

Grand Junction Sentinel

Education foundations angling to raise severance tax

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By Mike Saccone, The Daily Sentinel

If two Front Range education foundations have their way, voters will decide in November whether Colorado's severance tax should be raised and more of those dollars should flow to school construction.

The four ballot titles, filed Thursday with Colorado Legislative Council, would eliminate a tax credit for energy producers and, to varying degrees, devote portions of the revenues to local communities, school construction and legislative projects.

Under each of the constitutional amendments, filed by representatives of the Donnell-Kay Foundation and the Colorado Children's Campaign, producers could no longer claim an "ad valorem" property tax credit on their severance tax payments.

The credit, which allows an energy producer to claim 87.5 percent of its prior year's property tax payment against its severance tax burden, can virtually eliminate a producer's severance tax burdens.

Tony Lewis, executive director of the Donnell-Kay Foundation, said his organization put forth the four ballot titles because of the state's growing education construction needs and the state's relatively low tax rate.

"From our look at severance tax, we think the people of Colorado aren't getting a fair deal," Lewis said. "We're just letting our natural resources go out without collecting much tax revenue off them, and that's not right."

Because of the property tax credit, the effective severance tax rate floats around 2 percent instead of the 5.7 percent in statute, according to a Nov. 15 memo from the Colorado Legislative Council.

Lewis said with the abolition of the property tax credit, there will be more than enough mineral funds lying around to fund other programs in addition to local energy impacts.

In each of the ballot measures, roughly 25 percent of all severance tax dollars will be returned to energy-affected communities. The other 75 percent is divided between school construction, the state education fund and miscellaneous legislative proposals.

Lewis said the Donnell-Kay Foundation felt it important to have the spending mandates in the Constitution and not in statute because of the message it would send.

"Quite honestly, K-12 capital (construction) and higher ed they've never been adequately addressed by the Legislature, ever," he said. "We want to give legislators the understanding that these things are really important, a state responsibility. We're not willing to let that go forward and then watch it get gutted by strong-arm tactics by lobbyists."

Rep. Kathleen Curry, D-Gunnison, said she could support eliminating the "ad valorem" tax credit, provided the proposals direct sufficient severance tax revenues to energy-affected communities.

“Personally, having looked at this issue for the last several years, I feel that the tax credit, from an administrative standpoint, is really unwieldy,” Curry said. “Severance tax is a volatile revenue stream as it is, and the tax credit, which is unique to Colorado, makes it even more volatile, so I think we need to wean ourselves off that credit over time.”

Curry said she was cautious about the ballot measures’ local diversion of roughly a quarter of all tax receipts, but a comprehensive impact study from the Department of Local Affairs would settle that question.

Ken Wonstolen, general counsel for the Colorado Oil and Gas Association, said unwinding the state’s severance tax structure could have a number of unintended consequences.

Wonstolen said the property tax credit originally was established to create a relatively uniform tax rate for producers across various counties, whose tax levels could vary significantly.

“The difficulty, I think, in unwinding that system is that you get very disparate impacts on producers county by county,” Wonstolen said.

He said eliminating the property tax credit “in one fell swoop” would force producers in higher tax-rate counties to pay more than their operations in low-tax counties.

Wonstolen said the Colorado Oil and Gas Association does not have a blanket position on raising the severance tax rate, and it would have to examine Lewis’ ballot titles before taking a position.

Rep. Bernie Buescher, D-Grand Junction, said whatever merit there might be in Lewis’ proposals, inserting tax policy into the Colorado Constitution is always a poor choice.

“If there’s a mistake in it, it is extraordinarily difficult to fix it,” Buescher said.

He said Colorado’s experience with constitutional budget policies has been nothing short of troublesome, citing the competing needs of Amendment 23, the Gallagher Amendment and the Taxpayer’s Bill of Rights.

“The world changes from time to time, and you have no flexibility to deal with it,” Buescher said.

He said a better way to confront reform would be an interim committee or a special legislative task force that could bring in every stakeholder to hash out a deal that has no unintended consequences.

“Tax policy is tough stuff,” Buescher said. “It deserves careful, careful analysis.”

To view the Donnell-Kay Foundation and Colorado Children’s Campaign’s ballot proposals and others submitted this year, visit: www.state.co.us/gov_dir/leg_dir/lcsstaff/balpage.htm.

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