HB 18-1150

Legislative
Council Staff
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FINAL FISCAL NOTE

Drafting Number:	LLS 18-0891	**Date:**	June 11, 2018
Prime Sponsors:	Rep. Buck	**Bill Status:**	Postponed Indefinitely
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Bill Topic: LOCAL GOV LIABLE FRACKING BAN OIL & GAS MORATORIUM

Summary of Fiscal Impact:

- ☒ State Revenue *(conditional)*
- ☒ State Expenditure *(conditional)*
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government *(conditional)*
- ☐ Statutory Public Entity

The bill requires that local governments that place a moratorium on oil and gas development compensate mineral owners for the costs, damages, or loss of fair market value that result from the moratorium. Increased state revenue and expenditures and local fiscal impacts are conditional on a local government restricting the use of hydraulic fracturing.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

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, or places a moratorium on oil and gas activities. The local government is liable to the mineral interest owner for the value of the mineral interest not received due to the prohibition or moratorium. The bill also requires that a local government that enacts a moratorium on oil and gas activities compensate oil and gas operators, mineral lessees, and royalty owners for all costs, damages, and losses of fair market value associated with the moratorium.

Background

Oil and gas production in Colorado. Colorado has several regions with significant oil and gas production. Currently, the most active area is the Wattenberg Field within the Julesberg Basin, centered in Weld County. Other high activity areas include the Piceance Basin in Northwestern Colorado, and the San Juan Basin in Southern Colorado.

State lands. The State Land Board (SLB) in the Department of Natural Resources receives royalty payments from oil and gas production on the state lands it holds and manages. Revenue from mineral interests, primarily oil and gas, have accounted for over 85 percent of SLB revenue in recent fiscal years.

Local rules. Cities, towns, and counties may enact certain rules that attempt to restrict hydraulic fracturing. 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. In 2016, the Colorado Supreme Court overturned local Front Range cities' limits on oil and gas development, including local limitations on oil and gas development passed in Fort Collins, Loveland, Longmont, and Lafayette. In these cases, the Supreme Court ruled that local limitations were preempted by state law.

Assumptions

Under current law, state regulation of oil and gas development preempts local regulation. Because of this, as well as recent Supreme Court decisions upholding state preeminence, this fiscal note assumes that local ordinances prohibiting hydraulic fracturing, or moratoriums on oil and gas activity within a local government's jurisdiction will be rare or non-existent unless and until the state's constitution is amended.

The state impacts described below are conditional; a local government will experience these impacts only if that government acts via ordinance or formal policy to limit the practice of hydraulic fracturing, or places a moratorium on oil and gas activities in direct contradiction of the state constitution.

State Revenue

The SLB receives royalty payments for oil and gas production on its lands. The bill will allow the SLB to seek reimbursements for lost royalty revenue should a local government adopt an ordinance or policy to prohibit the practice of hydraulic fracturing, which has a conditional revenue impact for the SLB. No significant SLB revenue has been affected by previous prohibitions in local jurisdictions along the Front Range, since no significant amount of SLB lands overlap these local jurisdictions.

State Expenditures

Judicial Department. Beginning in FY 2018-19, the bill potentially increases workload in the trial courts of judicial districts where a local government prohibits hydraulic fracturing. Should such an ordinance become implemented without appeal, district courts will be required to determine reimbursement amounts to be paid to compensate oil and gas operators, mineral lessees, and royalty owners. This increase is conditional; workload and related expenditures only increase if a local government decides to restrict the practice of hydraulic fracturing within its jurisdiction.

Local Government Impact

The bill potentially increases expenditures and workload for any local government that prohibits hydraulic fracturing in the future, or places a moratorium on oil and gas activities. This increase includes paying the amount of lost royalties as a result of the prohibition, the fair market value of the unsevered minerals, and other costs and damages incurred by oil and gas operators, mineral leases, and other royalty holders. Local governments will also have increased work and related legal expenses to adjudicate these cases. The workload of municipal courts may also increase in some cases. This fiscal note assumes that local governments are unlikely to enact future bans of hydraulic fracturing, and makes no estimate of the value of minerals or royalties potentially affected.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on March 7, 2018.

State and Local Government Contacts

Counties	Local Affairs
Municipalities	Natural Resources