First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0973.01 Thomas Morris x4218 **SENATE BILL 19-181**

SENATE SPONSORSHIP

Fenberg,

HOUSE SPONSORSHIP

Becker,

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PUBLIC WELFARE PROTECTIONS REGARDING**
102 **THE CONDUCT OF OIL AND GAS OPERATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill enhances local governments' ability to protect public health, safety, and welfare and the environment by clarifying, reinforcing, and establishing their regulatory authority over the surface impacts of oil and gas development.

Current law specifies that local governments have so-called "House Bill 1041" powers, which are a type of land use authority over oil

and gas mineral extraction areas, only if the Colorado oil and gas conservation commission (commission) has identified a specific area for designation. **Sections 1 and 2** of the bill repeal that limitation.

Section 3 directs the air quality control commission to adopt rules to:

- Require an oil and gas operator of an oil and gas facility to install continuous emission monitoring equipment at the facility to monitor for hazardous air pollutants as specified by the commission by rule, as well as for methane and volatile organic compounds; and
- Minimize emissions of methane and other hydrocarbons and nitrogen oxides from the entire oil and gas fuel cycle.

Section 4 clarifies that local governments have land use authority to regulate the siting of oil and gas locations and to regulate land use and surface impacts, including the ability to inspect oil and gas facilities; impose fines for leaks, spills, and emissions; and impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.

Section 5 repeals an exemption for oil and gas production from counties' authority to regulate noise.

The remaining substantive sections of the bill amend the "Oil and Gas Conservation Act" (Act). The legislative declaration for the Act states that it is in the public interest to "foster" the development of oil and gas resources in a manner "consistent" with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources; this has been construed to impose a balancing test between fostering oil and gas development and protecting the public health, safety, and welfare. **Section 6** states that the public interest is to "regulate" oil and gas development to "protect" those values.

Currently, the Act defines "waste" to include a diminution in the quantity of oil or gas that ultimately may be produced. **Section 7** excludes from that definition the nonproduction of oil or gas as necessary to protect public health, safety, and welfare or the environment. Section 7 also repeals the requirement that the commission take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.

The 9-member commission currently includes 3 members who must have substantial experience in the oil and gas industry and one member who must have training or experience in environmental or wildlife protection. **Section 8** reduces the number of industry members to one and requires one member with training or substantial experience in wildlife protection; one member with training or substantial experience in environmental protection; one member with training or substantial

experience in soil conservation or reclamation; one member who is an active agricultural producer or a royalty owner; and one member with training or substantial experience in public health. **Section 9** requires the director of the commission to hire up to 2 deputy directors.

The Act currently specifies that the commission has exclusive authority relating to the conservation of oil or gas. **Section 10** clarifies that nothing in the Act alters, impairs, or negates the authority of:

- The air quality control commission to regulate the air pollution associated with oil and gas operations;
- The water quality control commission to regulate the discharge of water pollutants from oil and gas operations;
- The state board of health to regulate the disposal of naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials from oil and gas operations;
- The solid and hazardous waste commission to regulate the disposal of hazardous waste and exploration and production waste from oil and gas operations; or
- A local government to regulate land use related to oil and gas operations, including specifically the siting of an oil and gas location.

Currently, an operator first gets a permit from the commission to drill one or more wells within a drilling unit, which is located within a defined area, and then notifies the applicable local government of the proposed development and seeks any necessary local government approval. **Section 11** requires operators to file, with the application for a permit to drill, either: Proof that the operator has already filed an application with the affected local government to approve the siting of the proposed oil and gas location and of the local government's disposition of the application; or proof that the affected local government does not regulate the siting of oil and gas locations. Section 11 also specifies that the commission and the director shall not issue a permit until the commission has promulgated every rule required to be adopted by oil and gas bills enacted in 2019 and the rules have become effective; except that the director may issue a permit if the director determines that the permit does not require additional analysis to ensure the protection of public health, safety, and welfare or the environment or require additional local government or other state agency consultation.

Pursuant to commission rule, an operator may submit a statewide blanket financial assurance of $60,000 for fewer than 100 wells or $100,000 for 100 or more wells. Section 11 directs the commission to adopt rules that require financial assurance sufficient to provide adequate coverage for all applicable requirements of the Act. Current law allows the commission to set numerous fees used to administer the Act and sets a $200 or $100 cap on the fees. Section 11 eliminates the caps and

requires the commission to set a permit application fee in an amount sufficient to recover the commission's reasonably foreseeable direct and indirect costs in conducting the analysis necessary to assure that permitted operations will be conducted in compliance with all applicable requirements of the Act.

Current law gives the commission the authority to regulate oil and gas operations so as to prevent and mitigate "significant" adverse environmental impacts to the extent necessary to protect public health, safety, and welfare, taking into consideration cost-effectiveness and technical feasibility. Section 11 requires the commission to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations. Section 11 also requires the commission to adopt rules that require alternate location analyses for oil and gas facilities that are proposed to be located near populated areas and that evaluate and address the cumulative impacts of oil and gas development. Finally, section 11 directs the commission to promulgate rules to:

- Ensure proper wellhead integrity of all oil and gas production wells, including the use of nondestructive testing of well joints and requiring certification of oil and gas field welders;
- Allow public disclosure of flowline information and to evaluate and determine when a deactivated flowline must be inspected before being reactivated; and
- Evaluate and determine when inactive and shut-in wells must be inspected before being put into production or used for injection.

Current law authorizes "forced" or "statutory" pooling, a process by which "any interested person", typically an operator who has at least one lease or royalty interest, may apply to the commission for an order to pool oil and gas resources located within a particularly identified drilling unit. After giving notice to interested parties and holding a hearing, the commission can adopt a pooling order to require an owner of oil and gas resources within the drilling unit who has not consented to the application (nonconsenting owner) to allow the operator to produce the oil and gas within the drilling unit notwithstanding the owner's lack of consent. **Section 12** requires that the owners of more than 50% of the mineral interests to be pooled must have joined in the application for a pooling order and that the application include either: Proof that the applicant has already filed an application with the affected local government to approve the siting of the proposed oil and gas facilities and of the local government's disposition of the application; or proof that the affected local government does not regulate the siting of oil and gas facilities.

