



Legislative
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HB 18-1071

**REVISED
FISCAL NOTE**

(replaces fiscal note dated January 23, 2018)

Drafting Number: LLS 18-0078
Prime Sponsors: Rep. Salazar
Sen. Moreno

Date: February 22, 2018
Bill Status: Senate Agriculture
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Bill Topic: REGULATE OIL GAS OPERATIONS PROTECT PUBLIC SAFETY

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure (<i>potential workload</i>)	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill restates current law and codifies a recent court decision concerning the regulation of oil and gas. Beginning with FY 2018-19, the bill potentially increases workload for the Department of Natural Resources, the Colorado Department of Public Health and Environment, and the Department of Law.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note is being revised to include additional information. The fiscal note reflects the reengrossed bill.

Summary of Legislation

This bill restates that the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) is required to regulate oil and gas operations in a manner consistent with the protection of public health, safety, and welfare, including the protection of the environment and wildlife resources. The commission must regulate oil and gas operations so as to prevent and mitigate adverse environmental or public health impacts.

Background

Under current law the COGCC is charged with regulating oil and gas resource production in the state in a way that balances production and public health, safety, and welfare. In 2013, a rule was proposed requiring that the commission withhold drilling permits unless it could be independently confirmed that the drilling would not adversely impact human health or the environment. The commission concluded that the proposed rule would readjust the balance between production and public safety, and that the proposed rule would require regulatory actions that are beyond the commission's statutory authority. In 2014, the district court upheld the commission's decision to deny adopting the proposed rule.

The Colorado court of appeals, in *Martinez v. Colorado Oil & Gas Conservation Commission* 16CA0564 (Colorado 2017), overturned the district court's decision. The court of appeals concluded that current regulation is not balanced between production and public health and safety,

and that current law gives the commission the authority and obligation to regulate oil and gas development in the interest of public health and the environment. This bill codifies the result reached by the appellate court in Martinez. On January 29, 2018, the Colorado Supreme Court granted a petition for a writ of certiorari (judicial review), and will consider if the court of appeals erred in its decision in the Martinez case. The court's ruling on this matter is pending.

Under a limited set of circumstances, the Colorado Department of Public Health and Environment (CDPHE) consults with the commission on surface location permit applications. In general, CDPHE staff evaluate the permit application, conduct a site visit, review public comments, confer with staff from air, water and solid waste divisions, and with commission staff. Currently, the CDPHE consults on about 12 applications annually.

State Expenditures

The court's decision in Martinez is under further appeal; however, current law already requires that the COGCC regulate oil and gas operations in manner consistent with public health and environmental protection. This bill restates the law in a way that harmonizes state statutes with the appellate court's interpretation of the regulatory charge of the commission. This interpretation of the law is consistent with the interpretation held by the commission. As such, the bill does not require a change in the regulatory workload, revenue, or expenditures of the DNR.

Although the bill does not directly require new expenditures, it is anticipated that workload in the DNR, the CDPHE, and the Department of Law will increase to assist the commission to recalibrate regulatory efforts related to oil and gas development and the protection of public health and the environment. No additional appropriations are required to support this increased workload.

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.

State and Local Government Contacts

Law Natural Resources Public Health And Environment