

**STATE
FISCAL IMPACT**

Drafting Number: LLS 14-0290
Prime Sponsor(s): Rep. Foote
 Sen. Jones

Date: April 8, 2014
Bill Status: House Transportation and Energy
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SHORT TITLE: STRENGTHEN PENALTY AUTHORITY OIL & GAS COMMN

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	<u>\$300,000 to 400,000</u>	<u>\$300,000 to 400,000</u>
Cash Funds	300,000 to 400,000	300,000 to 400,000
State Expenditures	<u>\$128,947</u>	<u>\$124,793</u>
Cash Funds	118,679	113,976
Centrally Appropriated Costs**	10,268	10,817
FTE Position Change	0.9 FTE	0.9 FTE
Appropriation Required: \$80,425 - Dept. of Natural Resources (FY 2014-15)***		

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

*** Funds for legal services are included in the FY 2014-15 Long Bill.

Summary of Legislation

This bill increases the penalties for violations of the Oil and Gas Conservation Act. The maximum daily fine is increased from \$1,000 to \$15,000 for each act of violation per day that the violation continues. The \$10,000 maximum cap on violations that do not result in a significant adverse impact is repealed. The Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) is required to:

- promulgate rules to establish the basis for determining the duration of a violation for purposes of imposing the applicable penalty, using presumptions specified in the bill;
- publish a quarterly report on its website that lists specific information on penalties assessed; and
- present penalty information during the annual DNR hearings before the General Assembly committees of reference.

The COGCC is required to hold a hearing if there is evidence that an operator is responsible for gross negligence or knowing and willful misconduct that results in an egregious violation. After a hearing in which the operator is found responsible, the COGCC may issue an order that prohibits issuance of new permits to the operator, suspends any or all of the operator's certificates of clearance, or both. The COGCC may vacate the order once the operator has come into compliance and all penalties have been paid.

Background

Between 2009 and 2013, the COGCC imposed \$5.7 million in penalties in a total of 91 cases. The average penalty was \$62,700. Some enforcement actions are resolved quickly through operator compliance, some after protracted negotiation, and some proceed to a contested hearing in front of the COGCC. During the five-year time period, 80 of the 91 cases were settled (resulting in an administrative order by consent), and 11 of the 91 cases resulted in an order finding violation. The average fine for the 11 cases was \$173,350 based on a rate of \$1,000 per day.

Executive Order D 2013-005 directed the COGCC to adjust fines based on aggravating and mitigating factors so as to strongly deter violations. The COGCC response to this order has resulted in higher penalty revenues for FY 2013-14.

State Revenue

This bill is expected to increase fine revenue to the Oil and Gas Conservation and Environmental Response Fund by **\$300,000 to \$400,000 beginning in FY 2014-15** from increased limits on penalties.

While the maximum fine per day is increased from \$1,000 to \$15,000, it is assumed that a \$15,000 daily fine is unlikely to be levied in the near term. Penalty revenue for FY 2013-14 is estimated at \$1.0 million. Assuming a 30 percent to 40 percent increase results in an increase of \$300,000 to \$400,000 per year. Actual revenue increases will depend on the type, duration, and resolution of violations.

State Expenditures

This bill is expected to increase expenditures for the COGCC by **\$128,947 and 0.9 FTE in FY 2014-15 and \$124,793 and 0.9 FTE in FY 2015-16** from the Oil and Gas Conservation and Environmental Response Fund. Because an existing Long Bill appropriation and centrally appropriated costs are included in the FY 2014-15 expenditure of \$128,947, only \$80,425 of these costs require a new appropriation. Costs are shown in Table 1 and explained below.

Assumptions. The fiscal impact of this bill is based on the following assumptions:

- each contested case requires at least 200 hours of enforcement officer time to prepare;
- each major contested case requires at least 500 hours of enforcement officer time to prepare;
- contested cases require COGCC hearings;
- higher penalties will increase the number of contested cases by four to eight per year, and the number of major contested cases by one per year; and
- to attract qualified staff, the new enforcement officer will be hired at mid salary range.

Rulemaking. The COGCC will hold a rulemaking hearing to establish the new penalty schedule and basis for determining the duration of a violation. Staff and legal services hours are expected to be addressed with existing resources.

Contested cases. The COGCC is expected to add 0.9 FTE for an enforcement officer in FY 2014-15 and FY 2015-16 to address the increase in contested cases at a cost of \$68,099 per year plus operating and capital outlay costs. The COGCC is expected to hold six additional meetings per year to hear contested cases at a cost of \$6,768 per year.

The Department of Law is expected to provide to the COGCC 420 hours (\$38,254) per fiscal year in legal services for enforcement actions and appeals. Because the COGCC received an additional 2,180 hours in legal services for enforcement in the FY 2014-15 Long Bill, no additional appropriation is required. Should additional funds be required for enforcement, the COGCC is expected to request an increase through the annual budget process.

Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$68,099	\$68,099
FTE	0.9 FTE	0.9 FTE
Operating Expenses and Capital Outlay Costs	5,558	855
Legal Services (\$91.08 per hour)	38,254	38,254
COGCC Meeting Expenses	6,768	6,768
Centrally Appropriated Costs*	10,268	10,817
TOTAL	\$128,947	\$124,793

* Centrally appropriated costs are not included in the bill's appropriation.

Judicial Branch. If the increase in penalties results in an increase in cases appealed to district court, the workload in the branch may increase. Such cases are expected to be minimal and do not require new appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,539	\$5,539
Supplemental Employee Retirement Payments	4,729	5,278
TOTAL	\$10,268	\$10,817

*More information is available at: <http://colorado.gov/fiscalnotes>

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2014-15, the Department of Natural Resources requires an appropriation of \$80,425 and 0.9 FTE from the Oil and Gas Conservation and Environmental Response Fund.

State and Local Government Contacts

Natural Resources

Law

Judicial