

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 10, 2015)

Drafting Number: LLS 15-0346	Date: March 6, 2015
Prime Sponsor(s): Sen. Sonnenberg Rep. Becker J.	Bill Status: House SVMA
	Fiscal Analyst: Alex Schatz (303-866-4375)

BILL TOPIC: COMPENSATE OWNERS MINERAL INTERESTS EXTRACTION REGS

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 **reengrossed** bill requires local governments to compensate the owner of an interest in mineral rights (mineral owner) when a local ordinance, resolution, rule, regulation, or other official policy (local rule) reduces the fair market value (FMV) of the owner's mineral interest by at least 60 percent. The bill requires mineral owners and local governments to exchange written notifications as follows:

- mineral owners must notify a local government at least 63 days before commencing new mineral extraction operations within the local government's jurisdiction; and
- after receiving the mineral owner's notification, the local government must provide advance notice to the mineral owner when the local government is considering a local rule that is likely to reduce the mineral owner's FMV by at least 60 percent.

Within seven days of notifying the mineral owner of a pending local rule, a hearing is set to determine the preliminary value of the reduction in FMV. This hearing will be held before a panel of three impartial commissioners appointed by a judge, or, if requested by the mineral owner, it will involve adjudication before the district court or before 6 or 12 land owners as a jury. The preliminary value determined as a result of this hearing may be challenged by the mineral owner if he or she believes the value is too low. Local governments may also post an appeal bond and contest the preliminary value in limited circumstances.

If the mineral owner is owed compensation, the local government may implement its pending local rule by paying the mineral owner the preliminary value, plus the mineral owner's reasonable attorney fees and costs, within seven business days of the hearing. Failure of the local government to pay compensation by this deadline bars the local government from implementing the pending local rule.

Provisions in the bill clarify that partial ownership of a mineral interest, or shared interest in the royalties from a mineral interest, must be equitably apportioned between all affected parties. The bill does not affect any other legal recourse available to owners of private property taken for public use.

Background

Mineral production in Colorado. Mineral production, ranging from clay and gravel pits to precious metal and underground coal mining, occurs in every region of the state. 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. As one measure of mineral values, a study released in June 2014 by the National Association of Royalty Owners asserts that prohibiting oil and gas development in Boulder County would impact a total of \$1 billion in royalty payments. Between June 2014 and February 2015, benchmark prices for domestic crude oil have dropped from approximately \$100 per barrel to \$50 per barrel and remain unstable.

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. The SLB also leases other mineral lands to mining operators. 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 policies (a local rule) that control the process of mineral extraction within the local jurisdiction. For example, 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, 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.

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 mineral interest recognized in Colorado law, including, but not limited to, precious metals; gravel and construction material; and coal, oil and gas, and other energy commodities.
- For cases meeting the threshold impact of 60 percent or more of the FMV of a mineral right, the amount of compensation owed is equal to the diminution in value that will result if the local rule is implemented.
- The bill applies to any moratorium, temporary or indefinite in term, and any other local rule that affects the FMV of a mineral owner's property.

- 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.

State Revenue

State revenue will potentially increase to the extent that the FMV of mineral interests held in trust by 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 diminished mineral rights value.

Judicial Department. Workload in the Judicial Department will increase, as the bill provides that state courts will be the starting point for all adjudication of diminished FMV. Workload for the courts will increase in cases that proceed directly to trial, as well as cases where a judge must appoint a panel of commissioners or land owners to adjudicate preliminary value.

Cases to determine preliminary value or other liability under the bill will involve expert testimony and detailed factual inquiry. 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 impairing the FMV of mineral interests.

At this time, the overall increase in workload to the Judicial Department is not expected to require new appropriations. However, if a significant number of new local rules are enacted, leading to a large number of adjudications under the bill, 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 FMV of mineral interests. 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 owner contends that a local rule diminishes the FMV of his or her mineral interest, the city, town, or county with the local rule 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 require compensation, the city, town, or county must increase expenditures accordingly. While the overall impact of the bill on cities, towns, and counties is not estimated, the potential expenditure impact of a local rule that reduces the FMV of mineral interests by 60 percent or more is millions of dollars for each jurisdiction with such a rule.

As allowed by the bill, a local government may mitigate fiscal impact by considering repeal or modification of a local rule immediately after preliminary value is determined. To the extent that local governments suspend the adoption of local rules that cause impacts on mineral interests, the amount of local expenditures required to provide compensation will be reduced.

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Local Affairs
Revenue
Law

Natural Resources
Counties
Special Districts

Judicial Department
Municipalities
Transportation