SB 19-181

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 19-0973	**Date:**	March 5, 2019
Prime Sponsors:	Sen. Fenberg Rep. Becker	**Bill Status:**	Senate Transportation
		Fiscal Analyst:	Josh Abram | 303-866-3561 josh.abram@state.co.us

Bill Topic: PROTECT PUBLIC WELFARE OIL & GAS OPERATIONS

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

The bill expands the regulatory charge of the Department of Natural Resources related to oil and gas production, and allows local governments to also regulate oil and gas operations within their jurisdictions. The bill increases state government revenue and expenditures and may also impact local government revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of $770,959 to the Department of Natural Resources.

Fiscal Note Status: This fiscal note is preliminary and reflects the introduced bill. While all agencies were canvassed for this fiscal note, additional time may be required to obtain information from agencies and to further review information previously submitted. The fiscal note will be updated if new or additional information becomes available.

Table 1
State Fiscal Impacts Under SB 19-181

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	$3.0 million	$3.0 million
	Total	**$3.0 million**	**$3.0 million**
Expenditures	Cash Fund	$770,959	$738,241
	Centrally Appropriated	$202,690	$201,174
	Total	**$973,649**	**$939,415**
	Total FTE	**7.0 FTE**	**7.0 FTE**
Transfers		-	-
TABOR Refund	General Fund	$3.0 million	-

Summary of Legislation

This bill modifies the composition and the regulatory charge of the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR), and provides additional regulatory authority over oil and gas operations to local governments.

Under current law, the Oil and Gas Conservation Act declares that it is in the public interest to *foster* the responsible, balanced development, production, and utilization of natural resources of oil and gas in a manner that is consistent with public health, safety, and welfare, including protection of wildlife resources. Current law also requires that the COGCC take into consideration cost-effectiveness and technical feasibility when making decisions or taking actions to minimize the adverse impacts of oil and gas development. This bill modifies the legislative declaration to direct the COGCC to *regulate* the development of oil and gas in a manner that protects public health, safety, and welfare, including protection of wildlife resources, and removes the cost-effectiveness and technical feasibility test.

Among its many provisions, this bill:

- requires that the COGCC regulate oil and gas operations in a manner to protect public health, safety, and welfare, the environment, and wildlife resources;

- modifies the composition of the COGCC, changes some of the appointing authorities, and requires that the commission hire up to two deputy directors;

- requires that the COGCC review and, if necessary, amend existing rules related to flowlines and inactive, temporarily abandoned, and shut-in wells, and adopt new rules for drilling application fees, estimating financial assurances provided by operators, conducting alternative location analysis, and ensuring proper wellhead integrity for production wells;

- permits the director of the COGCC to deny permit applications in lieu of additional environmental analysis while the commission adopts newly required rules;

- removes existing monetary caps on permitting fees, and allows COGCC to set a permit application fee in an amount sufficient to cover all direct and indirect costs;

- permits the COGCC to authorize more than one drilling unit in a statutory pooling order only if more than 50 percent of the mineral interests consent to be pooled, and prohibits an operator form using the surface property of a non-consenting owner without the owner's permission;

- requires that the Air Quality Control Commission in the Colorado Department of Public Health and Environment (CDPHE) adopt rules to minimize emissions of methane and other hydrocarbons and nitrogen oxides, and to regulate air pollution from oil and gas facilities during construction, drilling, and completion activities;

- requires that an operator of an oil and gas facility install continuous monitoring equipment for hazardous air pollution;

- clarifies that other state environmental agencies continue to regulate the environmental impacts associated with oil and gas production;

- creates additional permitting requirements for oil and gas operators, including a requirement that operators file applications with affected local governments before applying to the COGCC; and

- removes the state preemption of oil and gas regulation and expands the authority of local governments to regulate oil and gas development within their jurisdictions, including the local government's ability to zone land used for mineral resource development, to site, monitor, and inspect oil and gas facilities, and to impose fees and fines.

If there is a conflict between the regulations or standards of a local government and any state agency, or between state agencies regarding the exercise of authority over oil and gas development, this bill requires that the regulation that is rationally designed to be more protective of public health and the environment takes primacy over the conflicting regulation.

State Revenue

This bill increases state revenue from application fees to the COGCC by $3.0 million beginning FY 2019-20, and may impact severance tax revenue on an ongoing basis.

Fee impact on oil and gas operators. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by DNR based on cash fund balance, program costs, and the number of permits subject to the fee.

Currently, the COGCC estimated cost to process a request for a new oil and gas location is approximately $1,000, and the estimated cost to process an application for a permit to drill is approximately $300. Current law caps fee amounts at $200. This bill permits the DNR to establish fee amounts in rule. The DNR estimates that COGCC processes about 600 new oil and gas location applications, and 8,000 permit to drill applications annually. Based on this volume of applications and an anticipated increase in fee amounts, the bill will increase state revenue. State revenue from fees is subject to the TABOR revenue limits in the state constitution. Table 2 identifies the estimated fee impact of this bill.

