

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0152.02 Kate Meyer

HOUSE BILL 09-1255

HOUSE SPONSORSHIP

Gardner C., McKinley, Baumgardner, Bradford, Looper, McNulty, Sonnenberg, Tipton

SENATE SPONSORSHIP

Kopp, Brophy

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON THE CONDITIONS IMPOSED BY THE**
102 **COLORADO OIL AND GAS CONSERVATION COMMISSION ON OIL**
103 **AND GAS OPERATIONS TO IMPLEMENT RECOMMENDATIONS**
104 **MADE BY STATE ENTITIES OTHER THAN THE COMMISSION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Specifies that an oil and gas operator is not required to consult with the division of wildlife in the department of natural resources (division) to determine whether wildlife mitigation requirements are reasonably practicable, and requires the Colorado oil and gas

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

conservation commission (commission) to make that determination. Includes technical and economic feasibility under the term "reasonably practicable". Prohibits the commission from proposing restricted surface occupancy for oil and gas operations upon private lands without the consent of the surface owner. Prohibits the commission from denying an application because the surface owner did not consent to a wildlife mitigation requirement. Requires that wildlife habitat mitigation best management practices (BMP) are presumptive conditions for operations in the units for which they are established, and prohibits the commission from requiring a BMP that has not been so established unless the commission demonstrates the need for the BMP.

Requires the commission to conduct a cost-benefit analysis of a mitigation measure proposed by the division in an appeal of a permit, rule, or order, and prohibits the commission from upholding such measure unless the commission demonstrates that the benefits of the measure outweigh its costs. Prohibits the executive director of the department of natural resources from participating in an appeal of a mitigation measure proposed by the division, and prohibits the executive director of the department of public health and environment (department) from participating in an appeal of a mitigation measure proposed by the department.

Requires the commission to grant or deny a variance from a wildlife mitigation measure within 5 days after receipt of a written request for the variance.

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

2 **SECTION 1.** 34-60-128 (3) (a), (3) (b), and (3) (c) and the
3 introductory portion to 34-60-128 (3) (d) (III), Colorado Revised Statutes,
4 are amended, and the said 34-60-128 is further amended BY THE
5 ADDITION OF A NEW SUBSECTION, to read:

6 **34-60-128. Habitat stewardship - rules.** (3) In order to
7 minimize adverse impacts to wildlife resources, the commission shall:

8 (a) Establish a timely and efficient procedure for consultation with
9 the wildlife commission and division of wildlife on decision-making that
10 impacts wildlife resources. AN OPERATOR SHALL NOT BE REQUIRED TO
11 ENGAGE IN SUCH CONSULTATION OR THE CONSULTATION ESTABLISHED

1 PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (d) OF THIS SUBSECTION
2 (3) TO DETERMINE WHETHER PERMIT CONDITIONS OR OTHER MITIGATION
3 REQUIREMENTS ARE REASONABLY PRACTICABLE, AND SUCH
4 DETERMINATION SHALL BE MADE BY THE COMMISSION. AS USED IN THIS
5 SECTION, "REASONABLY PRACTICABLE" INCLUDES TECHNICALLY OR
6 ECONOMICALLY FEASIBLE.

7 (b) Provide for commission consultation and consent of the
8 affected surface owner, or the surface owner's appointed tenant, on
9 permit-specific conditions for wildlife habitat protection. Such conditions
10 shall be discontinued when final reclamation has occurred. THE
11 COMMISSION SHALL NEITHER PROPOSE NOR DESIGNATE NO-SURFACE
12 OCCUPANCY AREAS OR RESTRICT SURFACE OCCUPANCY FOR OIL AND GAS
13 OPERATIONS UPON PRIVATE LANDS WITHOUT THE CONSENT OF THE
14 SURFACE OWNER. THE COMMISSION SHALL NOT DENY A PERMIT OR OTHER
15 APPLICATION AS A RESULT OF A FAILURE TO OBTAIN THE CONSENT OF THE
16 SURFACE OWNER TO ANY PERMIT CONDITION OR OTHER MITIGATION
17 REQUIREMENT.

