Initiative # 64

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: April 16, 2019 **Fiscal Analyst:** Max Nardo (303-866-4776)

LCS TITLE: OIL AND GAS REGULATION

Fiscal Impact Summary		**FY 2019-20**	**FY 2020-21**
Revenue	Cash Funds	($1.5 million)	($3.0 million)
Expenditures	Cash Funds	($480,508)	($2,520,531)

Disclaimer. *This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure recreates and renames the state's oil and gas regulatory body and modifies its mandate. It changes the composition of the commission; alters how the agency is financed and exempts the agency's funding from state revenue limits; and preempts any law conflicting with the measure's provisions. It also repeals Senate Bill 19-181.

Colorado's oil and gas regulatory body. The measure replaces the Colorado Oil and Gas Conservation Commission (COGCC) with the Independent Oil and Gas Regulatory Commission (IOGRC). The staff of the COGCC become the staff of the IOGRC, and the new agency is authorized to use the budget that was allocated to the COGCC for FY 2019-20.

Funding Source. The measure modifies the two primary funding sources for oil and gas regulation. Under the measure, revenue from the existing conservation levy is deposited into the renamed Oil and Gas Regulation and Environmental Response Fund. Money in this fund is continuously appropriated to the IOGRC. Severance taxes, the agency's other primary funding source, will be transferred into the newly created Oil and Gas Regulatory Commission Operating Fund, which is subject to annual appropriation by the state legislature. Both funds are designated as voter-approved revenue changes and exempt from the state's revenue limit under TABOR. The measure creates the Oil and Gas Local Regulatory Fund, which will be administered by the IOGRC to support local governments in oil and gas oversight activity.

Commissioners. The measure modifies the composition of the commission and the method by which commissioners are appointed. The measure reduces the size of the commission from seven salaried commissioners to three volunteer commissioners. Commissioners are appointed to four-year terms by a panel of retired judges and justices selected from a list of nominees prepared by the governor, and one or more of the highest ranking members of the Senate. The IOGRC is required to adopt the rules of the COGCC as they existed on December 31, 2018, as its initial rules and policies. After April 1, 2020, the IOGRC must conduct a systematic evaluation of the former COGCC rules it adopted, and consider amending the rules consistent with the revised mission of the agency.

Regulatory mandate. The measure repeals SB 19-181 and reenacts state law that existed prior to the enactment of that bill with certain modifications. These provisions include:

- establishing that an area of oil and gas development is an area of state interest, unless identified otherwise by the IOGRC;
- directing the agency to foster and regulate the development of oil and gas, and requiring the IOGRC to account for cost effectiveness and technical feasability in rules to protect wildlife;
- directing the IOGRC to balance private property rights, including both surface and mineral; input and priorities of affected local communities; and the protection of public health, safety and welfare, including the environment and wildlife resources;
- exempting oil and gas production from local noise ordinances;
- allowing the IOGRC to issue a permit without the operator filing an application with a local government first;
- capping drilling permit and other service fees at $200;
- setting financial assurance requirements;
- establishing protocols for pooling orders, including allowing the IOGRC to create a pooling order at the request of any interested person in the absence of voluntary pooling; and
- establishing that landowner or tenant consent is required for certain permit-specific activity to minimize the adverse impacts on wildlife resources.

Background

Financing oil and gas regulation. Under current law, the COGCC's two primary funding sources are a conservation levy on oil and gas production and severance taxes. The COGCC is authorized to set a charge on the value of oil and gas production as necessary to fund its expenses, up to a cap of 1.7 mills ($0.0017 per dollar value). In FY 2017-18, the levy generated $10.4 million in revenue. The levy was increased to its current rate of 1.1 mills in April of 2018. The previous rate of 0.7 mills was effective from July of 2007 through March of 2018. Severance taxes are appropriated annually to the COGCC in an amount up to 35 percent of the total money in the Severance Tax Operational Fund. Both of these sources are subject to the state revenue limit under TABOR. These fund sources support the agencies staff of about 135 FTE.

Senate Bill 19-181. This bill was passed by the General Assembly during the 2019 legislative session and signed by the Governor on April 16, 2019. Senate Bill 19-181 expands the regulatory charge of the COGCC related to oil and gas production to place a greater emphasis on health and safety, and allows local governments to also regulate oil and gas operations within their jurisdictions.

