

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0594.02 Thomas Morris x4218

HOUSE BILL 16-1355

HOUSE SPONSORSHIP

Foote and Ryden,

SENATE SPONSORSHIP

Ulibarri and Jones,

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ABILITY OF LOCAL GOVERNMENTS TO EXERCISE**
102 **LAND USE AUTHORITY OVER OIL AND GAS FACILITIES USED IN**
103 **OIL AND GAS OPERATIONS IN A MANNER ANALOGOUS TO THE**
104 **SITING OF OTHER INDUSTRIAL FACILITIES.**

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://www.leg.state.co.us/billsummaries>.)

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

conservation commission has identified a specific area for designation; **sections 2 and 3** repeal that limitation.

Section 4 includes specific authority to regulate the siting of oil and gas facilities in counties' existing land use authority. **Section 5** makes the same changes with regard to municipalities' existing land use authority.

Sections 6 and 7 specify that the Colorado oil and gas conservation commission's authority to regulate oil and gas operations, including the siting of oil and gas facilities, does not exempt oil and gas facilities from local governments' siting authority and that oil and gas operators must ensure that the location of oil and gas facilities complies with city, town, county, or city and county siting regulations.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that:

5 (I) Local governments can determine where new industrial
6 activities occur within their jurisdiction through zoning ordinances and
7 resolutions, and the exercise of this authority is one of the main and most
8 commonly exercised functions of local government;

9 (II) Under applicable statutes and case law, the Colorado oil and
10 gas conservation commission has authority over the siting of oil and gas
11 facilities in every jurisdiction around the state; and

12 (III) As a result of this, there is substantial uncertainty and
13 disagreement regarding the legal effect of this overlap between local
14 governments' siting authority and the commission's siting authority;

15 (b) Determines that:

16 (I) The differences between rural and urban areas, west slope and
17 front range, mountains and plains, and different geological formations
18 mean that statewide siting rules provide an ineffective protection for the
19 public, and therefore the current legal structure is not working because

1 the state rules governing the siting of industrial oil and gas facilities do
2 not work for all communities;

3 (II) The commission's 2013 rule-making regarding setbacks and
4 water quality, the commission's 2014 rule-making regarding oil and gas
5 drilling in flood plains, and the most recent commission rule-making
6 regarding large-scale oil and gas operations are all examples of the
7 commission's inability to adequately address local concerns regarding oil
8 and gas operations; and

9 (III) The governing bodies of local governments are in the best
10 position to determine the appropriate locations for oil and gas facilities
11 and will properly balance the interests of all property owners as well as
12 the effects on public health, wildlife, and the environment; and

13 (c) Declares that nothing in this act establishes, alters, impairs, or
14 negates the authority of local governments to regulate land use related to
15 oil and gas operations, and that it is in the interest of the state of Colorado
16 to clarify that, while the commission should continue to exercise its
17 existing authority over the location of oil and gas facilities, the oil and gas
18 industry is not exempt from local governments' authority to control the
19 location of oil and gas facilities through existing zoning and land use
20 authority just as they do for every other industry.

21

22 **SECTION 2.** In Colorado Revised Statutes, 30-28-113, **amend**
23 (1) (a) (VI) as follows:

24 **30-28-113. Regulation of size and use - districts - repeal.**

25 (1) (a) Except as otherwise provided in section 34-1-305, C.R.S., when
26 the county planning commission of any county makes, adopts, and
27 certifies to the board of county commissioners plans for zoning the

1 unincorporated territory within any county, or any part thereof, including
2 both the full text of a zoning resolution and the maps, after public hearing
3 thereon, the board of county commissioners, by resolution, may regulate,
4 in any portions of such county that lie outside of cities and towns:

5 (VI) The uses of land for trade, industry, INCLUDING THE
6 LOCATION OF OIL AND GAS FACILITIES, residence, recreation, or other
7 purposes and for flood control.