Section 12 also specifies that the operator cannot use the surface owned by a nonconsenting owner without permission from the nonconsenting owner.

Current law also sets the royalty that a nonconsenting owner is entitled to receive at 12.5% of the full royalty rate until the consenting owners have been fully reimbursed (out of the remaining 87.5% of the nonconsenting owner's royalty) for their costs. Section 12 raises a nonconsenting owner's royalty rate during this pay-back period from 12.5% to 15% and makes a corresponding reduction of the portion of the nonconsenting owner's royalty from which the consenting owners' costs are paid.

Current law requires the commission to ensure that the 2-year average of the unobligated portion of the oil and gas conservation and environmental response fund does not exceed $6 million and that there is an adequate balance in the environmental response account in the fund to address environmental response needs. **Section 13** directs the commission to ensure that the unobligated portion of the fund does not exceed 50% of total appropriations from the fund for the upcoming fiscal year and that there is an adequate balance in the account to support the operations of the commission and to address environmental response needs.

Section 15 amends preemption law by specifying that both state agencies and local governments have authority to regulate oil and gas operations and establishes that, where there is a conflict in the exercise of that authority, the more protective standard as to health, safety, and welfare, the environment, and wildlife resources controls.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-65.1-202, **repeal**
3 (1)(d) as follows:

4 **24-65.1-202. Criteria for administration of areas of state**
5 **interest.** (1) (d) ~~Unless an activity of state interest has been designated~~
6 ~~or identified or unless it includes part or all of another area of state~~
7 ~~interest, an area of oil and gas development shall not be designated as an~~
8 ~~area of state interest unless the state oil and gas conservation commission~~
9 ~~identifies such area for designation.~~

10 **SECTION 2.** In Colorado Revised Statutes, 24-65.1-302, **repeal**
11 (3) as follows:

24-65.1-302. Functions of other state agencies. (3) ~~Pursuant to section 24-65.1-202 (1)(d), the oil and gas conservation commission of the state of Colorado may identify an area of oil and gas development for designation by local government as an area of state interest.~~

SECTION 3. In Colorado Revised Statutes, 25-7-109, **add** (10) as follows:

25-7-109. Commission to promulgate emissions control regulations. (10) (a) THE COMMISSION SHALL ADOPT RULES TO MINIMIZE EMISSIONS OF METHANE AND OTHER HYDROCARBONS AND NITROGEN OXIDES FROM THE ENTIRE OIL AND GAS FUEL CYCLE.

(b) (I) AN OIL AND GAS OPERATOR OF AN OIL AND GAS FACILITY SHALL INSTALL CONTINUOUS EMISSION MONITORING EQUIPMENT AT THE FACILITY TO MONITOR FOR:

(A) HAZARDOUS AIR POLLUTANTS SPECIFIED BY THE COMMISSION BY RULE;

(B) METHANE; AND

(C) VOLATILE ORGANIC COMPOUNDS.

(II) THE COMMISSION MAY, BY RULE, PHASE IN THE REQUIREMENT TO COMPLY WITH THIS SUBSECTION (10)(b) ON THE BASES OF PRODUCTION CAPABILITY, TYPE AND AGE OF OIL AND GAS FACILITY, AND COMMERCIAL AVAILABILITY OF CONTINUOUS MONITORING EQUIPMENT. IF THE COMMISSION PHASES IN THE REQUIREMENT TO COMPLY WITH THIS SUBSECTION (10)(b), IT SHALL INCREASE THE REQUIRED FREQUENCY OF INSPECTIONS AT FACILITIES THAT ARE SUBJECT TO THE PHASE-IN UNTIL THE FACILITIES ACHIEVE CONTINUOUS EMISSION MONITORING.

(c) NOTWITHSTANDING THE GRANT OF AUTHORITY TO THE OIL AND GAS CONSERVATION COMMISSION IN ARTICLE 60 OF TITLE 34, INCLUDING

SPECIFICALLY SECTION 34-60-105 (1), THE COMMISSION MAY REGULATE AIR POLLUTION FROM OIL AND GAS OPERATIONS AND OIL AND GAS FACILITIES, INCLUDING DURING CONSTRUCTION, DRILLING, AND COMPLETION ACTIVITIES.

SECTION 4. In Colorado Revised Statutes, 29-20-104, **amend** (1) introductory portion, (1)(g), and (1)(h); and **add** (1)(i) and (2) as follows:

29-20-104. Powers of local governments - definition. (1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section ~~shall~~ DOES not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(g) Regulating the use of land FOR RESIDENTIAL, COMMERCIAL, RECREATIONAL, INDUSTRIAL, AND OTHER PURPOSES, INCLUDING MINERAL RESOURCE DEVELOPMENT, on the basis of the impact ~~thereof~~ OF THE USE on the community or surrounding areas; ~~and~~

(h) ~~Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.~~ REGULATING OIL AND GAS OPERATIONS TO ADDRESS:

(I) LAND USE;

(II) THE MINIMIZATION OF ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE. FOR PURPOSES OF THIS SUBSECTION (1)(h)(II), "MINIMIZATION OF ADVERSE IMPACTS" MEANS TO:

(A) AVOID ADVERSE IMPACTS FROM OIL AND GAS OPERATIONS;

1 AND

2 (B) MINIMIZE AND MITIGATE THE EXTENT AND SEVERITY OF THOSE
3 IMPACTS THAT CANNOT BE AVOIDED;

4 (III) THE LOCATION AND SITING OF OIL AND GAS FACILITIES AND
5 OIL AND GAS LOCATIONS, AS THOSE TERMS ARE DEFINED IN SECTION
6 34-60-103 (6.2) AND (6.4);

7 (IV) IMPACTS TO PUBLIC FACILITIES AND SERVICES;

8 (V) WATER QUALITY AND SOURCE, NOISE, VIBRATION, ODOR,
9 LIGHT, DUST, AIR EMISSIONS AND AIR QUALITY, LAND DISTURBANCE,
10 RECLAMATION PROCEDURES, CULTURAL RESOURCES, EMERGENCY
11 PREPAREDNESS AND COORDINATION WITH FIRST RESPONDERS, SECURITY,
12 AND TRAFFIC AND TRANSPORTATION IMPACTS;

13 (VI) FINANCIAL SECURITIES, INDEMNIFICATION, AND INSURANCE
14 AS APPROPRIATE TO ENSURE COMPLIANCE WITH THE REGULATIONS OF THE
15 LOCAL GOVERNMENT; AND

16 (VII) ALL OTHER NUISANCE-TYPE EFFECTS OF OIL AND GAS
17 DEVELOPMENT; AND

18 (i) OTHERWISE PLANNING FOR AND REGULATING THE USE OF LAND
19 SO AS TO PROVIDE PLANNED AND ORDERLY USE OF LAND AND PROTECTION
20 OF THE ENVIRONMENT IN A MANNER CONSISTENT WITH CONSTITUTIONAL
21 RIGHTS.