State Revenue

By repealing Senate Bill 19-181, the estimated revenue impacts of that legislation are reversed as of January 1, 2020, if this measure is approved by voters. This would result in a reduction in fee revenue to the Department of Natural resources of about $1.5 million in FY 2019-20 (a half-year impact) and $3 million in FY 2020-21 and future years.

The measure changes the destination of conservation levy revenue and severance taxes to newly created or newly renamed cash funds. While this change does not directly affect the amount of revenue collected, the measure excludes these revenue sources from the state revenue limit under TABOR.

State Expenditures

By repealing Senate Bill 19-181, the estimated expenditure impacts of that legislation are reversed as of January 1, 2020, if this measure is approved by voters. Specifically, expenditures would be reduced by $480,508 and 3.5 FTE in FY 2019-20 (a half-year impact) and $2,520,531 and 16 FTE in FY 2020-21. These reductions in expenditures in the Department of Natural Resources would eliminate the expanded staffing at the COGCC, commissioner salaries, rulemaking, legal services, and other costs that would otherwise be incurred under Senate Bill 19-181. The reductions also include savings for Colorado Parks and Wildlife.

Other changes in the measure have a minimal impact on state expenditures. The three members of the selection panel are eligible to receive a per diem allowance as set by the General Assembly for each day in attendance at panel meetings and reimbursement for expenses. The fiscal note assumes the impact will be minimal. Additionally, the Oil and Gas Regulation and Environmental Response Fund is designated as continuously appropriated, which gives the IOGRC flexibility to spend money in the fund without an annual appropriation, but does not inherently change the amount of money that will be spent over time.

The measure also increases workload for the Judicial Department and the nonpartisan staff of the General Assembly's Legislative Council and Office of Legislative Legal Services to assist the selection panel. This work can be accomplished within existing appropriations.

Local Government

This measure impacts local governments in several ways. First, the Oil and Gas Local Regulatory Fund, created by the measure, represents a potential source of revenue for local governments. As drafted, the measure does not establish a source of revenue to deposit into the fund; therefore, no specific impact is estimated. Second, repealing Senate Bill 19-181 will reduce local control and decision-making authority over oil and gas development, which eliminates various impacts that potentially arise for local governments under that bill. Local impacts under Senate Bill 19-181 depend on the type of regulations, if any, a local government chooses to adopt.

Economic Impacts

By repealing Senate Bill 19-181, the measure reduces fees and regulatory costs on oil and gas development, which may increase oil and gas activity. Additionally, this measure may increase oil and gas development by making changes to the mission and structure of the new oil and gas regulatory body.

To the extent that the measure increases development, there will be more oil and gas employment, greater demand for associated services, increased rent and royalty income to mineral owners, increased profits for operators, and increased state and local government tax revenue. Increased oil and gas development may have adverse health and environmental impacts, which may impact employment or industry activity in other areas of the economy.

Effective Date

If approved by voters at the 2019 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed, or January 1, 2020, whichever is later.

State and Local Government Contacts

Natural Resources

Abstract of Initiative 64: OIL AND GAS REGULATION

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 16, 2019, identifies the following impacts:

State revenue. By repealing Senate Bill 19-181, this measure reverses the revenue impacts of that legislation. This will result in a reduction in fee revenue to the Department of Natural Resources of $1.5 million in FY 2019-20 and $3.0 million in FY 2020-21. Other revenue impacts are minimal.

State expenditures. By repealing Senate Bill 19-181, this measure reverses the expenditure impacts of that legislation. This will result in reduced expenditures by the Department of Natural Resources of $480,508 and 3.5 FTE in FY 2019-20 and $2,520,531 and 16 FTE in FY 2020-21. Other expenditure impacts, including compensation for selection panel members and workload for various agencies, are minimal.

Economic impacts. By repealing Senate Bill 19-181, this measure reduces fees and regulatory costs on oil and gas development, which may increase oil and gas activity. Additionally, this measure may increase oil and gas development by making changes to the mission and structure of the new oil and gas regulatory body.

To the extent that the measure increases development, there will be more oil and gas employment, greater demand for associated services, increased rent and royalty income to mineral owners, increased profits for operators, and increased state and local government tax revenue. Increased oil and gas development may have adverse health and environmental impacts, which may impact employment or industry activity in other areas of the economy.