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SB 18-048

**FINAL
FISCAL NOTE**

Drafting Number: LLS 18-0335
Prime Sponsors: Sen. Jones
Rep. Foote

Date: July 11, 2018
Bill Status: Postponed Indefinitely
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Bill Topic: PROTECT ACT LOCAL GOV AUTH OIL & GAS FACILITIES

Summary of Fiscal Impact:

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

The bill gives local governments the authority to site oil and gas facilities. The bill may result in a future reduction in state revenue, conditioned on actions taken by local governments to limit the siting of oil and gas development. State expenditures for legal services to the Department of Natural Resources may also increase. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note represents the introduced bill. 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 designate an area containing oil and gas development, unless the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) has done so. 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 and gives municipalities similar power. Current law gives the COGCC 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, 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 the act, it must then adopt regulations for

that area, referred to as 1041 rules, named after the bill number that authorized this power for local governments. Local 1041 regulations must control development of land within the designated area, or 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 may cause a conditional reduction of state revenue. Since the bill provides local governments the authority to regulate the siting of oil and gas operations, some local governments may limit these operations in their jurisdictions. Because the state receives revenue from severance taxes, and in some cases from royalty payments, 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 dependent on future siting decisions made by local governments and cannot be estimated.

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. Currently, roughly ten percent of oil and gas location assessments 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 location assessment not hindered by jurisdictional questions. The bill will increase the number of location assessments and require additional time and workload to process.

The bill is also anticipated to increase workload for field inspection staff, both to approve location assessments 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.

The bill is also anticipated to increase legal services to the DNR from the Department of Law (DOL). Conflicts between local government and COGCC over siting decisions and other 1041 regulations may require that the commission participate in litigation, particularly if mineral rights' owners believe a failure to obtain a local site permit results in a regulatory taking of property rights. 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 DNR will require additional legal services from the DOL 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 cost of additional legal services from DOL is unknown. The DNR 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 postponed indefinitely by the Senate State, Veterans and Military Affairs Committee on January 29, 2018.

State and Local Government Contacts

Counties
Municipalities
Special Districts

Law
Natural Resources

Local Affairs
Public Health And Environment