A BILL FOR AN ACT

CONCERNING ADDITIONAL PROTECTIONS FOR WATER RELATING TO HYDRAULIC FRACTURING.

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
"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.

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

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

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

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

(c) Water quality and an adequate supply of water are essential to Colorado's economy and are topics of great concern to Colorado's cities and towns, Colorado's agricultural economy, and the outdoor recreation
and tourism for which Colorado is known across the nation and throughout the world;

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

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

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

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

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

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

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

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

(h) It is in the interest of all Colorado water right holders to
maintain the value of those water rights.

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

34-60-130. Hydraulic fracturing - water rights protection.

(1) Short title. This section shall be known and may be cited as the "Water Rights Protection Act".

(2) Contamination protocols. The commission shall establish rules for:

(a) Hydraulic fracturing near:

(I) radioactive materials; and

(II) sites listed on the national priority list pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. Sec. 9601 et seq., as amended; and

(b) shut-down of hydraulic fracturing operations when pressure readings indicate that the hydraulic fracturing fluid has entered a nontargeted area of the geologic formation.

(3) Water quantity reporting. (a) Before conducting a hydraulic fracturing treatment, an operator shall prepare and electronically submit to the commission a water quantity report, in a format and by a deadline specified by the commission, that includes:

(I) a good-faith estimate of where and how the operator intends to acquire the requisite water for the hydraulic fracturing treatment; and

(II) a good-faith estimate of the amount of water that will be required for the hydraulic fracturing treatment.
(b) Within sixty days following the conclusion of a hydraulic fracturing treatment and annually thereafter if more water is required for the drilling of or production from a well, an operator shall prepare and electronically submit to the commission a water quantity report, in a format and by a deadline specified by the commission, that includes:

(I) Where and how the operator actually acquired the requisite water for the hydraulic fracturing treatment; and

(II) The amount of water actually used in the hydraulic fracturing treatment.

(c) The commission shall promptly post the water quantity reports on its web site. The reports must be searchable by operator, well location, and other factors established by the commission, and must allow the public to easily find the total amount of water used for each well.

(4) Water quality reporting. (a) (I) Before the commission authorizes an operator to hydraulically fracture a well, the operator shall collect water quality samples related to potential impacts from hydraulic fracturing, as determined by the commission, from all active water wells located within one-half mile of the oil and gas well. The operator shall collect water quality samples related to potential impacts from hydraulic fracturing by the first, third, and sixth anniversary of completion of the hydraulic fracturing, pursuant to a schedule established by and as determined by the commission, from all water wells located within one-half mile of the oil and gas well. The operator shall submit the samples in
A WATER QUALITY REPORT TO THE COMMISSION, IN A FORMAT AND BY A
DEADLINE ESTABLISHED BY THE COMMISSION.

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

(b) (I) AN OPERATOR SHALL NOT INSERT INTO THE GROUND ANY
QUANTITY OF CHEMICALS KNOWN TO CAUSE OR REASONABLY
ANTICIPATED TO CAUSE CANCER, INCLUDING:

(A) DIESEL FUEL;
(B) BENZENE, TOLUENE, ETHYLBENZENE, OR XYLENE; AND
(C) ANY SUBSTANCE INCLUDED IN THE MOST RECENT "REPORT ON
CARCINOGENS" RELEASED BY THE NATIONAL TOXICOLOGY PROGRAM OF
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(II) NOTHING IN THIS PARAGRAPH (b) PROHIBITS THE USE OR
REINJECTION OF FLOW-BACK FLUID.

(5) Financial assurance. (a) IN ADDITION TO THE FINANCIAL
ASSURANCES OF SECTION 34-60-106(3.5) AND (13), EACH OPERATOR THAT
ENGAGES IN A HIGH-RISK HYDRAULIC FRACTURING TREATMENT SHALL
TAKE OUT AN ENVIRONMENTAL BOND OR OTHER FINANCIAL ASSURANCE
LISTED IN SECTION 34-60-106 (13) THAT WOULD BE FORFEITED IF THE
OPERATOR'S OPERATIONS CAUSE ANY DAMAGE TO ABSOLUTE OR DECREED
CONDITIONAL WATER RIGHTS OR NONTRIBUTARY WATER. THE
COMMISSION SHALL PROMULGATE RULES TO ESTABLISH THE REQUIRED
AMOUNT AND TYPE OF ASSURANCE. THE RULES MUST ALLOW AN
OPERATOR TO BOND PER HIGH-RISK WELL OR FOR ALL OF THE OPERATOR'S
WELLS IN OPERATION IN THE STATE AT THE OPERATOR'S ELECTION.
(b) As used in this subsection (5), "high-risk hydraulic fracturing treatment" means a hydraulic fracturing treatment that is located within one-half mile of:

(I) any site listed on the national priority list pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 et seq., as amended;

(II) naturally or nonnaturally occurring radioactive material explosives, including munitions;

(III) surface water; or

(IV) federally designated wilderness.

(6) Rebuttable presumption. (a) Unless rebutted by one or more of the defenses established in paragraph (b) of this subsection (6), an operator is presumed to be responsible for the pollution of a water supply that is within one-half 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 six months after the completion of the hydraulic fracturing of the well.

(b) In order to rebut the presumption of liability established in paragraph (a) of this subsection (6), the operator must affirmatively prove one of the following defenses:

(I) the pollution existed prior to the hydraulic fracturing, as determined by a predrilling or prealteration survey, including a water quality report submitted pursuant to paragraph (a) of subsection (4) of this section;

(II) the surface owner or water well owner failed to
ALLOW THE OPERATOR ACCESS TO CONDUCT A PREDRILLING OR
PREALTERATION SURVEY;

(III) THE WATER SUPPLY IS NOT WITHIN ONE-HALF MILE OF THE
WELL;

(IV) THE POLLUTION OCCURRED MORE THAN SIX MONTHS AFTER
INITIAL HYDRAULIC FRACTURING OF THE WELL; OR

(V) THE POLLUTION OCCURRED AS THE RESULT OF SOME CAUSE
OTHER THAN THE HYDRAULIC FRACTURING OF THE WELL.

(7) **Water-based setbacks.** (a) AN OPERATOR SHALL NOT
CONDUCT HYDRAULIC FRACTURING WITHIN ONE-HALF 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.

(b) NOTHING IN THIS SECTION PROHIBITS THE COMMISSION OR A
LOCAL GOVERNMENT FROM ADOPTING MORE STRINGENT LOCAL
PROTECTIONS.

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

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