22 (2) TO IMPLEMENT THE POWERS AND AUTHORITY GRANTED IN
23 SUBSECTION (1)(h) OF THIS SECTION, LOCAL GOVERNMENTS HAVE THE
24 AUTHORITY TO:

25 (a) INSPECT ALL FACILITIES SUBJECT TO LOCAL GOVERNMENT
26 REGULATION;

27 (b) IMPOSE FINES FOR LEAKS, SPILLS, AND EMISSIONS; AND

(c) IMPOSE FEES ON OPERATORS OR OWNERS TO COVER THE REASONABLY FORESEEABLE DIRECT AND INDIRECT COSTS OF PERMITTING AND REGULATION AND THE COSTS OF ANY MONITORING AND INSPECTION PROGRAM NECESSARY TO ADDRESS THE IMPACTS OF DEVELOPMENT AND TO ENFORCE LOCAL GOVERNMENTAL REQUIREMENTS.

SECTION 5. In Colorado Revised Statutes, 30-15-401, **amend** (1) introductory portion, (1)(m)(II) introductory portion, and (1)(m)(II)(B) as follows:

30-15-401. General regulations - definitions. (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article 15, the board of county commissioners ~~has the power to~~ MAY adopt ordinances for control or licensing of those matters of purely local concern that are described in the following enumerated powers:

(m) (II) Ordinances enacted to regulate noise on public and private property pursuant to ~~subparagraph (I) of this paragraph (m) shall~~ SUBSECTION (1)(m)(I) OF THIS SECTION DO not apply to:

(B) Property used for: Manufacturing, industrial, or commercial business purposes; AND public utilities regulated pursuant to title 40. ~~C.R.S.; and oil and gas production subject to the provisions of article 60 of title 34, C.R.S.~~

SECTION 6. In Colorado Revised Statutes, 34-60-102, **amend** (1)(a) introductory portion, (1)(a)(I), and (1)(b) as follows:

34-60-102. Legislative declaration. (1) (a) It is declared to be in the public interest AND THE COMMISSION IS DIRECTED to:

(I) ~~Foster~~ REGULATE the ~~responsible, balanced~~ development ~~production, and utilization~~ of the natural resources of oil and gas in the

state of Colorado in a manner ~~consistent with protection of~~ THAT PROTECTS public health, safety, and welfare, including protection of the environment and wildlife resources;

(b) It is ~~not~~ NEITHER the intent nor the purpose of this ~~article~~ ARTICLE 60 to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this ~~article~~ ARTICLE 60 to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES AND THE prevention of waste ~~consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources~~ AS SET FORTH IN SECTION 34-60-106 (2.5) AND (3)(a), and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production ~~therefrom~~ FROM THE COMMON SOURCE.

SECTION 7. In Colorado Revised Statutes, 34-60-103, **amend** the introductory portion, (5.5), (11), (12), and (13); and **add** (5.3), (6.2), and (6.4) as follows:

34-60-103. Definitions. As used in this ~~article~~ ARTICLE 60, unless the context otherwise requires:

(5.3) "LOCAL GOVERNMENT" MEANS, EXCEPT WITH REGARD TO SECTION 34-60-104 (2)(a)(I), A:

(a) MUNICIPALITY OR CITY AND COUNTY WITHIN WHOSE BOUNDARIES AN OIL AND GAS LOCATION IS SITED OR PROPOSED TO BE

SITED; OR

(b) COUNTY, IF AN OIL AND GAS LOCATION IS SITED OR PROPOSED TO BE SITED WITHIN THE BOUNDARIES OF THE COUNTY BUT IS NOT LOCATED WITHIN A MUNICIPALITY OR CITY AND COUNTY.

(5.5) "Minimize adverse impacts" means to: ~~wherever reasonably practicable:~~

(a) Avoid adverse impacts from oil and gas operations; ~~on wildlife resources;~~ AND

(b) Minimize AND MITIGATE the extent and severity of those impacts that cannot be avoided.

~~(c) Mitigate the effects of unavoidable remaining impacts; and~~

~~(d) Take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.~~

(6.2) "OIL AND GAS FACILITY" MEANS EQUIPMENT OR IMPROVEMENTS USED OR INSTALLED AT AN OIL AND GAS LOCATION FOR THE EXPLORATION, PRODUCTION, WITHDRAWAL, TREATMENT, OR PROCESSING OF CRUDE OIL, CONDENSATE, EXPLORATION AND PRODUCTION WASTE, OR GAS.

(6.4) "OIL AND GAS LOCATION" MEANS A DEFINABLE AREA WHERE AN OIL AND GAS OPERATOR HAS DISTURBED OR INTENDS TO DISTURB THE LAND SURFACE IN ORDER TO LOCATE AN OIL AND GAS FACILITY.

(11) "Waste", as applied to gas:

(a) Includes the escape, blowing, or releasing, directly or indirectly into the open air, of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner

as unreasonably reduces reservoir pressure or, SUBJECT TO SUBSECTION (11)(b) OF THIS SECTION, unreasonably diminishes the quantity of oil or gas that ultimately may be produced; excepting gas that is reasonably necessary in the drilling, completing, testing, and in furnishing power for the production of wells; AND

(b) DOES NOT INCLUDE THE NONPRODUCTION OF GAS FROM A FORMATION IF NECESSARY TO PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES AS DETERMINED BY THE COMMISSION.

