

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0594.02 Thomas Morris x4218

HOUSE BILL 16-1355

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HOUSE SPONSORSHIP

Foote and Ryden,

SENATE SPONSORSHIP

Ulibarri and Jones,

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House Committees

State, Veterans, & Military Affairs

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE ABILITY OF LOCAL GOVERNMENTS TO EXERCISE  
102 LAND USE AUTHORITY OVER OIL AND GAS FACILITIES USED IN  
103 OIL AND GAS OPERATIONS IN A MANNER ANALOGOUS TO THE  
104 SITING OF OTHER INDUSTRIAL FACILITIES.

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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>.)*

Current law specifies that local governments have so-called "House Bill 1041" powers, which are a type of land use authority, over oil and gas mineral extraction areas only if 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 has identified a specific area for designation; **sections 2 and 3** repeal that limitation.

**Section 4** includes specific authority to regulate the siting of oil and gas facilities in counties' existing land use authority. **Section 5** makes the same changes with regard to municipalities' existing land use authority.

**Sections 6 and 7** specify that the Colorado oil and gas conservation commission's authority to regulate oil and gas operations, including the siting of oil and gas facilities, does not exempt oil and gas facilities from local governments' siting authority and that oil and gas operators must ensure that the location of oil and gas facilities complies with city, town, county, or city and county siting regulations.

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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:

4 (a) Finds that:

5 (I) Local governments can determine where new industrial  
6 activities occur within their jurisdiction through zoning ordinances and  
7 resolutions, and the exercise of this authority is one of the main and most  
8 commonly exercised functions of local government;

9 (II) Under applicable statutes and case law, the Colorado oil and  
10 gas conservation commission has authority over the siting of oil and gas  
11 facilities in every jurisdiction around the state; and

12 (III) As a result of this, there is substantial uncertainty and  
13 disagreement regarding the legal effect of this overlap between local  
14 governments' siting authority and the commission's siting authority;

15 (b) Determines that:

16 (I) The differences between rural and urban areas, west slope and  
17 front range, mountains and plains, and different geological formations  
18 mean that statewide siting rules provide an ineffective protection for the  
19 public, and therefore the current legal structure is not working because

1 the state rules governing the siting of industrial oil and gas facilities do  
2 not work for all communities;

3 (II) The commission's 2013 rule-making regarding setbacks and  
4 water quality, the commission's 2014 rule-making regarding oil and gas  
5 drilling in flood plains, and the most recent commission rule-making  
6 regarding large-scale oil and gas operations are all examples of the  
7 commission's inability to adequately address local concerns regarding oil  
8 and gas operations; and

9 (III) The governing bodies of local governments are in the best  
10 position to determine the appropriate locations for oil and gas facilities  
11 and will properly balance the interests of all property owners as well as  
12 the effects on public health, wildlife, and the environment; and

13 (c) Declares that it is in the interest of the state of Colorado to  
14 clarify that, while the commission should continue to exercise its existing  
15 authority over the location of oil and gas facilities, the oil and gas  
16 industry is not exempt from local governments' authority to control the  
17 siting of oil and gas facilities through existing zoning and land use  
18 authority just as they do for every other industry.

19 **SECTION 2.** In Colorado Revised Statutes, 24-65.1-202, **repeal**  
20 (1) (d) as follows:

21 **24-65.1-202. Criteria for administration of areas of state**  
22 **interest.** (1) (d) ~~Unless an activity of state interest has been designated~~  
23 ~~or identified or unless it includes part or all of another area of state~~  
24 ~~interest, an area of oil and gas development shall not be designated as an~~  
25 ~~area of state interest unless the state oil and gas conservation commission~~  
26 ~~identifies such area for designation.~~

27 **SECTION 3.** In Colorado Revised Statutes, 24-65.1-302, **repeal**

1 (3) as follows:

2 **24-65.1-302. Functions of other state agencies.** (3) Pursuant to  
3 ~~section 24-65.1-202 (1) (d), the oil and gas conservation commission of~~  
4 ~~the state of Colorado may identify an area of oil and gas development for~~  
5 ~~designation by local government as an area of state interest.~~

6 **SECTION 4.** In Colorado Revised Statutes, 30-28-113, **amend**  
7 (1) (a) (V) and (1) (a) (VI); and **add** (1) (a) (VII) as follows:

8 **30-28-113. Regulation of size and use - districts - repeal.**

9 (1) (a) Except as otherwise provided in section 34-1-305, C.R.S., when  
10 the county planning commission of any county makes, adopts, and  
11 certifies to the board of county commissioners plans for zoning the  
12 unincorporated territory within any county, or any part thereof, including  
13 both the full text of a zoning resolution and the maps, after public hearing  
14 thereon, the board of county commissioners, by resolution, may regulate,  
15 in any portions of such county that lie outside of cities and towns:

16 (V) Access to sunlight for solar energy devices; ~~and~~

17 (VI) The uses of land for trade, industry, residence, recreation, or  
18 other purposes and for flood control; AND

19 (VII) THE SITING OF OIL AND GAS FACILITIES.