Table 2
Fee Impact on Oil and Gas Operators

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2019-20	Oil & gas location assessment	$1,000	600	$600,000
	Application to drill	$300	8,000	$2,400,000
			FY 2019-20 Total	**$3,000,000**
FY 2020-21	Oil & gas location assessment	$1,000	600	$600,000
	Application to drill	$300	8,000	$2,400,000
			FY 2020-21 Total	**$3,000,000**

The measure's revenue impact will also depend on the type of regulations, if any, that state and local governments enact, and the effects those regulations have on the overall production of oil and gas resources. For example, an outright prohibition of oil and gas development will reduce overall severance tax revenue and the oil and gas conservation mill levy, since the resource must be removed from the ground before these taxes may be levied. Other state or local restrictions may still allow oil and gas developers to access the resource and will have less impact on state revenue. Since these future conditions are unknowable, the precise change in state revenue cannot be estimated.

State Expenditures

The bill increases state expenditures by $973,649 and7.0 FTE in FY 2019-20, and by $939,415 and 7.0 FTE in FY 2020-21. State expenditures are in the Department of Natural Resources and the Department of Law. The bill also increases workload for the Colorado Department of Public Health and Environment. New expenses are displayed in Table 3 and described below.

Table 3
Expenditures Under SB 19-181

Cost Components	FY 2019-20	FY 2020-21
Department of Natural Resources		
Personal Services	$524,369	$524,369
Operating Expenses and Capital Outlay Costs	$33,918	$5,700
Travel and Vehicle Lease	$21,638	$21,638
Technical Training	$4,500	-
Legal Services - Department of Law	$186,534	$186,534
Centrally Appropriated Costs*	$202,690	$201,174
FTE – Personal Services	6.0 FTE	6.0 FTE
FTE – Legal Serices	1.0 FTE	1.0 FTE
TOTAL	**$973,649**	**$939,415**
Total FTE	**7.0 FTE**	**7.0 FTE**

** Centrally appropriated costs are not included in the bill's appropriation.*

Personal services - Department of Natural Resources. Beginning in FY 2019-20 and ongoing, the bill increases personal services costs for the DNR. The bill requires that DNR hire 2.0 FTE additional deputy directors. New rulemaking and modified regulatory requirements necessitate 1.0 FTE for administrative support, and at least 1.0 FTE for a toxicologist to assist with rulemaking and ongoing environmental regulation. Because the bill requires that oil and gas operators provide financial assurance sufficient to cover every obligation specified in the Oil and Gas Conservation Act, DNR will require 1.0 FTE for a financial assurance specialist to assist with estimating necessary surety. All regulatory staff at DNR will require additional training and professional development to understand and implement the modified charge of the COGCC.

Colorado Parks and Wildlife (CPW) in the DNR will also require 1.0 FTE new staff to assist those counties and local governments that choose to regulate oil and gas operations more stringently than the COGCC. Assuming up to 20 local governments choose some form of regulation over oil and gas, CPW workload increases to consult and advise governing boards and staff, and to assist with implementation. Travel expenses are also anticipated for this new FTE.

Personal services - Department of Law. The Attorney General's office will assist the DNR with rule making and related legal services estimated at 1,800 hours annually, or the equivalent of 1.0 FTE.

Personal services - Department of Public Health and Environment. For FY 2019-20 only, the bill increases workload in the Colorado Department of Public Health and Environment to assist the Board of Health to adopt rules to minimize emissions of methane and other hydrocarbons and nitrogen oxides, and to regulate air pollution from oil and gas operations. This workload is estimated at 1,040 hours, or the equivalent of 0.5 FTE; however, the CDPHE can accomplish this workload within existing appropriations. Depending on the rules adopted by the state board, the department may require additional FTE beginning in FY 2020-21 to regulate air pollution; however, the total cost of new personal services at CDPHE has not been estimated.

Travel and vehicle lease. DNR will require travel expenses for mileage reimbursement and for vehicle lease. These costs are estimated at about $22,000 annually.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and leased space, are estimated to be $202,690 in FY 2019-20 and $201,174 in FY 2020-21.

Expenses not estimated. The bill may also increase expenses for the Governor's Office of Information Technology to create a fee tracking process for new fees collected by GOGCC. The bill may also increase demand for the state share of school finance to increase to backfill school finance for school districts that collect less property taxes in jurisdictions that limit or prohibit oil and gas development that would otherwise occur.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by $3.0 million in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government

The measure's impact on local revenue and expenditures will depend on the type of regulations, if any, a local government chooses to adopt. Local regulatory programs will increase a local government's expenditures and could also impact the amount of property taxes collected by counties, school districts, and special districts. A prohibition on new drilling will reduce future local property tax collections, since producing well sites have higher assessed value than non-producing areas. Since the type and location of potential regulations adopted at the local level are unknowable, the change in local revenue and expenditures cannot be estimated.

The bill potentially impacts the amount of severance tax revenue that state government collects and then shares with those local governments most directly impacted by oil and gas development.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to conduct occurring on or after that date, including determinations of applications pending on the effective date.

State Appropriations

For FY 2019-20, the bill requires an appropriation of $770,959 from the Oil and Gas Conservation and Environmental Response Fund to the Department of Natural Resources and an allocation of 6.0 FTE. Of this amount, the Department of Law requires $186,534 in reappropriated funds and an additional allocation of 1.0 FTE.

State and Local Government Contacts

Counties	Information Technology
Judicial	Law
Local Affairs	Municipalities
Natural Resources	Public Health and Environment
Revenue	