(12) "Waste", as applied to oil:

(a) Includes underground waste; inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste; open-pit storage; and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open-pit storage, reasonably necessary for building up or maintaining crude stocks and products ~~thereof~~ OF CRUDE STOCKS for consumption, use, and sale; AND

(b) DOES NOT INCLUDE THE NONPRODUCTION OF OIL FROM A FORMATION IF NECESSARY TO PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES AS DETERMINED BY THE COMMISSION.

(13) "Waste", in addition to the meanings as set forth in subsections (11) and (12) of this section:

(a) Means, SUBJECT TO SUBSECTION (13)(b) OF THIS SECTION:

~~(a)~~ (I) Physical waste, as that term is generally understood in the oil and gas industry;

~~(b)~~ (II) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which~~ THAT causes or tends to cause reduction in quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or ~~which~~ THAT causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; AND

~~(c)~~ (III) Abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas ~~therefrom~~ FROM THE POOL, causing reasonably avoidable drainage between tracts of land or resulting in one or more producers or owners in ~~such~~ THE pool producing more than ~~his~~ AN equitable share of the oil or gas from ~~such~~ THE pool; AND

(b) DOES NOT INCLUDE THE NONPRODUCTION OF OIL OR GAS FROM A FORMATION IF NECESSARY TO PROTECT PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, OR WILDLIFE RESOURCES AS DETERMINED BY THE COMMISSION.

SECTION 8. In Colorado Revised Statutes, 34-60-104, **amend** (1), (2)(a)(I), and (2)(a)(II) as follows:

34-60-104. Oil and gas conservation commission - report - publication. (1) There is hereby created, in the department of natural resources, the oil and gas conservation commission. ~~of the state of Colorado.~~

(2) (a) (I) Effective July 1, ~~2007~~ 2019, the commission ~~shall consist~~ CONSISTS of nine members, seven of whom shall be appointed by the governor with the consent of the senate. ~~and two of whom,~~ The executive director of the department of natural resources and the executive director of the department of public health and environment,

~~shall be~~ OR THE EXECUTIVE DIRECTORS' DESIGNEES, ARE ex officio voting members. At least two members shall be appointed from west of the continental divide, and, to the extent possible, consistent with this ~~paragraph (a)~~ SUBSECTION (2)(a), the other members shall be appointed taking into account the need for geographical representation of ~~other~~ areas of the state with high levels of CURRENT OR ANTICIPATED oil and gas activity or employment. ~~Three members shall~~ ONE MEMBER MUST be ~~individuals~~ AN INDIVIDUAL with substantial experience in the oil and gas industry; ~~and at least two of said three members shall have a college degree in petroleum geology or petroleum engineering;~~ one member ~~shall~~ MUST be a local government official; one member ~~shall~~ MUST have formal training or substantial experience in environmental ~~or wildlife~~ protection; one member ~~shall~~ MUST have formal training or substantial experience in WILDLIFE PROTECTION; ONE MEMBER MUST HAVE FORMAL TRAINING OR SUBSTANTIAL EXPERIENCE IN soil conservation or reclamation; ~~and~~ one member ~~shall~~ MUST be actively engaged in agricultural production ~~and also~~ OR be a royalty owner; AND ONE MEMBER MUST HAVE FORMAL TRAINING OR SUBSTANTIAL EXPERIENCE IN PUBLIC HEALTH. Excluding the executive directors from consideration, no more than four members of the commission ~~shall~~ MAY be members of the same political party.

(II) Subject to ~~paragraph (b) of this subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION, nothing in this ~~paragraph (a) shall be construed to require~~ SUBSECTION (2)(a) REQUIRES a holdover member of the commission holding office on July 1, ~~2007~~ 2019, to comply with ~~the provisions of this paragraph (a)~~ THIS SUBSECTION (2)(a), as amended, unless ~~such~~ THE person is reappointed to the commission for another term of office. Nothing in this ~~subparagraph (II) shall alter, impair, or negate~~

SUBSECTION (2)(a) ALTERS, IMPAIRS, OR NEGATES the authority of the governor to remove or appoint members of the commission pursuant to ~~paragraph (b) of this subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION.

SECTION 9. In Colorado Revised Statutes, 34-60-104.5, **amend** (2)(d) as follows:

34-60-104.5. Director of commission - duties. (2) The director of the commission shall:

(d) (I) Appoint, pursuant to section 13 of article XII of the state constitution, such clerical and professional staff and consultants as may be necessary for the efficient and effective operation of the commission, INCLUDING AT LEAST ONE AND UP TO TWO DEPUTY DIRECTORS; and ~~shall~~

(II) Exercise general supervisory control over ~~said~~ THE staff; and

SECTION 10. In Colorado Revised Statutes, 34-60-105, **amend** (1) as follows:

34-60-105. Powers of commission. (1) (a) The commission has jurisdiction over all persons and property, public and private, necessary to enforce ~~the provisions of this article, and has~~ THIS ARTICLE 60, the power to make and enforce rules ~~regulations,~~ and orders pursuant to this ~~article~~ ARTICLE 60, and to do whatever may reasonably be necessary to carry out ~~the provisions of this article~~ THIS ARTICLE 60.

(b) Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn, and ~~such~~ THAT authority is unqualifiedly conferred upon the commission, as provided in this section; EXCEPT THAT, AS FURTHER SPECIFIED IN SECTION 34-60-131, NOTHING IN THIS ARTICLE 60 ALTERS, IMPAIRS, OR NEGATES THE AUTHORITY OF:

(I) THE AIR QUALITY CONTROL COMMISSION TO REGULATE, PURSUANT TO ARTICLE 7 OF TITLE 25, THE EMISSION OF AIR POLLUTANTS FROM OIL AND GAS OPERATIONS;

(II) THE WATER QUALITY CONTROL COMMISSION TO REGULATE, PURSUANT TO ARTICLE 8 OF TITLE 25, THE DISCHARGE OF WATER POLLUTANTS FROM OIL AND GAS OPERATIONS;

(III) THE STATE BOARD OF HEALTH TO REGULATE, PURSUANT TO SECTION 25-11-104, THE DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIALS AND TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS FROM OIL AND GAS OPERATIONS;

