

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0335.01 Thomas Morris x4218

SENATE BILL 18-048

SENATE SPONSORSHIP

Jones,

HOUSE SPONSORSHIP

Foote,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE ABILITY OF A LOCAL GOVERNMENT 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, AND, IN CONNECTION
105 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".

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

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.

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

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

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

6 (a) Finds that:

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

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

11 (III) Oil and gas operations release carcinogenic gases that may
12 cause acute myeloid leukemia and possibly acute lymphocytic leukemia,
13 chronic lymphocytic leukemia, multiple myeloma, and non-Hodgkin's
14 lymphoma. They also release toxic gases that may cause adverse

1 developmental, reproductive, neurological, and immune effects in both
2 humans and wildlife.

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

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

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

15 (b) Determines that:

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

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

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

1 whether they are allowed; and

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

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

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

13 **SECTION 4.** In Colorado Revised Statutes, 24-65.1-302, **repeal**
14 (3) as follows:

15 **24-65.1-302. Functions of other state agencies.** (3) Pursuant to
16 section ~~24-65.1-202 (1) (d)~~, the oil and gas conservation commission of
17 the state of Colorado may identify an area of oil and gas development for
18 designation by local government as an area of state interest.

19 **SECTION 5.** In Colorado Revised Statutes, 30-28-113, **amend**
20 (1)(a) introductory portion, (1)(a)(V), and (1)(a)(VI); and **add** (1)(a)(VII)
21 as follows:

22 **30-28-113. Regulation of size and use - districts - repeal.**
23 (1) (a) Except as otherwise provided in section 34-1-305, ~~C.R.S.~~, when
24 the county planning commission of any county makes, adopts, and
25 certifies to the board of county commissioners plans for zoning the
26 unincorporated territory within any county, or any part thereof, including
27 both the full text of a zoning resolution and the maps, after public hearing

1 thereon, the board of county commissioners, by resolution, may regulate,
2 in any portions of ~~such~~ THE county that lie outside of cities and towns:

- 3 (V) Access to sunlight for solar energy devices; ~~and~~
- 4 (VI) The uses of land for trade, industry, residence, recreation, or
5 other purposes and for flood control; AND

6 (VII) THE SITING OF OIL AND GAS FACILITIES. NOTWITHSTANDING
7 ANY OTHER PROVISION OF LAW, A BOARD OF COUNTY COMMISSIONERS
8 MAY, IN ORDER TO PROTECT THE PUBLIC SAFETY, HEALTH, AND WELFARE
9 OF THE CITIZENS OF THE COUNTY, PLAN, ZONE, AND REFUSE TO ALLOW OIL
10 AND GAS OPERATIONS.

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

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

- 18 (I) The height, number of stories, and size of buildings and other
19 structures;
- 20 (II) The percentage of A lot that may be occupied;
- 21 (III) The size of yards, courts, and other open spaces;
- 22 (IV) The density of population;
- 23 (V) The height and location of trees and other vegetation; ~~and~~
- 24 (VI) The location and use of buildings, structures, and land for
25 trade, industry, residence, or other purposes; AND

26 (VII) THE SITING OF OIL AND GAS FACILITIES. NOTWITHSTANDING
27 ANY OTHER PROVISION OF LAW, THE GOVERNING BODY OF A MUNICIPALITY

1 MAY, IN ORDER TO PROTECT THE PUBLIC SAFETY, HEALTH, AND WELFARE
2 OF THE CITIZENS OF THE MUNICIPALITY, PLAN, ZONE, AND REFUSE TO
3 ALLOW OIL AND GAS OPERATIONS.

4 (b) Regulations and restrictions ~~of~~ ON the height, number of
5 stories, and the height and location of trees and other vegetation ~~shall~~ DO
6 not apply to existing buildings, structures, trees, or vegetation except for
7 new growth on ~~such~~ THE vegetation. ~~Such regulations shall provide that~~
8 A board of adjustment may determine and vary ~~their~~ THE application OF
9 REGULATIONS in harmony with their general purpose and intent and in
10 accordance with general or specific rules contained in ~~such~~ THE
11 regulations.

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

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

26 **SECTION 7.** In Colorado Revised Statutes, 34-60-105, **amend**
27 (1) as follows:

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

7 (b) Any delegation of authority to any other state officer, board,
8 or commission to administer any other laws of this state relating to the
9 conservation of oil or gas, or either of them, is hereby rescinded and
10 withdrawn and such authority is unqualifiedly conferred upon the
11 commission, as provided in this section. NOTHING IN THIS ARTICLE 60
12 EXEMPTS THE LOCATION OF OIL AND GAS FACILITIES USED IN OIL AND GAS
13 OPERATIONS FROM A LOCAL GOVERNMENT'S LAND USE AND SITING
14 AUTHORITY AS PROVIDED IN ARTICLE 20 OF TITLE 29, PART 1 OF ARTICLE
15 28 OF TITLE 30, AND PARTS 2 AND 3 OF ARTICLE 23 OF TITLE 31.

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

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

24 **34-60-106. Additional powers of commission - rules.** (18) AN
25 OPERATOR IS SUBJECT TO A LOCAL GOVERNMENT'S SITING AUTHORITY AS
26 PROVIDED BY LAW AND SHALL ENSURE THAT THE LOCATION OF OIL AND
27 GAS FACILITIES COMPLIES WITH CITY, TOWN, COUNTY, OR CITY AND

1 COUNTY SITING REGULATIONS. NOTHING IN THIS SECTION IMPAIRS OR
2 NEGATES THE AUTHORITY OF A LOCAL GOVERNMENT TO REGULATE THE
3 SITING OF OIL AND GAS FACILITIES. NOTWITHSTANDING ANY OTHER
4 PROVISION OF LAW, THE GOVERNING BODY OF A MUNICIPALITY AND A
5 BOARD OF COUNTY COMMISSIONERS MAY, IN ORDER TO PROTECT THE
6 PUBLIC SAFETY, HEALTH, AND WELFARE OF THE CITIZENS OF THE
7 JURISDICTION GOVERNED BY THE LOCAL GOVERNMENT, PLAN, ZONE, AND
8 REFUSE TO ALLOW OIL AND GAS OPERATIONS.

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