A BILL FOR AN ACT
CONCERNING THE ABILITY OF A LOCAL GOVERNMENT TO EXERCISE LAND USE AUTHORITY OVER OIL AND GAS FACILITIES USED IN OIL AND GAS OPERATIONS IN A MANNER ANALOGOUS TO THE SITING OF OTHER INDUSTRIAL FACILITIES, AND, IN CONNECTION THEREWITH, ENACTING THE "PROTECT ACT".

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.)

Section 1 of the bill specifies that the short title of the act is the "Protect Act".
Current law specifies that local governments have powers, commonly 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 has designated a specific area as an area of state interest; sections 3 and 4 repeal that limitation.

Section 5 includes specific authority to regulate the siting of oil and gas facilities in counties' existing land use authority. Section 6 makes the same changes with regard to municipalities' existing land use authority.

Sections 7 and 8 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 an oil and gas facility from a local government's siting authority and that an oil and gas operator must ensure that the location of an oil and gas facility complies with city, town, county, or city and county siting regulations.

Sections 5, 6, and 8 specify that, notwithstanding any other provision of law, the governing body of a municipality and a board of county commissioners may, in order to protect the public safety, health, and welfare of the citizens of the local government, plan, zone, and refuse to allow oil and gas operations.

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

SECTION 1. Short title. The short title of this act is the "Protect Act".

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

(a) Finds that:

(I) The protection of citizens' public safety, health, and welfare is the highest responsibility of government and is a fundamental right;

(II) Local governments routinely use their land use authority to manage industrial activities;

(III) Oil and gas operations release carcinogenic gases that may cause acute myeloid leukemia and possibly acute lymphocytic leukemia, chronic lymphocytic leukemia, multiple myeloma, and non-Hodgkin's lymphoma. They also release toxic gases that may cause adverse
developmental, reproductive, neurological, and immune effects in both humans and wildlife.

(IV) The toxic gases also help cause ozone, which may aggravate chronic lung diseases such as asthma, chronic obstructive pulmonary disease, emphysema, and bronchitis. The northern Colorado area is listed as a nonattainment area for ozone due to health concerns.

(V) Oil and gas are inherently dangerous materials to manage, making accidents potentially catastrophic to people and the environment; and

(VI) Oil and gas methane emissions contribute to global warming, which reduces snowpack, increases drought with impacts to agriculture and heat-related illnesses, fosters widespread tree beetle kill, makes wildfires larger, more volatile, and costly, and likely increases floods, all with large local government social and financial costs and liabilities;

(b) Determines that:

(I) The current legal structure is not working because the Colorado oil and gas conservation commission's rules governing the siting of industrial oil and gas facilities do not protect the public health and safety of Colorado's citizens;

(II) The Colorado oil and gas conservation commission's 2013 rule-making regarding setbacks and water quality, the commission's 2014 rule-making regarding oil and gas drilling in flood plains, and the commission's 2016 rule-making regarding large-scale oil and gas operations are all examples of the commission's inability to adequately address local concerns regarding oil and gas operations; and

(III) The governing bodies of local governments are in the best position to determine the appropriate locations for oil and gas facilities or
whether they are allowed; and

(c) Declares that it is in the interest of the state of Colorado to clarify that local governments may plan, zone, and allow or refuse to allow oil and gas facilities.

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

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

SECTION 4. In Colorado Revised Statutes, 24-65.1-302, repeal (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 5. In Colorado Revised Statutes, 30-28-113, amend (1)(a) introductory portion, (1)(a)(V), and (1)(a)(VI); and add (1)(a)(VII) as follows:

30-28-113. Regulation of size and use - districts - repeal. (1) (a) Except as otherwise provided in section 34-1-305, C.R.S., when the county planning commission of any county makes, adopts, and certifies to the board of county commissioners plans for zoning the unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, after public hearing
thereon, the board of county commissioners, by resolution, may regulate,
in any portions of such the county that lie outside of cities and towns:
  (V) Access to sunlight for solar energy devices; and
  (VI) The uses of land for trade, industry, residence, recreation, or
other purposes and for flood control; and
  (VII) The siting of oil and gas facilities. Notwithstanding
any other provision of law, a board of county commissioners
may, in order to protect the public safety, health, and welfare
of the citizens of the county, plan, zone, and refuse to allow oil
and gas operations.

SECTION 6. In Colorado Revised Statutes, 31-23-301, amend
(1) as follows:

31-23-301. Grant of power. (1) (a) Except as otherwise provided
in section 34-1-305, C.R.S., for the purpose of promoting health, safety,
morals, or the general welfare of the community, including energy
conservation and the promotion of solar energy utilization, the governing
body of each municipality is empowered to may regulate and restrict:
  (I) The height, number of stories, and size of buildings and other
structures;
  (II) The percentage of a lot that may be occupied;
  (III) The size of yards, courts, and other open spaces;
  (IV) The density of population;
  (V) The height and location of trees and other vegetation; and
  (VI) The location and use of buildings, structures, and land for
trade, industry, residence, or other purposes; and
  (VII) The siting of oil and gas facilities. Notwithstanding
any other provision of law, the governing body of a municipality
MAY, IN ORDER TO PROTECT THE PUBLIC SAFETY, HEALTH, AND WELFARE
OF THE CITIZENS OF THE MUNICIPALITY, PLAN, ZONE, AND REFUSE TO
ALLOW OIL AND GAS OPERATIONS.

(b) Regulations and restrictions on the height, number of
stories, and the height and location of trees and other vegetation shall do
not apply to existing buildings, structures, trees, or vegetation except for
new growth on such vegetation. Such regulations shall provide that
A board of adjustment may determine and vary their application of
regulations in harmony with their general purpose and intent and in
accordance with general or specific rules contained in such regulations.

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

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

SECTION 7. 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 the power to make and enforce rules, regulations and orders pursuant to this article and to do whatever may reasonably be necessary to carry out the provisions of this article.

(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 authority is unqualifiedly conferred upon the commission, as provided in this section. **NOTHING IN THIS ARTICLE 60 EXEMPTS THE LOCATION OF OIL AND GAS FACILITIES USED IN OIL AND GAS OPERATIONS FROM A LOCAL GOVERNMENT'S LAND USE AND SITING AUTHORITY AS PROVIDED IN ARTICLE 20 OF TITLE 29, PART 1 OF ARTICLE 28 OF TITLE 30, AND PARTS 2 AND 3 OF ARTICLE 23 OF TITLE 31.**

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

**SECTION 8.** In Colorado Revised Statutes, 34-60-106, add (18) as follows:

34-60-106. **Additional powers of commission - rules.** (18) An operator is subject to a local government's siting authority as provided by law and shall ensure that the location of oil and gas facilities complies with city, town, county, or city and
COUNTY SITING REGULATIONS. NOTHING IN THIS SECTION IMPAIRS OR NEGATES THE AUTHORITY OF A LOCAL GOVERNMENT TO REGULATE THE SITING OF OIL AND GAS FACILITIES. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GOVERNING BODY OF A MUNICIPALITY AND A BOARD OF COUNTY COMMISSIONERS MAY, IN ORDER TO PROTECT THE PUBLIC SAFETY, HEALTH, AND WELFARE OF THE CITIZENS OF THE JURISDICTION GOVERNED BY THE LOCAL GOVERNMENT, PLAN, ZONE, AND REFUSE TO ALLOW OIL AND GAS OPERATIONS.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.