HB15-1119

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 15-0561	**Date:**	June 16, 2015
Prime Sponsor(s):	Rep. Buck	**Bill Status:**	Postponed Indefinitely
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BILL TOPIC: LOCAL GOVERNMENT FRACKING BAN LIABLE ROYALTIES

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	Potential increase. See State Revenue section.	
State Expenditures	Potential workload increase. See State Expenditures section.	
FTE Position Change		
TABOR Set-Aside	Potential increase.	
Appropriation Required: None.		

* *This summary shows changes from current law under the bill for each fiscal year.*

Summary of Legislation

This bill provides for the compensation of a royalty owner when a local ordinance, resolution, or other policy prohibits the practice of hydraulic fracturing to recover oil and gas within a local government's jurisdiction. The local government is liable to the royalty owner for the value of royalties not received due to the prohibition.

Background

Oil and gas production in Colorado. Colorado has several regions with significant oil and gas production. The most active area of current oil and gas exploration is the Wattenberg Field, centered in Weld County and including parts of surrounding counties. Other regions with substantial oil and gas production include the Piceance Basin and Rangley Field in Northwestern Colorado, and the Ignacio Blanco, a primarily gas-producing resource in Southern Colorado.

State lands. According to the Colorado Constitution, the State Land Board (SLB) in the Department of Natural Resources holds certain state lands in trust and manages these lands for public benefit, including state revenue, subject to local regulations. Within major oil and gas producing regions and throughout the state, the SLB receives royalty payments from oil and gas production on the state lands it holds in trust and manages. Revenue from mineral interests, primarily oil and gas, accounts for over 80 percent of SLB revenue in recent fiscal years.

Local rules. Cities, towns, and counties may enact certain ordinances, resolutions, home rule charter amendments, or other legislation (a local rule) that attempt to restrict hydraulic fracturing within the local jurisdiction. A local rule may regulate oil and gas exploration and recovery, or, in the case of a moratorium, it may suspend local approval of such activities while the issue is studied.

Currently, at least five home rule municipalities and one county in Colorado have adopted such a local rule. The cities of Boulder, Fort Collins, and Longmont, the city and county of Broomfield, and Boulder County have each adopted temporary moratoria on hydraulic fracturing. A local rule in the city of Lafayette permanently bans all forms of drilling. The legality and effect of the local rules in Fort Collins, Lafayette, and Longmont has been challenged in recent legal action.

Royalty values. Estimates of prospective royalty values are based on numerous assumptions, including consideration of the feasibility of drilling, commodity prices, production rates, and royalty owner contributions to the costs of production. As one example, according to a study released in June 2014 by the National Association of Royalty Owners, prohibiting oil and gas development in Boulder County impacts a total of $1 billion in royalty payments to owners of oil and gas rights. Between June 2014 and February 2015, benchmark prices for domestic oil have dropped from approximately $100 per barrel to $50 per barrel and remain unstable.

Assumptions

The fiscal note adopts the following assumptions in its analysis of the impact of the bill on state and local revenue and expenditures:

- The bill applies to any moratorium, temporary or indefinite in term, and any other local rule that affects an operator's ability to recover oil and gas resources using hydraulic fracturing. A temporary moratorium creates liability for at least the effective duration of the local rule.

- If a local rule subject to the bill is repealed or invalidated, the local government may remain liable for lost royalties for the period the local regulation was in effect.

- Though other constitutional and state law claims related to the impairment of property rights may apply, a significant percentage of mineral rights owners affected by a local rule will seek legal recourse under the bill.

- Liability under the bill is enforced through the courts, including state courts and municipal courts with original jurisdiction.

State Revenue

State revenue will potentially increase to the extent that oil and gas royalties paid to the SLB are affected by local rules and the agency pursues compensation from a local government under the bill. No significant SLB revenue is affected by current prohibitions of hydraulic fracturing in local jurisdictions, and any future state revenue under the bill would depend on a local rule impacting a significant amount of undeveloped mineral rights. As a result, the likelihood of a significant increase in state revenue is deemed to be small.

TABOR Impact

To the extent that this bill increases state revenue, it will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Beginning in FY 2015-16, the bill potentially increases workload in trial courts of the Judicial Department. The bill also potentially increases workload for the SLB to pursue compensation for lost royalties under the bill.

Judicial Department. Workload in the Judicial Department will increase, as state courts are the primary venue for the adjudication of lost royalties under the bill. These property rights cases will involve expert testimony and detailed factual inquiry regarding the value of royalties and the extent to which the local rule is responsible for royalties not received. In addition, these cases will tend to accumulate unevenly within the state court system, impacting only judicial districts where a city, town, or county has enacted a local rule concerning hydraulic fracturing. At this time, the overall increase in workload to the Judicial Department is not expected to require new appropriations. However, if a large number of cases are filed in state court, resources required to handle the increase in caseload will be requested through the annual budget process.

Department of Natural Resources — SLB. If the SLB determines that it will pursue lost royalties under the bill, its workload will increase to assemble relevant information and file the claim in court. No increase in workload for the SLB is warranted by current local rules. Pursuing lost royalties on undeveloped SLB mineral rights presents a small chance of increasing costs in future fiscal years.

Local Government Impact

The bill increases expenditures and workload for any city, town, or county that enacts a local rule affecting the payment of royalties to mineral rights owners. To the extent that a city, town, or county is held liable for lost royalties, the increase in expenditures is likely to be substantial.

When an affected mineral rights owner contends that a local rule delays, interrupts, or diminishes the value of royalty payments, the local government will be required to assess its liability under the bill. A city, town, or county will experience increased workload and expend moneys for legal representation, expert consultants, and staff time to manage claims. If a local rule is held to create liability for impaired royalties, the city, town, or county must fund compensation to the extent of that liability. While the overall impact of the bill on cities, towns, and counties is not estimated, the potential expenditure impact of a local rule that impairs royalty payments is millions of dollars for each jurisdiction with such a rule.

To the extent that municipal courts are the venue in which royalty claims are adjudicated, a city or town will also incur increased workload and potential costs for court personnel. The overall increase in municipal court costs depends on the number of jurisdictions, if any, where the municipal court has jurisdiction, as well as the total number of claims brought in each municipal court.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on February 25, 2015.

State and Local Government Contacts

Local Affairs	Natural Resources	Judicial Department
Revenue	Counties	Municipalities
Law	Special Districts	Transportation