8 **SECTION 3.** In Colorado Revised Statutes, 31-23-301, **amend**
9 (1) as follows:

10 **31-23-301. Grant of power.** (1)(a) Except as otherwise provided
11 in section 34-1-305, C.R.S., for the purpose of promoting health, safety,
12 morals, or the general welfare of the community, including energy
13 conservation and the promotion of solar energy utilization, the governing
14 body of each municipality ~~is empowered to~~ MAY regulate and restrict:

15 (I) The height, number of stories, and size of buildings and other
16 structures;

17 (II) The percentage of A lot that may be occupied;

18 (III) The size of yards, courts, and other open spaces;

19 (IV) The density of population;

20 (V) The height and location of trees and other vegetation; and

21 (VI) The location and use of buildings, structures, and land for
22 trade, industry, INCLUDING OIL AND GAS FACILITIES, residence, or other
23 purposes.

24 (b) Regulations and restrictions of the height, number of stories,
25 and the height and location of trees and other vegetation shall not apply
26 to existing buildings, structures, trees, or vegetation except for new
27 growth on such vegetation. Such regulations shall provide that a board of

1 adjustment may determine and vary their application in harmony with
2 their general purpose and intent and in accordance with general or
3 specific rules contained in such regulations.

4 (c) Subject to ~~the provisions of~~ subsection (2) of this section and
5 to the end that adequate safety may be secured, ~~said~~ THE governing body
6 ~~also has power to~~ MAY establish, regulate, restrict, and limit such uses on
7 or along any storm or floodwater runoff channel or basin, as such storm
8 or floodwater runoff channel or basin has been designated and approved
9 by the Colorado water conservation board, in order to lessen or avoid the
10 hazards to persons and damage to property resulting from the
11 accumulation of storm or floodwaters.

12 (d) Any ordinance enacted under authority of this part 3 ~~shall~~
13 MUST exempt from the operation thereof any building or structure as to
14 which satisfactory proof is presented to the board of adjustment that the
15 present or proposed situation of such building or structure is reasonably
16 necessary for the convenience or welfare of the public.

17 **SECTION 4.** In Colorado Revised Statutes, 34-60-105, **amend**
18 (1) as follows:

19 **34-60-105. Powers of commission.** (1) (a) The commission has
20 jurisdiction over all persons and property, public and private, necessary
21 to enforce ~~the provisions of~~ this article, and has the power to make and
22 enforce rules ~~regulations~~, and orders pursuant to this article and to do
23 whatever may reasonably be necessary to carry out ~~the provisions of~~ this
24 article.

25 (b) Any delegation of authority to any other state officer, board,
26 or commission to administer any other laws of this state relating to the
27 conservation of oil or gas, or either of them, is hereby rescinded and

1 withdrawn and such authority is unqualifiedly conferred upon the
2 commission, as provided in this section; EXCEPT THAT NOTHING IN THIS
3 ARTICLE PREEMPTS THE LOCATION OF OIL AND GAS FACILITIES USED IN OIL
4 AND GAS OPERATIONS FROM LOCAL GOVERNMENTS' AUTHORITY AS
5 PROVIDED IN PART 1 OF ARTICLE 28 OF TITLE 30 AND PARTS 2 AND 3 OF
6 ARTICLE 23 OF TITLE 31, C.R.S.

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

13 **SECTION 5.** In Colorado Revised Statutes, 34-60-106, **add** (18)
14 as follows:

15 **34-60-106. Additional powers of commission - rules.** (18) AN
16 OPERATOR SHALL ENSURE THAT THE LOCATION OF OIL AND GAS
17 FACILITIES COMPLIES WITH CITY, TOWN, COUNTY, OR CITY AND COUNTY
18 REGULATIONS. NOTHING IN THIS SECTION IMPAIRS OR NEGATES THE
19 AUTHORITY OF LOCAL GOVERNMENTS TO REGULATE THE LOCATION OF OIL
20 AND GAS FACILITIES.

21 **SECTION 6. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.