(IV) THE SOLID AND HAZARDOUS WASTE COMMISSION TO:

(A) REGULATE, PURSUANT TO ARTICLE 15 OF TITLE 25, THE DISPOSAL OF HAZARDOUS WASTE FROM OIL AND GAS OPERATIONS; OR

(B) REGULATE, PURSUANT TO SECTION 30-20-109 (1.5), THE DISPOSAL OF EXPLORATION AND PRODUCTION WASTE FROM OIL AND GAS OPERATIONS; AND

(V) A LOCAL GOVERNMENT TO REGULATE OIL AND GAS OPERATIONS PURSUANT TO SECTION 29-20-104;

(c) Any person, or the attorney general on behalf of the state, may apply for ~~any~~ A hearing before the commission, or the commission may initiate proceedings, upon any question relating to the administration of this ~~article~~ ARTICLE 60, and jurisdiction is conferred upon the commission to hear and determine the ~~same~~ QUESTION and enter its rule ~~regulation,~~ or order with respect ~~thereto~~ TO THE QUESTION.

SECTION 11. In Colorado Revised Statutes, 34-60-106, **amend** (1) introductory portion, (1)(f), (2) introductory portion, (2)(b), (2)(c), (7), (13), and (15); **repeal** (2)(d); and **add** (2.5), (11)(c), (18), and (19) as

1 follows:

2 **34-60-106. Additional powers of commission - rules - repeal.**

3 (1) The commission also ~~has authority to~~ SHALL require:

4 (f) (I) That no operations for the drilling of a well for oil and gas

5 shall be commenced without first:

6 (A) ~~Giving to the commission notice of intention~~ APPLYING FOR

7 A PERMIT to drill, WHICH MUST INCLUDE PROOF EITHER THAT: THE

8 OPERATOR HAS FILED AN APPLICATION WITH ALL AFFECTED LOCAL

9 GOVERNMENTS TO APPROVE THE SITING OF THE PROPOSED OIL AND GAS

10 LOCATION AND THE LOCAL GOVERNMENTS' DISPOSITION OF THE

11 APPLICATION; OR NO AFFECTED LOCAL GOVERNMENT REGULATES THE

12 SITING OF OIL AND GAS LOCATIONS; and ~~without first~~

13 (B) Obtaining a permit from the commission, under ~~such~~ rules ~~and~~

14 ~~regulations as may be~~ prescribed by the commission; ~~and~~

15 (II) Paying to the commission a filing and service fee to be

16 established by the commission for the purpose of paying the expense of

17 administering this ~~article~~ ARTICLE 60 as provided in section 34-60-122,

18 which fee may be transferable or refundable, at the option of the

19 commission, if ~~such~~ THE permit is not used; ~~but no such fee shall exceed~~

20 ~~two hundred dollars;~~ AND

21 (III) (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW BUT

22 SUBJECT TO SUBSECTION (1)(f)(III)(B) OF THIS SECTION, UNTIL THE

23 COMMISSION HAS PROMULGATED EVERY RULE REQUIRED TO BE ADOPTED

24 BY LEGISLATION ENACTED IN 2019 THAT AMENDS THIS ARTICLE 60 AND

25 EACH RULE SPECIFIED IN THIS SUBSECTION (1)(f)(III)(A) HAS BECOME

26 EFFECTIVE, THE DIRECTOR MAY REFUSE TO ISSUE A PERMIT IF THE

27 DIRECTOR DETERMINES THAT THE PERMIT REQUIRES ADDITIONAL

ANALYSIS TO ENSURE THE PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE OR THE ENVIRONMENT OR REQUIRE ADDITIONAL LOCAL GOVERNMENT OR OTHER STATE AGENCY CONSULTATION.

(B) THIS SUBSECTION (1)(f)(III) WILL BE REPEALED IF THE RULES SPECIFIED IN SUBSECTION (1)(f)(III)(A) OF THIS SECTION HAVE BECOME EFFECTIVE. THE DIRECTOR SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE ON WHICH ALL RULES SPECIFIED IN SUBSECTION (1)(f)(III)(A) OF THIS SECTION HAVE BECOME EFFECTIVE BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS SUBSECTION (1)(f)(III) IS REPEALED, EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE RULES SPECIFIED IN SUBSECTION (1)(f)(III)(A) OF THIS SECTION HAVE BECOME EFFECTIVE OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

(2) The commission ~~has the authority to~~ MAY regulate:

(b) The shooting and chemical treatment of wells; AND

(c) The spacing AND NUMBER of wells ALLOWED IN A DRILLING UNIT. ~~and~~

(d) ~~Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.~~

(2.5) (a) IN EXERCISING THE AUTHORITY GRANTED BY THIS ARTICLE 60, THE COMMISSION SHALL REGULATE OIL AND GAS OPERATIONS SO AS TO PROTECT AND MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES

AND SHALL PROTECT AGAINST ADVERSE ENVIRONMENTAL IMPACTS ON ANY AIR, WATER, SOIL, OR BIOLOGICAL RESOURCE RESULTING FROM OIL AND GAS OPERATIONS.

(b) THE NONPRODUCTION OF OIL AND GAS RESULTING FROM A CONDITIONAL APPROVAL OR DENIAL AUTHORIZED BY THIS SUBSECTION (2.5) DOES NOT CONSTITUTE WASTE.

(7) (a) The commission ~~has the authority to~~ MAY establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. ~~No such fees shall exceed two hundred dollars for any application, petition, or other pleading initiating a proceeding nor one hundred dollars for any protest or other responsive pleadings, and any party to any commission proceeding shall pay no more than one such fee for each proceeding in which it is a party.~~ All ~~such~~ fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and ~~shall be~~ ARE subject to appropriations by the general assembly for the purposes of this ~~article~~ ARTICLE 60.

(b) THE COMMISSION SHALL BY RULE ESTABLISH THE FEES FOR THE FILING OF APPLICATIONS IN AMOUNTS SUFFICIENT TO RECOVER THE COMMISSION'S REASONABLY FORESEEABLE DIRECT AND INDIRECT COSTS IN CONDUCTING THE ANALYSIS, INCLUDING THE ANNUAL REVIEW OF FINANCIAL ASSURANCE PURSUANT TO SUBSECTION (13) OF THIS SECTION, NECESSARY TO ASSURE THAT PERMITTED OPERATIONS WILL BE CONDUCTED IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF THIS ARTICLE 60.

