENT THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S CONSUMPTION DURING A CALENDAR YEAR, THE CUSTOMER SHALL BE REIMBURSED BY THE QUALIFYING RETAIL UTILITY AT ITS AVERAGE HOURLY INCREMENTAL COST OF ELECTRICITY SUPPLY OVER THE PRIOR TWELVE MONTH PERIOD. THE QUALIFYING RETAIL UTILITY SHALL NOT APPLY UNREASONABLY BURDENSOME INTERCONNECTION REQUIREMENTS IN CONNECTION WITH THIS STANDARD REBATE OFFER. ELECTRICITY GENERATED UNDER THIS PROGRAM SHALL BE ELIGIBLE FOR THE QUALIFYING RETAIL UTILITY'S COMPLIANCE WITH THIS ARTICLE.

(F) POLICIES FOR THE RECOVERY OF COSTS INCURRED WITH RESPECT TO THESE STANDARDS FOR QUALIFYING RETAIL UTILITIES THAT ARE SUBJECT TO RATE REGULATION BY THE COMMISSION. SUCH POLICIES SHALL INCLUDE:

(I) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN AN EXTRA PROFIT ON THEIR INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS PROVIDE NET ECONOMIC BENEFITS TO CUSTOMERS AS DETERMINED BY THE



COMMISSION. THE ALLOWABLE EXTRA PROFIT IN ANY YEAR SHALL BE THE QUALIFYING RETAIL UTILITY'S MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN PLUS A BONUS LIMITED TO 50% OF THE NET ECONOMIC BENEFIT.

(II) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN THEIR MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN, BUT NO BONUS, ON INVESTMENTS IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS DO NOT PROVIDE A NET ECONOMIC BENEFIT TO CUSTOMERS.

(III) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE ENERGY CONTRACT BETWEEN THE QUALIFYING RETAIL UTILITY AND ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND CONDITIONS SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. ALL CONTRACTS FOR ACQUISITION OF ELIGIBLE RENEWABLE ELECTRICITY SHALL HAVE A MINIMUM TERM OF 20 YEARS. ALL CONTRACTS FOR THE ACQUISITION OF RENEWABLE ENERGY CREDITS FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON SITE AT CUSTOMER FACILITIES SHALL ALSO HAVE A MINIMUM TERM OF TWENTY YEARS.

(IV) A REQUIREMENT THAT QUALIFYING RETAIL UTILITIES CONSIDER PROPOSALS OFFERED BY THIRD PARTIES FOR THE SALE OF RENEWABLE ENERGY AND/OR RENEWABLE ENERGY CREDITS. THE COMMISSION MAY DEVELOP STANDARD TERMS FOR THE SUBMISSION OF SUCH PROPOSALS.

(G) RETAIL RATE IMPACT RULE. THE COMMISSION SHALL ANNUALLY ESTABLISH A MAXIMUM RETAIL RATE IMPACT FOR THIS SECTION OF 50 CENTS (\$0.50) PER MONTH FOR THE AVERAGE RESIDENTIAL CUSTOMER OF A QUALIFYING RETAIL UTILITY. THE RETAIL RATE IMPACT SHALL BE DETERMINED NET OF NEW NON-RENEWABLE ALTERNATIVE SOURCES OF ELECTRICITY SUPPLY REASONABLY AVAILABLE AT THE TIME OF THE DETERMINATION.

(H) ANNUAL REPORTS. EACH QUALIFYING RETAIL UTILITY SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN TO COMPLY WITH THIS ARTICLE INCLUDING THE COSTS AND BENEFITS OF EXPENDITURES FOR RENEWABLE ENERGY. THE REPORT SHALL BE WITHIN THE TIME PRESCRIBED AND IN A FORMAT APPROVED BY THE COMMISSION.

(I) RULES NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE INCLUDING ENFORCEMENT MECHANISMS NECESSARY TO ENSURE THAT EACH QUALIFYING RETAIL UTILITY COMPLIES WITH THIS STANDARD; AND PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION PURSUANT TO SECTION 40-6-109. UNDER NO CIRCUMSTANCES

SHALL THE COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO RETAIL CUSTOMERS.

(2) THE COMMISSION SHALL ESTABLISH ALL RULES CALLED FOR IN SUBSECTIONS (A) THROUGH (G) OF THIS SECTION BY MARCH 31, 2006.

(3) IF A MUNICIPALLY OWNED ELECTRIC UTILITY OR A RURAL ELECTRIC COOPERATIVE IMPLEMENTS A RENEWABLE ENERGY STANDARD SUBSTANTIALLY SIMILAR TO THIS SECTION 40-2-124, THEN THE GOVERNING BODY OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE MAY SELF-CERTIFY ITS RENEWABLE ENERGY STANDARD AND UPON SELF-CERTIFICATION WILL HAVE NO OBLIGATIONS UNDER THIS ARTICLE. THE MUNICIPALLY OWNED UTILITY OR COOPERATIVE SHALL SUBMIT A STATEMENT TO THE COMMISSION THAT DEMONSTRATES SUCH UTILITY OR COOPERATIVE HAS A SUBSTANTIALLY SIMILAR RENEWABLE ENERGY STANDARD. IN ORDER FOR SUCH UTILITY OR COOPERATIVE TO SELF-CERTIFY, SUCH RENEWABLE ENERGY STANDARD SHALL, AT A MINIMUM, MEET THE FOLLOWING CRITERIA:

(A) THE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE LIMITED TO THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(A),

(B) THE PERCENTAGE REQUIREMENTS MUST BE EQUAL TO OR GREATER IN THE SAME YEARS THAN THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(C)(I), AND

(C) THE UTILITY MUST HAVE AN OPTIONAL PRICING PROGRAM IN EFFECT THAT ALLOWS RETAIL CUSTOMERS THE OPTION TO SUPPORT THROUGH UTILITY RATES EMERGING RENEWABLE ENERGY TECHNOLOGIES.

(4) PROCEDURE FOR EXEMPTION AND INCLUSION - ELECTION.

(A) THE BOARD OF DIRECTORS OF EACH QUALIFYING RETAIL UTILITY SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS EXEMPTION FROM SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH EXEMPTION, PROVIDING THAT A MINIMUM OF 25% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

(B) THE BOARD OF DIRECTORS OF EACH MUNICIPALLY OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE NOT SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS INCLUSION IN SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH

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