

Initiative #178
State and Local Regulation of Oil and Natural Gas Development

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2 ♦ affirm in the state constitution the existing authority of the state and local
3 governments to regulate oil and natural gas development.

4 **Summary and Analysis**

5 Amendment ? establishes in the state constitution the existing authority of the state
6 and local governments to regulate oil and gas development. It affirms the authority of
7 local governments, which include municipalities and counties, to regulate some above
8 ground aspects of oil and natural gas development as long as the regulation does not
9 conflict with state law or regulations. This authority includes the ability to set fair and
10 reasonable fees for inspections and monitoring in order to ensure compliance with local
11 permits.

12 The measure clarifies that state and local governments are prohibited from
13 unreasonably restricting a property owner from accessing his or her surface or mineral
14 property. The state and local governments are also prohibited from imposing restrictions
15 on the access to or development of oil and natural gas resources that make such
16 development technically infeasible or economically impracticable.

17 **State regulation of oil and natural gas.** The Colorado Constitution does not
18 contain specific language related to the regulation of oil and natural gas development.
19 Oil and natural gas development is primarily governed by state statutes and by
20 regulations written and enforced by the Colorado Oil and Gas Conservation Commission
21 (COGCC) in the Colorado Department of Natural Resources. The COGCC is charged
22 with fostering the responsible development, production, and use of oil and natural gas
23 resources in a manner that protects public health, safety, welfare, and the environment.

24 **Local regulation of oil and natural gas.** Under current law, local governments may
25 regulate land use related to oil and natural gas development. The Colorado Supreme
26 Court has determined that local governments may not enact oil and natural gas
27 regulations that conflict with state regulations or that prohibit oil and natural gas
28 development. The COGCC is also allowed to delegate its inspection and monitoring
29 functions, but not its enforcement authority, through an agreement with local
30 governments. Local governments may appoint a local representative to receive
31 information from the COGCC and developers about oil and natural gas activities
32 occurring within their jurisdiction, and they may enter into surface use agreements with
33 oil and natural gas developers to minimize the impact of such activities.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 6, 2018**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

1 **Argument For**

2 1) By affirming in the constitution the authority of the state and local governments to
3 regulate oil and natural gas development, Amendment ? provides certainty for
4 the industry and ensures the continued development of oil and natural gas
5 resources in Colorado. Conflicting state and local regulations make it difficult
6 and expensive for developers to access the state's mineral resources. By
7 clarifying this authority, Amendment ? ensures that the property interests of
8 mineral owners are protected and balanced with the rights of land owners, local
9 governments, and residents.

10 **Argument Against**

11 1) Establishing authority for the regulation of oil and gas development in the
12 constitution makes it more difficult to adapt or respond to local needs and
13 circumstances. Controlling land use and determining the location of industrial
14 activities are core functions of local governments. The location of oil and natural
15 gas wells is one of the few industrial activities that local governments are
16 precluded from regulating through zoning under current law. Placing these
17 provisions in the constitution makes it more difficult to change laws and address
18 the needs of local communities.

19 **Estimate of Fiscal Impact**

20 The measure restates existing statutory law in the state constitution and results in no
21 change in the revenue, expenditures, or workload of state or local governments.