3rd Draft

Initiative #75
Local Government Authority to Regulate Oil and Natural Gas Development

Amendment ? proposes amending the Colorado Constitution to:

- allow county and municipal governments to enact more restrictive regulations on oil and natural gas development and production within their boundaries than those imposed by the state, including limiting, delaying, and prohibiting such development.

Summary and Analysis

Amendment ? expands the authority of counties and municipalities to regulate oil and natural gas development activities within their boundaries. Such activities include the exploration for, and the drilling, producing, and processing of oil or natural gas, including hydraulic fracturing, as well as the treatment and disposal of associated waste products. Amendment ? authorizes local governments to adopt local laws that are more restrictive on oil and natural gas development and production than state laws, including prohibitions; however, local governments may not adopt laws that are less protective of a community's health, safety, general welfare, and environment than laws enacted by the state. If a local government adopts laws that are more restrictive on oil and natural gas development than a state law, or that conflict with state laws, Amendment ? requires that the local law override state law.

State regulation of oil and natural gas. State regulators have primary responsibility for regulating the development of oil and natural gas in Colorado. The Colorado Oil and Gas Conservation Commission (COGCC) in the Colorado Department of Natural Resources is the state agency that establishes and enforces these regulations. The COGCC is charged with fostering the responsible development, production, and use of oil and natural gas resources in a manner that protects public health, safety, and welfare and the environment, and ensuring that the private property rights of surface land owners and mineral owners are protected. In Colorado, surface land and the underlying mineral resources may be owned by different parties. COGCC rules require that oil and gas companies consult with land owners and municipal governments about the location of oil and natural gas wells and related facilities. The commission also consults with the Colorado Department of Public Health and Environment (CDPHE) to consider the health and safety of the public when regulating oil and natural gas operations. The CDPHE regulates air pollution, the discharge of water to surface water bodies, and the disposal of other hazardous waste related to industrial activities, including oil and natural gas operations.

Local regulation of oil and natural gas. Under current law, local governments may regulate land use related to oil and natural gas development, provided such regulations do not conflict with state law. The COGCC is also allowed to delegate its inspection and monitoring functions, but not its enforcement authority, through an agreement with local governments. Local governments may appoint a local representative to receive information from the COGCC and developers about oil and natural gas activities occurring within their jurisdiction, and they may enter into surface use agreements with oil and natural gas developers to minimize the impact of such activities. The state's Supreme Court has determined that towns and counties are prohibited from enacting oil and natural gas regulations that conflict with state regulations or that prohibit oil and natural gas development.

Oil and natural gas resources in Colorado. Geologic formations containing oil and natural gas are found in many areas of Colorado, with some formations underlying multiple local government jurisdictions. Most of the recent development of these resources has been concentrated in five counties, including Weld County — where most of the state's oil production is occurring — and Garfield, La Plata, Rio Blanco, and Las Animas counties, as well as portions of surrounding counties. Oil and natural gas resources are owned or leased by many different private companies, governments, financial institutions, nonprofits, and private individuals.

Oil and natural gas extraction technologies. Technological developments, such as horizontal drilling and hydraulic fracturing, or "fracking," have led to substantial oil and natural gas production increases in Colorado and nationally, as well as an increase in the number of wells and related facilities. Hydraulic fracturing is used for most new wells and involves pumping a mixture of mostly water and sand, and smaller amounts of chemicals, into underground rock layers where oil or natural gas is trapped. The pressure of the water creates small fractures in the rock. The sand holds open the fractures, allowing the oil or natural gas to escape and flow up the well. Hydraulic fracturing enables access to oil and natural gas formations that were previously inaccessible. Horizontal drilling enables oil and natural gas operators to drill multiple wells from a single location to improve their efficiency and minimize surface disturbances.

Oil and natural gas production in Colorado. Oil production in Colorado more than doubled between 2008 and 2013, and doubled again between 2013 and 2015. In 2014, Colorado ranked seventh among the states in domestic oil production and sixth in natural gas production. In 2015, there were over 53,000 active wells in Colorado, a 90 percent increase over the number of active wells in 2005.

