Colorado Legislative Council Staff

HB16-1355

FINAL FISCAL NOTE

FISCAL IMPACT: ☒ State ☒ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 16-0594	**Date:**	July 21, 2016
Prime Sponsor(s):	Rep. Foote; Ryden Sen. Ulibarri; Jones	**Bill Status:**	Deemed Lost
		Fiscal Analyst:	Josh Abram (303-866-3561)

BILL TOPIC: AFFIRM LOCAL GOVERNMENT SITING AUTHORITY OIL & GAS FACILITIES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	Conditional reduction in state revenue. See State Revenue section.	
State Expenditures	Workload increase. Potential increased expenditures. See State Expenditures Section.	
Appropriation Required: None.		
Future Year Impacts: Ongoing workload change; potential increased appropriations in future years.		

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

Under current law, local governments have the authority to designate geographic areas or specific activities as matters of state interest, and may control development by adopting regulations for these areas and activities that require permitting. However, a local government may not so designate an area of oil and gas development, unless the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) identifies such an area for designation. This bill repeals that prohibition.

The bill also adds the siting of oil and gas facilities to the enumerated powers a county has when zoning unincorporated land. The bill gives municipalities similar power to site oil and gas facilities.

Current law bestows the COGCC with exclusive jurisdiction over regulating oil and gas development. This bill specifies that the COGCC authority does not exempt oil and gas facilities from local government siting authority. The bill also requires operators to ensure that the location of such facilities complies with local government site regulations.

Background

Pursuant to the Areas and Activities of State Interest Act (AASIA), local governments are encouraged to designate certain geographic areas and specified activities as matters of state interest. If a local government designates an area under AASIA, it must then adopt regulations for that area, referred to as 1041 rules, named after the bill number of the state statute that authorized this power for local governments. The local 1041 regulations must control development of land resources withing the designated area, or that are affected by the designated activity. A permit from the local government is then required for development in regulated areas or for regulated activities.

State Revenue

The bill has a conditional impact on state revenue. Since the bill provides local governments the authority to permit sitting of oil and gas operations, some local governments may limit these operations in their jurisdictions. Because the state receives some state revenue from severance taxes, royalty payments and leases, and a conservation levy, any limitation of oil and gas development potentially decreases the amount of state revenue collected; however, the total reduction is anticipated to be minimal.

State Expenditures

The bill both increases and decreases workload for state agencies and may require future appropriations to the DNR for legal services, as described below.

Colorado Oil and Gas Conservation Commission. Under current law, COGCC in the DNR has exclusive authority over siting oil and gas facilities. This bill extends that authority to local governments and will require that oil and gas operators ensure their facilities comply with local ordinances. This fiscal note assumes the responsibility to comply with local restrictions is borne by the oil and gas operator, and that local permitting will occur prior to an operator obtaining a state drilling permit.

Currently, roughly ten percent of Oil and Gas Location Assessments (OGLA) submitted to COGCC require some intervention by the commission to assist in the discussion and negotiation of terms between oil and gas operators and local governments. These assessments are more time consuming and labor intensive than a standard OGLA not hindered by jurisdictional questions. This bill will increase the number of OGLAs that require additional time to process.

The bill is also anticipated to increase workload for field inspection staff, both to approve OGLAs and to conduct necessary on-site inspections. During the initial implementation of this bill, staff workload is anticipated to increase, but this increase does not require new appropriations.

Department of Law (DOL). This bill is anticipated to increase legal services to the DNR from the DOL. Conflicts between local government and COGCC siting decisions may lead to litigation, particularly if mineral rights' owners believe a siting decision results in a regulatory taking of property rights. In such cases the COGCC may be pulled into litigation, either as a named party or as an indispensable party. For example, the commission has participated as a party in litigation over a ban on hydraulic fracturing implemented by the City of Longmont. In that case, the COGCC has spent approximately $240,000 over the past several fiscal years, both for internal legal counsel, and to purchase additional legal counsel from the DOL.

The DOL will have increased costs to advise and counsel the COGCC, and to work with local jurisdictions on proposed regulations. Since the amount of legal services required from DOL is dependant on the future actions of local governments, the amount of legal services is unknown. The department may seek supplemental appropriations during the annual budget process.

Local Government Impact

Local governments that choose to exercise the authority to permit oil and gas sites in their jurisdictions will have increased workload and costs to develop, implement and enforce such ordinances. The precise amount of workload and new expenses will vary by jurisdiction and is not estimated in this fiscal note.

Effective Date

The bill was lost on second reading in the House of Representatives on April 4, 2016.

State and Local Government Contacts

Agriculture	Counties	Governor's Energy Office
Information Technology	Law	Local Affairs
Natural Resources	Public Health	Public Safety
Special Districts		