1st Draft

Initiative #121
Distribution of Oil and Gas Revenue

Proposition ? proposes amending the Colorado statutes to:

- prohibit the distribution of state revenues related to the development of nonrenewable natural resources to any city, town, or county that limits oil and gas activities within its boundaries.

Summary and Analysis

The state collects revenue from the exploration, development, production, and sale of certain nonrenewable natural resources, including oil, natural gas, oil shale, coal, and various metallic minerals, such as molybdenum and gold. This revenue is collected in the form of taxes, payments from the federal government, and land leases. Most of this money comes from oil and gas activities in the state. A portion of this money pays for state oversight of energy development, but most is distributed to cities, counties, school districts, and private entities in the form of regular payments, grants, or loans.

Sources of oil and gas revenues. The measure identifies three primary sources of affected revenue: state severance taxes, revenues from federal mineral leasing (FML) activities, and State Land Board revenue from energy development. The measure is not anticipated to impact revenue distributions from the State Land Board because most of this money is distributed to local school districts, which do not have authority to make land use decisions related to oil and gas activities. The measure is anticipated to impact revenue distributions from two sources of affected revenue — state severance taxes and revenue from FML activities.

- *Severance taxes* are collected on nonrenewable natural resources removed from the land. Severance taxes are used to fund state oversight of energy development and natural resources and are distributed to cities and counties. The amount distributed to cities and counties is based on a formula and is also made available in the form of grants and loans. In budget year 2012-13, the state collected $118.3 million in severance taxes.

- *FML revenue* is received as a result of energy development activities on federal land in Colorado. The state receives 49 percent of this money, and the remaining 51 percent is retained by the federal government. FML revenue is distributed to schools and local governments and used to fund water projects in the state. In budget year 2012-13, the state collected $120.8 million in FML revenue.

Distribution of oil and gas revenues. The amount of revenue distributed to cities, counties, school districts, and private entities is determined by two state agencies and is based on factors set in state law, such as the number of active wells in an area and the number of industry employees living within the boundaries of a particular local government. Typically, the more oil and gas activity in a region, the greater its share of the state revenue earned from these activities. A city or county with little or no oil and gas activity will see little revenue from the state. What revenue it does receive may come in the form of grants and loans to address the impact of oil and gas activities in neighboring local governments or to offset the impact of a population increase from industry employees living, but not working, within its boundaries.

Role of local governments. Colorado currently has 3,480 active local governments, including cities, towns, counties, special districts, and other political subdivisions of the state. State law generally prohibits the ability of a local government to regulate energy development activities within its boundaries. However, Colorado cities, towns, and counties have the authority to make decisions on how land within their boundaries is used, including regulations concerning zoning, noise, access, and visual impact. Recently, several local communities have enacted restrictions on oil and gas activities, such as hydraulic fracturing (commonly known as fracking), within their boundaries. A ban on fracking effectively limits all oil and gas activity in a region because of the widespread use of this technique to increase production on most wells in Colorado. Pending lawsuits have challenged the legality and effect of these recent bans on oil and gas activities.

The city of Lafayette permanently bans all forms of drilling, and the cities of Boulder, Fort Collins, and Longmont, and the city and county of Broomfield have each enacted a five-year ban on fracking. In budget year 2012-13, $600,000 was distributed to these five local governments according to the state severance tax formula. This figure does not account for any money distributed to these local governments in the form of grants or loans.

Changes under Proposition ?. This measure makes any city, town, or county in which any oil and gas activities have been limited ineligible to receive its share of state revenue from energy development. This includes revenue distributions in the form of regular payments, grants, or loans. Limiting activities may include a temporary or permanent ban on a particular technique used to access oil or natural gas such as fracking, a limit on new drilling, or a permanent ban on all drilling activities within the boundaries of a particular local government.

The measure redistributes money that would have otherwise been distributed to a city, town, or county that imposes limits on oil and gas activities to other eligible local governments. It also prevents a limiting city or county from receiving offsetting revenue from the state, or from creating a special district, in order to recover revenue forfeited as a result of a limit or ban on oil and gas activities. Finally, it reduces the share of revenue distributed to a special district located, in whole or part, within or across the boundaries of a city or county that limits oil and gas activities. A special district is a type of local government without land use authority that is set up to provide

certain services, such as water or fire protection. If the ban on oil and gas activities is lifted, a local government is again eligible to receive its share of state revenue from energy development.

> *For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*
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> http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) The measure creates an equitable system for distributing the state's share of revenue from oil and gas activities to local communities. By preventing money from going to communities that ban such activities, the measure rewards those communities that support an industry that is crucial to Colorado's economy. A local community that acts outside of state law to limit oil and gas activities should not benefit financially, especially when its actions could result in the loss of jobs and state revenue.

2) When a community bans oil and gas activities, it creates a confusing patchwork of energy development regulations that conflict with state policies, and it takes away the rights of individual citizens to develop minerals on their property. Withholding a share of the state's oil and gas revenues creates a disincentive for a local community to ban energy development. The state has a nationally recognized framework for regulating energy development that balances economic interests, the protection of natural resources, and local participation in policy making, and this framework should be preserved.

Arguments Against

1) The measure establishes an overreaching, all-or-nothing policy where state funds can be withheld from a community that limits any amount or type of energy development, even if other activities that contribute to oil and gas revenues are still allowed. A policy that withholds money fails to recognize that communities are impacted by energy development that occurs outside of their boundaries. For example, under this measure a limiting county will not receive funds that could be used to mitigate road impacts or negative air quality, though the county may continue to handle traffic or air pollution associated with oil and gas activity in a neighboring county. The measure also penalizes special districts, such as water districts, which have no control over land use decisions made by cities and counties with overlapping boundaries, but might otherwise apply for grant funds to mitigate oil and gas impacts.

2) A local community may have legitimate reasons to ban one or more types of oil and gas activities and should be free to make decisions about land use within its boundaries without risking the loss of an important source of revenue. For example, a community may decide to prioritize the use of its limited water supply for farming rather than the practice of fracking, which requires large amounts of water. Colorado law has a long tradition of valuing decisions made at the local level, which this measure jeopardizes.

Estimate of Fiscal Impact

(Please Note: A summary of the fiscal impact will be included in this space in the second draft of the analysis, and an official fiscal note will be prepared and placed on the web when the final blue book is sent to voters.)