Tax revenue from oil and natural gas. Companies that extract mineral resources, including oil and natural gas, coal, and metallic minerals, pay severance taxes to the state. Over the last five years, severance tax collections have ranged from $130 million to $272 million annually, with 95 percent of collections coming from oil and natural gas operations. While oil and natural gas tax collections fluctuate annually with changing energy prices, the state collected $X million in oil and natural gas severance taxes in budget year 2015-16. Under current law, Colorado severance tax revenue is split between state programs and local governments. Oil and natural gas producers also pay local property taxes. In 2015, Colorado oil and natural gas producers paid an estimated $360 million in property taxes to local governments.

For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2016, 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

Arguments For

1) Oil and natural gas development and operations can negatively impact nearby residents, businesses, and other properties through increased noise, traffic, dust, light pollution, and odors, and may also impact public health, safety, and the environment. Some people living near oil and gas operations have reported negative health effects to the CDPHE, including irritation of the eyes, nose, throat, lungs or skin, or other symptoms such as headaches, dizziness, nausea, and vomiting. The state regulatory system has not fully addressed the concerns of people who live or work near oil and natural gas development. Amendment ? empowers local governments to enact laws that more fully protect their communities from the impacts of oil and gas development.

2) The authority to control land use and determine the location of residential, commercial, and industrial activities is a core function of local governments. Amendment ? provides county and municipal governments with the authority to regulate land use activities that may impact the health and safety of their residents. Oil and natural gas development is one of the few industrial activities that local governments are prevented from regulating through zoning. State regulators may have only limited ties to affected communities. Locally elected officials who work and live in communities affected by oil and natural gas development are better positioned to address the concerns of their residents.

Arguments Against

1) The state's regulation of oil and natural gas development and operations is meant to ensure the efficient use of the resources, and to protect public health, safety, welfare, and the environment. Colorado has comprehensive oil and natural gas regulations that have been used as a model by other states and the federal government. Current law effectively ensures that the property interests of mineral owners are considered, along with the rights of surface owners. Allowing neighboring cities and counties to supercede state regulations may create uncertainty and a patchwork of inconsistent regulations. Moreover, most local governments do not have adequate resources or expertise to assume the technical aspects of regulating oil and natural gas, possibly increasing risks for their citizens.

2) Oil and natural gas development is important to Colorado's economy. Local limitations or prohibitions on oil and natural gas development could impact Colorado's economy. In 2015, Colorado's oil and gas industry generated about $9.7 billion in oil

and natural gas production value. Allowing local governments to further restrict the industry may make it more difficult and expensive for developers to access the state's mineral resources, leading to decreased oil and natural gas production. This will diminish the economic benefits the industry provides for Coloradans, including jobs, payments to mineral owners, severance tax revenue to the state, and lower energy prices for consumers.

Estimate of Fiscal Impact

State government revenue and spending. Amendment ? is expected to affect the amount of severance tax revenue that state government collects in the future. The measure's revenue impact will depend on the type of regulations, if any, that local governments enact, and the effects those regulations have on overall production of oil and gas resources. For example, an outright prohibition of oil and gas development will reduce overall severance tax revenue, since the resource must be removed from the ground before the tax may be levied. Other local restrictions may still allow oil and gas developers to access the resource and will have less impact on state tax revenue. Since these conditions are unknowable, the change in state severance tax revenue cannot be estimated.

Department of Natural Resources. Severance tax revenue received by the state funds both general operating expenses of state government and specific programs in the Department of Natural Resources, including water supply project grants, low-income energy assistance, control of invasive species, and a variety of other programs.

Local government revenue and spending. Amendment ? is expected to affect the amount of severance tax revenue that state government collects and then shares with those local governments most directly impacted by oil and natural gas development. The measure's impact on local revenue and expenditures will depend on the type of regulations, if any, a local government chooses to adopt. Local regulatory programs will increase a local government's expenditures and could also impact the amount of property taxes collected by counties. Since the type and location of potential regulations adopted at the local level are unknowable, the change in local revenue and expenditures cannot be estimated.