(11) (c) THE COMMISSION SHALL ADOPT RULES THAT:

(I) ADOPT AN ALTERNATIVE LOCATION ANALYSIS PROCESS AND

SPECIFY CRITERIA USED TO IDENTIFY OIL AND GAS LOCATIONS AND FACILITIES PROPOSED TO BE LOCATED NEAR POPULATED AREAS THAT WILL BE SUBJECT TO THE ALTERNATIVE LOCATION ANALYSIS PROCESS; AND

(II) IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, EVALUATE AND ADDRESS THE POTENTIAL CUMULATIVE IMPACTS OF OIL AND GAS DEVELOPMENT.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling ~~any~~ EVERY obligation imposed ~~under subsections (11), (12), and (17) of this section~~ BY THIS ARTICLE 60 AS SPECIFIED IN RULES ADOPTED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (13), AS AMENDED. THE RULE-MAKING MUST CONSIDER: INCREASING FINANCIAL ASSURANCE FOR INACTIVE WELLS AND FOR WELLS TRANSFERRED TO A NEW OWNER; REQUIRING A FINANCIAL ASSURANCE ACCOUNT, WHICH MUST REMAIN TIED TO THE WELL IN THE EVENT OF A TRANSFER OF OWNERSHIP, TO BE FULLY FUNDED IN THE INITIAL YEARS OF OPERATION FOR EACH NEW WELL TO COVER FUTURE COSTS TO PLUG, RECLAIM, AND REMEDIATE THE WELL; AND CREATING A POOLED FUND TO ADDRESS ORPHANED WELLS FOR WHICH NO OWNER, OPERATOR, OR RESPONSIBLE PARTY IS CAPABLE OF COVERING THE COSTS OF PLUGGING, RECLAMATION, AND REMEDIATION. For purposes of this subsection (13), references to "operator" ~~shall~~ include an operator of an underground natural gas storage cavern and an applicant for a certificate of closure under subsection (17) of this section. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net

worth to guarantee performance of ~~any~~ EVERY obligation imposed by ~~rule under subsections (11), (12), and (17) of this section. Such~~ THIS ARTICLE 60. THE COMMISSION SHALL ANNUALLY REVIEW THE guarantee and demonstration of net worth. ~~shall be annually reviewed by the commission.~~

(b) A certificate of general liability insurance in a form acceptable to the commission ~~which~~ THAT names the state as an additional insured and ~~which~~ covers occurrences during the policy period of a nature relevant to an obligation imposed by ~~rule under subsections (11), (12), and (17) of this section~~ THIS ARTICLE 60;

(c) A bond or other surety instrument;

(d) A letter of credit, certificate of deposit, or other financial instrument;

(e) An escrow account or sinking fund dedicated to the performance of ~~any~~ EVERY obligation imposed by ~~rule under subsections (11), (12), and (17) of this section~~ THIS ARTICLE 60;

(f) A lien or other security interest in real or personal property of the operator. ~~Such~~ THE lien or security interest ~~shall~~ MUST be in a form and priority acceptable to the commission in its sole discretion. ~~and shall be reviewed annually by~~ The commission SHALL ANNUALLY REVIEW THE LIEN OR SECURITY.

(15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract; except that ~~no such~~ AN assignment ~~shall~~ MUST NOT allow for the imposition of any new tax or fee by the assignee in order to conduct ~~such~~ THE assigned inspection and monitoring and ~~no such assignment shall~~ MUST NOT

provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee. ~~No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in this subsection (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.~~

(18) THE COMMISSION SHALL PROMULGATE RULES TO ENSURE PROPER WELLHEAD INTEGRITY OF OIL AND GAS PRODUCTION WELLS. THE RULES MUST ADDRESS THE USE OF NONDESTRUCTIVE TESTING OF WELL JOINTS AND REQUIRE THE CERTIFICATION OF OIL AND GAS FIELD WELDERS.

(19) THE COMMISSION SHALL REVIEW AND, IF NECESSARY, AMEND ITS FLOWLINE AND INACTIVE, TEMPORARILY ABANDONED, AND SHUT-IN WELL RULES TO ENSURE THAT THE RULES PROTECT AND MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT, INCLUDING BY:

(a) ALLOWING PUBLIC DISCLOSURE OF FLOWLINE INFORMATION AND EVALUATING AND DETERMINING WHEN A DEACTIVATED FLOWLINE MUST BE INSPECTED BEFORE BEING REACTIVATED; AND

(b) EVALUATING AND DETERMINING WHEN INACTIVE, TEMPORARILY ABANDONED, AND SHUT-IN WELLS MUST BE INSPECTED BEFORE BEING PUT INTO PRODUCTION OR USED FOR INJECTION.

SECTION 12. In Colorado Revised Statutes, 34-60-116, **amend** (1), (3), (6), (7)(a)(II), (7)(a)(III), (7)(c), and (7)(d)(I); and **add** (7)(a)(IV) as follows:

34-60-116. Drilling units - pooling interests. (1) (a) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, may establish one or more drilling units of specified size and shape covering any pool or portion of a pool.

(b) THE APPLICATION MUST INCLUDE PROOF THAT EITHER:

(I) THE APPLICANT HAS FILED AN APPLICATION WITH ALL AFFECTED LOCAL GOVERNMENTS TO APPROVE THE SITING OF THE PROPOSED OIL AND GAS LOCATION AND THE LOCAL GOVERNMENTS' DISPOSITION OF THE APPLICATION; OR

(II) NO AFFECTED LOCAL GOVERNMENT REGULATES THE SITING OF OIL AND GAS LOCATIONS.

(3) The order establishing a drilling unit:

(a) IS SUBJECT TO SECTION 34-60-106 (2.5); AND

(b) May authorize one or more wells to be drilled and produced from the common source of supply on a drilling unit.

(6) (a) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning ~~such~~ THE interests may pool their interests for the development and operation of the drilling unit.