18 (c) Implement, whenever reasonably practicable, best
19 management practices AS SPECIFIED IN SUBPARAGRAPH (III) OF
20 PARAGRAPH (d) OF THIS SUBSECTION (3) and other reasonable measures
21 to conserve wildlife resources;

22 (d) Promulgate rules by July 16, 2008, in consultation with the
23 wildlife commission, to establish standards for minimizing adverse
24 impacts to wildlife resources affected by oil and gas operations and to
25 ensure the proper reclamation of wildlife habitat during and following
26 such operations. At a minimum, the rules shall address:

27 (III) Minimizing surface disturbance and fragmentation in

1 important wildlife habitat by incorporating appropriate best management
2 practices AS SPECIFIED IN THIS SUBPARAGRAPH (III). BEST MANAGEMENT
3 PRACTICES ESTABLISHED PURSUANT TO SUB-SUBPARAGRAPH (A) OR (B) OF
4 THIS SUBPARAGRAPH (III) SHALL BE PRESUMPTIVE CONDITIONS FOR
5 OPERATIONS IN THE UNITS FOR WHICH THEY ARE ESTABLISHED, AND THE
6 COMMISSION SHALL NOT REQUIRE A BEST MANAGEMENT PRACTICE THAT
7 HAS NOT BEEN SO ESTABLISHED UNLESS THE COMMISSION DEMONSTRATES
8 THE NEED FOR THE PRACTICE:

9 (5) (a) UPON REQUEST OF THE APPLICANT IN AN APPEAL OF A
10 MITIGATION MEASURE PROPOSED BY THE DIVISION OF WILDLIFE PURSUANT
11 TO THIS SECTION FOR A PERMIT, RULE, OR ORDER, THE COMMISSION SHALL
12 CONDUCT A COST-BENEFIT ANALYSIS OF THE MEASURE, GIVING
13 CONSIDERATION TO THE FACTORS SPECIFIED IN SECTION 24-4-103 (4.5) (a),
14 C.R.S., AND PROVIDE ALL PARTIES TO THE HEARING WITH WRITTEN NOTICE
15 OF THE ANALYSIS AT LEAST FIVE DAYS BEFORE THE HEARING. THE
16 COMMISSION SHALL NOT UPHOLD SUCH MEASURE UNLESS THE COMMISSION
17 DEMONSTRATES THAT THE BENEFICIAL EFFECTS OF THE MEASURE
18 OUTWEIGH ITS COSTS.

19 (b) IN AN APPEAL TO THE COMMISSION OF A MITIGATION MEASURE
20 PROPOSED BY THE DIVISION OF WILDLIFE PURSUANT TO THIS SECTION FOR
21 A VARIANCE, PERMIT, RULE, OR ORDER, THE EXECUTIVE DIRECTOR OF THE
22 DEPARTMENT OF NATURAL RESOURCES SHALL NOT PARTICIPATE IN THE
23 APPEAL.

24 (c) THE COMMISSION SHALL GRANT OR DENY A VARIANCE FROM A
25 CONDITION IMPOSED PURSUANT TO THIS SECTION WITHIN FIVE DAYS AFTER
26 RECEIPT OF A WRITTEN REQUEST FOR THE VARIANCE.

27 **SECTION 2.** 34-60-106 (1) (f), the introductory portion to

1 34-60-106 (11) (a), and 34-60-106 (11) (a) (II), Colorado Revised
2 Statutes, are amended to read:

3 **34-60-106. Additional powers of the commission - rules -**
4 **repeal.** (1) The commission also has authority to require:

5 (f) That no operations for the drilling of a well for oil and gas
6 shall be commenced without first giving to the commission notice of
7 intention to drill and without first obtaining a permit from the
8 commission, under such rules ~~and regulations~~ as may be prescribed by the
9 commission, and paying to the commission a filing and service fee to be
10 established by the commission for the purpose of paying the expense of
11 administering this article as provided in section 34-60-122, which fee may
12 be transferable or refundable, at the option of the commission, if such
13 permit is not used; but no such fee shall exceed two hundred dollars;

14 (11) (a) ~~By July 16, 2008,~~ The commission shall:

15 (II) (A) Promulgate rules, in consultation with the department of
16 public health and environment, to protect the health, safety, and welfare
17 of the general public in the conduct of oil and gas operations. The rules
18 shall provide a timely and efficient procedure in which the department has
19 an opportunity to provide comments during the commission's
20 decision-making process. This rule-making shall be coordinated with the
21 rule-making required in section 34-60-128 (3) (d) so that the timely and
22 efficient procedure established pursuant to this subsection (11) is
23 applicable to the department and to the division of wildlife.

24 (B) IN AN APPEAL TO THE COMMISSION OF A MITIGATION MEASURE
25 PROPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
26 PURSUANT TO THIS SUBPARAGRAPH (II) FOR A VARIANCE, PERMIT, RULE,
27 OR ORDER, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC

1 HEALTH AND ENVIRONMENT SHALL NOT PARTICIPATE IN THE APPEAL.

2 **SECTION 3. Applicability.** This act shall apply to acts
3 occurring on or after the effective date of this act.

4 **SECTION 4. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.