

**Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0626.01 Thomas Morris x4218

**SENATE BILL 12-107**

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**SENATE SPONSORSHIP**

**Carroll,**

**HOUSE SPONSORSHIP**

**Wilson,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING ADDITIONAL PROTECTIONS FOR WATER RELATING TO**  
102     **HYDRAULIC FRACTURING.**

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**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://www.leg.state.co.us/billsummaries>.)*

The bill enacts the "Water Rights Protection Act", under which the Colorado oil and gas conservation commission (commission) must establish rules for:

- !       Hydraulic fracturing near radioactive materials and sites listed on the national priority list pursuant to the federal

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.*

"superfund" law; and

- ! The shut-down of hydraulic fracturing operations when monitoring equipment detects a pressure drop.

Oil and gas operators must submit water quantity reports showing projected and actual sources and amounts of water needed for hydraulically fracturing a well. Operators must also submit pre- and post-fracturing water quality reports for all active water wells located within .5 mile of oil and gas wells that will be or have been hydraulically fractured. This information will be posted on the commission's web site. Operators cannot inject into the ground any chemical compound that would cause cancer.

In addition to existing financial assurances, each operator that engages in a high-risk hydraulic fracturing treatment must take out an environmental bond that would be forfeited if the operator's operations cause any damage to water rights.

Subject to listed affirmative defenses, an operator is presumed to be responsible for the pollution of a water supply that is within .5 mile of a line between the well head and the surface projection of the bottom hole location of the well, if the pollution occurred within 6 months after the completion of the hydraulic fracturing of the well. Hydraulic fracturing would be prohibited within .5 mile of any surface water, including a pond, reservoir, or other natural or artificial impoundment or stream, ditch, or other artificial waterway, unless the operator uses a closed-loop system.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) Energy exploration by means of hydraulic fracturing is a topic  
5 of increasing interest and significance in Colorado;

6 (b) Energy exploration by means of hydraulic fracturing should be  
7 conducted in a responsible way that ensures the safety of Colorado  
8 residents and Colorado communities;

9 (c) Water quality and an adequate supply of water are essential to  
10 Colorado's economy and are topics of great concern to Colorado's cities  
11 and towns, Colorado's agricultural economy, and the outdoor recreation

1 and tourism for which Colorado is known across the nation and  
2 throughout the world;

3 (d) To follow up on findings made in the October 2011 "Colorado  
4 Hydraulic Fracturing State Review":

5 (I) The Colorado oil and gas conservation commission and the  
6 division of water resources should evaluate available sources of water for  
7 use in hydraulic fracturing; and

8 (II) The Colorado oil and gas conservation commission should  
9 evaluate naturally occurring radioactive materials in wastes associated  
10 with hydraulic fracturing operations;

11 (e) According to the April 2011 report addressing chemicals used  
12 in hydraulic fracturing of the United States house of representatives  
13 committee on energy and commerce, between 2005 and 2009, hydraulic  
14 fracturing companies in Colorado used more than:

15 (I) 1.5 million gallons of fracturing products containing at least  
16 one carcinogen; and

17 (II) 375,000 gallons of fracturing products containing at least one  
18 chemical regulated under the "Safe Drinking Water Act of 1974";

19 (f) The United States environmental protection agency has called  
20 the use of diesel fuel in fracturing fluids the greatest threat to  
21 underground sources of drinking water;

22 (g) The United States secretary of energy advisory board shale gas  
23 production subcommittee has stated that there is no technical or economic  
24 reason to use diesel fuel in fracturing fluids, and has further  
25 recommended that manifests be used to document all transfers of water  
26 among different locations; and

27 (h) It is in the interest of all Colorado water right holders to

1 maintain the value of those water rights.

2 **SECTION 2.** In Colorado Revised Statutes, **add** 34-60-130 as  
3 follows:

4         
5 **34-60-130. Hydraulic fracturing - rules.** (1) THIS SECTION  
6 SHALL BE KNOWN AND MAY BE CITED AS THE "FRACKING SAFETY AND  
7 WATER PROTECTION ACT".

8 (2) THE COMMISSION SHALL, WITHIN EXISTING RESOURCES, ADOPT  
9 RULES PURSUANT TO THIS SUBSECTION (2). THE RULES MUST CONTAIN  
10 DEADLINES, INCLUDING APPROPRIATE MILESTONES, FOR OPERATORS TO  
11 COMPLY WITH ANY ASPECT OF THE RULES THAT CANNOT REASONABLY BE  
12 COMPLIED WITH IMMEDIATELY. THE RULES MUST REQUIRE OPERATORS TO  
13 USE PRACTICES THAT ARE DESIGNED TO PREVENT OR REDUCE IMPACTS  
14 CAUSED BY OIL AND GAS OPERATIONS TO AIR, WATER, SOIL, OR  
15 BIOLOGICAL RESOURCES, AND TO MINIMIZE ADVERSE IMPACTS TO PUBLIC  
16 HEALTH, SAFETY AND WELFARE, INCLUDING THE ENVIRONMENT AND  
17 WILDLIFE RESOURCES, REGARDING:

18 (a) HYDRAULIC FRACTURING NEAR:

19 (I) RADIOACTIVE MATERIAL, AS DEFINED SECTION 25-11-101 (6),  
20 C.R.S.:

21 (II) EXPLOSIVES, INCLUDING MUNITIONS; AND

22 (III) SITES LISTED ON THE NATIONAL PRIORITY LIST PURSUANT TO  
23 THE FEDERAL "COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
24 COMPENSATION, AND LIABILITY ACT OF 1980", 42 U.S.C. SEC. 9601 ET  
25 SEQ., AS AMENDED;

26 (b) THE SHUT-DOWN OF HYDRAULIC FRACTURING OPERATIONS  
27 WHEN PRESSURE READINGS INDICATE THAT THE HYDRAULIC FRACTURING

1 FLUID HAS ENTERED A NONTARGETED AREA OF THE GEOLOGIC FORMATION;

2 (c) INCREASED SET BACKS COMPARED WITH THOSE IN THE  
3 COMMISSION'S RULES ON THE EFFECTIVE DATE OF THIS SECTION;

4 (d) THE USE OF OPEN PITS TO STORE OR DISPOSE OF DRILLING  
5 MUDS, HYDRAULIC FRACTURING FLUIDS, OR FLOW-BACK IN AREAS WHERE  
6 THERE IS RISK TO OCCUPIED STRUCTURES, SURFACE WATER, OR TRIBUTARY  
7 GROUNDWATER FROM SUCH USE, STORAGE, OR DISPOSAL;

8 (e) THE USE OF CLOSED-LOOP SYSTEMS FOR HYDRAULIC  
9 FRACTURING TREATMENTS;

10 (f) AFTER CONSULTATION WITH THE AIR QUALITY CONTROL  
11 COMMISSION CREATED IN SECTION 25-7-104 (1), C.R.S., THE  
12 MINIMIZATION OF AIR EMISSIONS FROM OIL AND GAS OPERATIONS;

13 (g) (I) THE COLLECTION OF WATER QUALITY SAMPLES RELATED TO  
14 POTENTIAL IMPACTS FROM HYDRAULIC FRACTURING, AS DETERMINED BY  
15 THE COMMISSION, FROM ALL ACTIVE WATER WELLS LOCATED WITHIN  
16 ONE-HALF MILE OF AN OIL AND GAS WELL THAT WILL BE HYDRAULICALLY  
17 FRACTURED. THE OPERATOR SHALL ALSO COLLECT WATER QUALITY  
18 SAMPLES RELATED TO POTENTIAL IMPACTS FROM HYDRAULIC FRACTURING  
19 AT LEAST ONCE AFTER THE COMPLETION OF THE HYDRAULIC FRACTURING,  
20 PURSUANT TO A SCHEDULE ESTABLISHED BY THE COMMISSION, FROM ALL  
21 WATER WELLS LOCATED WITHIN ONE-HALF MILE OF THE OIL AND GAS  
22 WELL. THE OPERATOR SHALL SUBMIT THE SAMPLES IN A WATER QUALITY  
23 REPORT TO THE COMMISSION, IN A FORMAT AND BY A DEADLINE  
24 ESTABLISHED BY THE COMMISSION.

25 (II) THE COMMISSION SHALL PROMPTLY POST THE WATER QUALITY  
26 REPORTS ON ITS WEB SITE. THE REPORTS MUST BE SEARCHABLE BY  
27 OPERATOR, WELL LOCATION, AND OTHER FACTORS ESTABLISHED BY THE

1 COMMISSION.

2 (III) THE RULES MUST INCLUDE TARGETED GOALS FOR THE  
3 REDUCTION OF THE TOXICITY OF HYDRAULIC FRACTURING FLUIDS; EXCEPT  
4 THAT NOTHING IN THIS PARAGRAPH (g) PROHIBITS THE USE OR  
5 REINJECTION OF FLOW-BACK FLUID.

6 (h) THE FINANCIAL ASSURANCES OF SECTION 34-60-106 (3.5) AND  
7 (13) MUST BE SUFFICIENT TO COVER REMEDIATION OF ALL FORESEEABLE  
8 DAMAGES TO PEOPLE, PROPERTY, SOIL, FOOD, AND WATER IN THE EVENT  
9 OF A SPILL, ACCIDENT, OR CONTAMINATION CAUSED DIRECTLY FROM  
10 CHEMICALS, LEAK OF METHANE, OIL, OR OTHER RELEASE OF OTHER  
11 UNDERGROUND CONTAMINANTS DISLODGED BY THE DRILLING PROCESS.

12 (3) (a) NOTHING IN THIS SECTION REQUIRES THE COMMISSION TO  
13 HIRE ANY NEW PERSONNEL OR CONTRACT WITH ADDITIONAL  
14 CONSULTANTS.

15 (b) ALL COSTS OF IMPLEMENTATION OF THIS SECTION MUST BE  
16 PAID BY PERMIT FEES ESTABLISHED AND COLLECTED PURSUANT TO  
17 SECTION 34-60-106 (16).

18 **SECTION 3. Applicability.** The provisions of this act apply to  
19 acts occurring on or after the effective date of this act.

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