(b) (I) In the absence of voluntary pooling, the commission, upon the application of ~~any interested person~~ A PERSON WHO OWNS, OR HAS SECURED THE CONSENT OF THE OWNERS OF, MORE THAN FIFTY PERCENT OF THE MINERAL INTERESTS TO BE POOLED, may enter an order pooling all interests in the drilling unit for the development and operation ~~thereof. Each such~~ OF THE DRILLING UNIT.

(II) THE pooling order shall be made after notice and A hearing and ~~shall~~ MUST be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, ~~his~~ A just and equitable share.

(c) Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of ~~such~~ operations upon each separately owned tract in the unit by the several owners ~~thereof~~ OF EACH SEPARATELY OWNED TRACT. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from ~~such~~ THE tract by a well drilled ~~thereon~~ ON IT.

(7) (a) Each pooling order must:

(II) Determine the interest of each owner in the unit and provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production from the wells applicable to the owner's interest in the wells and, unless the owner has agreed otherwise, a proportionate part of the nonconsenting owner's share of the production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to the owner's interest in the unit after the consenting owners have recovered the nonconsenting owner's share of the costs out of production; ~~and~~

(III) Specify that a nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling unit; AND

(IV) PROHIBIT THE OPERATOR FROM USING THE SURFACE OWNED

BY A NONCONSENTING OWNER WITHOUT PERMISSION FROM THE NONCONSENTING OWNER.

(c) A nonconsenting owner of a tract in a drilling unit that is not subject to any lease or other contract for ~~the development thereof for~~ oil and gas DEVELOPMENT shall be deemed to have a landowner's proportionate royalty of ~~twelve and one-half~~ FIFTEEN percent until ~~such time as~~ the consenting owners recover, only out of the nonconsenting owner's proportionate ~~seven-eighths~~ EIGHTY-FIVE PERCENT share of production, the costs specified in subsection (7)(b) of this section. After recovery of the costs, the nonconsenting owner then owns his or her full proportionate share of the wells, surface facilities, and production and then is liable for further costs as if the NONCONSENTING owner had originally agreed to drilling of the wells.

(d) (I) THE COMMISSION SHALL NOT ENTER an order pooling an unleased nonconsenting mineral owner ~~shall not be entered by the commission~~ under subsection (6) of this section over protest of the owner unless the commission has received evidence that the unleased mineral owner has been tendered, no less than sixty days before the hearing, a reasonable offer, MADE IN GOOD FAITH, to lease upon terms no less favorable than those currently prevailing in the area at the time application for the order is made and that ~~such~~ THE unleased mineral owner has been furnished in writing the owner's share of the estimated drilling and completion cost of the wells, the location and objective depth of the wells, and the estimated spud date for the wells or range of time within which spudding is to occur. The offer must include a copy of or link to a brochure supplied by the commission that clearly and concisely describes the pooling procedures specified in this section and the mineral

owner's options pursuant to those procedures.

SECTION 13. In Colorado Revised Statutes, 34-60-122, **amend** (1)(b) as follows:

34-60-122. Expenses - fund created. (1) (b) On and after July 1, ~~2014~~ 2019, the commission shall ensure that the ~~two-year average of the~~ unobligated portion of the fund does not exceed ~~six million dollars~~ FIFTY PERCENT OF TOTAL APPROPRIATIONS FROM THE FUND FOR THE UPCOMING FISCAL YEAR and that there is an adequate balance in the ~~environmental response account created pursuant to subsection (5) of this section~~ FUND TO SUPPORT THE OPERATIONS OF THE COMMISSION AND to address environmental response needs.

SECTION 14. In Colorado Revised Statutes, 34-60-128, **repeal** (4) as follows:

34-60-128. Habitat stewardship - rules. (4) ~~Nothing in this section shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.~~

SECTION 15. In Colorado Revised Statutes, **add** 34-60-131 as follows:

34-60-131. No land use preemption - most protective standard controls. (1) (a) NOTHING IN THIS ARTICLE 60 IMPAIRS OR NEGATES THE AUTHORITY OF A LOCAL GOVERNMENT TO REGULATE LAND USE AND THE SITING OF OIL AND GAS LOCATIONS AND FACILITIES.

(b) AN OPERATOR IS SUBJECT TO LOCAL GOVERNMENTS' LAND USE AND SITING AUTHORITY AS PROVIDED BY LAW AND SHALL ENSURE THAT THE LOCATION OF OIL AND GAS LOCATIONS AND FACILITIES COMPLIES WITH LOCAL GOVERNMENT LAND USE AND SITING REGULATIONS.

(2) LOCAL GOVERNMENTS AND STATE AGENCIES, INCLUDING THE

1 COMMISSION AND AGENCIES LISTED IN SECTION 34-60-105 (1)(b), HAVE
2 REGULATORY AUTHORITY OVER OIL AND GAS DEVELOPMENT, INCLUDING
3 AS SPECIFIED IN SECTION 34-60-105 (1)(b). IF THERE IS A CONFLICT
4 BETWEEN THE REGULATIONS OR STANDARDS OF A LOCAL GOVERNMENT
5 AND A STATE AGENCY, INCLUDING THE COMMISSION, OR BETWEEN STATE
6 AGENCIES REGARDING AN EXERCISE OF AUTHORITY, THE REGULATION OR
7 STANDARD THAT IS RATIONALLY DESIGNED TO BE MORE PROTECTIVE OF
8 PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, OR WILDLIFE
9 RESOURCES CONTROLS.
10 **SECTION 16. Applicability.** This act applies to conduct
11 occurring on or after the effective date of this act, including
12 determinations of applications pending on the effective date.
13 **SECTION 17. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.

SULLIVAN GREEN SEAVY LLC

Barbara J.B. Green
Barbara@SullivanGreenSeavy.com

To: QQ Members
From: Barbara Green
Date: March 6, 2019
Re: SB 181

Below is a brief summary of the oil and gas reform bill (SB 19-181) focusing on those parts of the bill of direct interest to local governments and their authority.

1. **What does the bill do**?

The bill accomplishes 3 key objectives:

- Clarifies that local governments have the authority to use their land use and nuisance powers to regulate oil and gas and removes certain exemptions from this authority.
- Eliminates "grey areas" regarding the extent of local authority by confirming that where local requirements and state requirements conflict, the more protective requirements will control
- Reforms the makeup and scope of authority of the oil and gas conservation commission so that its mission is clearly to regulate, not encourage or "foster" the oil and gas industry.

