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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Jennifer Berman, Office of Legislative Legal Services

DATE: January 9, 2020

SUBJECT: Definition of "alternative fuel"

Summary

The term "alternative fuel" is defined for section 25-7-106.8, C.R.S., which concerns the Colorado clean vehicle fleet program; however, all other provisions in that statute have been repealed. Therefore, section 25-7-106.8, C.R.S., consists of only a definition that is not associated with any substantive law. There are, however, four other statutes where the definition of "alternative fuel" in section 25-7-106.8, C.R.S., is cross-referenced.

Section 25-7-106.8, C.R.S., should be repealed and, in conjunction with the repeal, the definition of "alternative fuel" in section 25-7-106.8, C.R.S., should be moved to one of the statutes that cross-references the definition, while the other statutes that cross-reference the definition should be amended to cross-reference the amended statute.

This issue was brought to my attention while working on an interim committee bill.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

As part of an enactment to implement the 1990 amendments to the federal "Clean Air Act," the general assembly enacted S.B. 92-105 in 1992. The bill, in pertinent part, added section 25-7-106.8, C.R.S., to create a Colorado clean vehicle fleet program within the department of public health and environment as an alternative fuel fleet program mandated by the amendments to the federal act. In 2002, all provisions of section 25-7-106.8, C.R.S., were repealed in S.B. 02-198, except for the definition of "alternative fuel" in subsection (1)(a).

The definition of "alternative fuel" in section 25-7-106.8 (1)(a), C.R.S., is:

25-7-106.8. Colorado clean vehicle fleet program. (1) As used in this section, unless the context otherwise requires:

(a) "Alternative fuel" means compressed natural gas, propane, ethanol, or any mixture of ethanol containing eighty-five percent or more ethanol by volume with gasoline or other fuels, electricity, or any other fuels, which fuels may include, but are not limited to, clean diesel and reformulated gasoline so long as these other fuels make comparable reductions in carbon monoxide emissions and brown cloud pollutants as determined by the air quality control commission. "Alternative fuel" does not include any fuel product, as defined in section 25-7-139 (3), that contains or is treated with methyl tertiary butyl ether (MTBE).

The definition of "alternative fuel" is not referred to in any other statute in article 7 of title 25, C.R.S., the air quality control laws. Four other sections of statute, however, cross-reference the definition of "alternative fuel" in section 25-7-106.8, C.R.S. Those statutes are: Section 24-30-1104 (2)(c)(III)(A), C.R.S., regarding the department of personnel's central state motor vehicle fleet system; section 39-22-516.7 (1)(b), C.R.S., regarding a tax credit for innovative motor vehicles; section 39-22-516.8 (1)(c), C.R.S., regarding a tax credit for innovative trucks; and section 42-4-508 (1.5), C.R.S., regarding the gross weight limit for vehicles operating on state highways or bridges.

Because section 25-7-106.8, C.R.S., consists only of a stand-alone definition that is not relied on anywhere in title 25, C.R.S., the section should be repealed. In conjunction with the repeal, one of the four statutes that cross-references the definition of "alternative fuel" in section 25-7-106.8, C.R.S., should be amended to include the definitional language, while the other three statutes are amended to cross-reference that amended statute.

Statutory Charge²

Because section 25-7-106.8, C.R.S., consists of a stand-alone definition of "alternative fuel" that is not tied to any substantive law, section 25-7-106.8, C.R.S., is an obsolete statute and should be repealed under the committee's charge to streamline the statutes pursuant to section 2-3-902 (3), C.R.S. Since, however, four other statutes cross-reference the definition of "alternative fuel" in section 25-7-106.8, C.R.S., one of the four statutes should be amended to include the definition and the cross-references in the other three statutes should be updated as conforming amendments.

Proposed Bill

If the Statutory Revision Committee directs the Office of Legislative Legal Services to prepare a bill draft, we propose substantially the language contained in the accompanying bill draft.

² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.