2. **Does the bill grant new authority to local governments to use land use powers to regulate oil and gas**?

No. The bill just "spells out" the authority that local governments already have under the land use statutes and Art. XX of the Colorado constitution.

- Since 1992, courts have held that Colorado local governments can regulate the impacts of oil and gas development (in the same way they regulate any other development) through land use permits and regulations within the scope of their ordinary land use

authority as delegated by the Colorado General Assembly and/or home rule powers under Article XX of the Colorado Constitution.[1]

- In addition to the specific powers granted to counties and municipalities to regulate the use a development of land under the planning statutes, the Local Government Land Use Control Enabling Act currently gives local governments the authority to regulate development and activities in hazardous areas, to protect land from activities that would cause immediate or foreseeable material damage to wildlife habitat, to preserve areas of historical and archaeological importance, to regulate the location of activities and development which may result in significant changes in population density, to provide for the phased development of services and facilities, to regulate land use on the basis of its impact on the community or surrounding areas, and to otherwise plan for and regulate land use so as to provide for the orderly use of land and the protection of the environment consistent with constitutional rights.[2]
- Local regulatory authority is also recognized in provisions of the Colorado Oil and Gas Conservation Act.[3]

3. **Does the bill give local governments the authority to ban oil and gas?**

Probably not.

- Bans of any one industry are extremely difficult to sustain because the local government would have to prove that the ban was rationally related to a legitimate governmental purpose. Nothing in the bill would change this requirement.
- In the Colorado Mining Association case, the Supreme Court said that county planning authority "probably does not include the right to ban uses from all zoning districts."[4] This analysis would probably also apply to attempts to ban or "zone out" oil and gas.
- An outright ban would be subject to "takings" limitations.

4. **If local governments already have the authority to regulate oil and gas, why does the bill amend the Local Government Land Use Control Act**?

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1 City of Longmont Colorado v. Colorado Oil & Gas Ass'n, 369 P.3d 573 (Colo. 2016)("Longmont"); City of Fort Collins v. Colorado Oil & Gas Association, 369 P.3d 586 (Colo. 2016)("Fort Collins"); Board of County Comm'rs of La Plata County v. Bowen/Edwards Assoc.Inc., 830 P.2d 1045 (Colo. 1992)("Bowen/Edwards); Voss v. Lundvall Brothers, Inc., 830 P.2d 1061 (Colo. 1992) ("Voss");Board of County Comm'rs of Gunnison County v. BDS International,159 P.3d 773(Colo. App.2006)("BDS"); Bd. of County Comm'rs of La Plata County v. Colorado Oil and Gas Conservation Commission, 81 P.3d 1119, 1124 (Colo.App. 2003)("La Plata County");Town of Frederick v. North American Resources Co., 60 P.3d 758 (Colo. App.2002)(cert den'd)("Frederick").

2 C.R.S. § 29-20-104(1); Bowen/ Edwards at 1056.

3 C.R.S. §§ 34-60-127(4)(c) and 34-60-128(4); Fort Collins at 592.

4 Colorado Mining Association v. Bd. of County Comm'rs of Summit, 199 P.3d 718, 731 (Colo. 2009).

SB-181 Local Authority over Oil and Gas

The bill allows local governments to impose fees to cover the cost of regulating, monitoring and permitting the sites. The current Oil and Gas Conservation Act currently prohibits local governments currently from imposing fees to regulate oil and gas in areas under the COGCC's jurisdiction.

The bill also repeals an oil and gas sites exemption from city and county "noise pollution" ordinances.

- Even though courts have pointed to the Local Government Land Use Act as a source of authority to regulate impacts to land use and the environment, the industry has challenged that authority repeatedly in public meetings and in court.
- Some local government officials have been told that they have no authority at all over oil and gas. The bill drafters thought that an express statement of existing powers would help avoid this misunderstanding.
- The unresolved issue in the courts is what happens when a local regulation and a state requirement *conflict*?

5. **How does the bill change the "conflict analysis" that the courts have applied to local regulations?**

- Under current case law, a conflicting local law is preempted (i.e. not valid) where "the effectuation of the local interest would materially impede or destroy a state interest, recognizing that a local ordinance that authorizes what state law forbids or that forbids what state law authorizes will necessarily satisfy this standard."[5] The state's interest is expressed in the Colorado Oil and Gas Conservation Act and the Colorado Oil and Gas Conservation Commission rules.[6]
- The bill changes the mission of the Oil and Gas Conservation Act by eliminating the duty of the COGCC to "foster" oil and gas development and adding more clear direction to protect public health, safety, welfare and the environment. With this change, a local regulation that furthers public health, safety, welfare and the environment would be consistent with the state's interest.
- The bill adds that where there is a conflict between a local regulation and state regulation, the more protective would apply. This clarifies that a local regulation is *not* preempted if it is more protective than a state regulation.

6. **How can this be a "local control" bill if it means that COGCC requirements would still control when they are more protective than local requirements?**

[5] Longmont at 583; Bowen/Edwards at 636.
[6] C.R.S. § 34-60-104.5(2)(a); Fort Collins at 593.

There are no cases or statutes that have ever allowed a local government to supplant state law on matters of statewide concern.

- *Under current case law,* in matters of statewide concern, local government regulations that are less stringent than state law have *always* been preempted. In other words, a local government may decide to impose less stringent requirements an oil and gas operation, but the operator would also have to comply with state regulations.
- *Under current land use statutes,* if regulations adopted under a local government's land use authority impose higher standards than another state statute, the local regulations govern. If a state statute imposes higher standards, the state statute controls.[7]

7. **What about claims that this bill will cost jobs?**

The bill simply ends the "special treatment" that oil and gas has received and makes it subject to local regulations like any other industry. Many local governments have already been regulating oil and gas using land use authority to issue permits and/or require oil and gas operators to enter into operator agreements. For example, Erie has approved over 300 wells through operator agreements and regulations. Gunnison County has approved 52 oil and gas sites under land use regulations.

[7] C.R.S. §§ 31-23-309 and 30-28-123.