20 **SECTION 5.** In Colorado Revised Statutes, 31-23-301, **amend**  
21 (1) as follows:

22 **31-23-301. Grant of power.** (1) (a) Except as otherwise provided  
23 in section 34-1-305, C.R.S., for the purpose of promoting health, safety,  
24 morals, or the general welfare of the community, including energy  
25 conservation and the promotion of solar energy utilization, the governing  
26 body of each municipality ~~is empowered to~~ MAY regulate and restrict:

27 (I) The height, number of stories, and size of buildings and other

- 1 structures;
- 2 (II) The percentage of A lot that may be occupied;
- 3 (III) The size of yards, courts, and other open spaces;
- 4 (IV) The density of population;
- 5 (V) The height and location of trees and other vegetation; ~~and~~
- 6 (VI) The location and use of buildings, structures, and land for
- 7 trade, industry, residence, or other purposes; AND
- 8 (VII) THE SITING OF OIL AND GAS FACILITIES.

9 (b) Regulations and restrictions of the height, number of stories,

10 and the height and location of trees and other vegetation shall not apply

11 to existing buildings, structures, trees, or vegetation except for new

12 growth on such vegetation. Such regulations shall provide that a board of

13 adjustment may determine and vary their application in harmony with

14 their general purpose and intent and in accordance with general or

15 specific rules contained in such regulations.

16 (c) Subject to ~~the provisions of~~ subsection (2) of this section and

17 to the end that adequate safety may be secured, ~~said~~ THE governing body

18 ~~also has power to~~ MAY establish, regulate, restrict, and limit such uses on

19 or along any storm or floodwater runoff channel or basin, as such storm

20 or floodwater runoff channel or basin has been designated and approved

21 by the Colorado water conservation board, in order to lessen or avoid the

22 hazards to persons and damage to property resulting from the

23 accumulation of storm or floodwaters.

24 (d) Any ordinance enacted under authority of this part 3 ~~shall~~

25 MUST exempt from the operation thereof any building or structure as to

26 which satisfactory proof is presented to the board of adjustment that the

27 present or proposed situation of such building or structure is reasonably

1 necessary for the convenience or welfare of the public.

2 **SECTION 6.** In Colorado Revised Statutes, 34-60-105, **amend**  
3 (1) as follows:

4 **34-60-105. Powers of commission.** (1) (a) The commission has  
5 jurisdiction over all persons and property, public and private, necessary  
6 to enforce ~~the provisions of this article,~~ and has the power to make and  
7 enforce rules ~~regulations,~~ and orders pursuant to this article and to do  
8 whatever may reasonably be necessary to carry out ~~the provisions of this~~  
9 article.

10 (b) Any delegation of authority to any other state officer, board,  
11 or commission to administer any other laws of this state relating to the  
12 conservation of oil or gas, or either of them, is hereby rescinded and  
13 withdrawn and such authority is unqualifiedly conferred upon the  
14 commission, as provided in this section; EXCEPT THAT NOTHING IN THIS  
15 ARTICLE EXEMPTS THE LOCATION OF OIL AND GAS FACILITIES USED IN OIL  
16 AND GAS OPERATIONS FROM LOCAL GOVERNMENTS' SITING AUTHORITY AS  
17 PROVIDED IN PART 1 OF ARTICLE 28 OF TITLE 30 AND PARTS 2 AND 3 OF  
18 ARTICLE 23 OF TITLE 31, C.R.S.

19 (c) Any person, or the attorney general on behalf of the state, may  
20 apply for any hearing before the commission, or the commission may  
21 ITSELF initiate proceedings, upon any question relating to the  
22 administration of this article, and jurisdiction is conferred upon the  
23 commission to hear and determine the ~~same~~ QUESTION and enter its rule  
24 ~~regulation,~~ or order with respect ~~thereto~~ TO THE QUESTION.

25 **SECTION 7.** In Colorado Revised Statutes, 34-60-106, **add** (18)  
26 as follows:

27 **34-60-106. Additional powers of commission - rules.** (18) AN

1 OPERATOR IS SUBJECT TO LOCAL GOVERNMENTS' SITING AUTHORITY AS  
2 PROVIDED BY LAW AND SHALL ENSURE THAT THE LOCATION OF OIL AND  
3 GAS FACILITIES COMPLIES WITH CITY, TOWN, COUNTY, OR CITY AND  
4 COUNTY SITING REGULATIONS. NOTHING IN THIS SECTION IMPAIRS OR  
5 NEGATES THE AUTHORITY OF LOCAL GOVERNMENTS TO REGULATE THE  
6 SITING OF OIL AND GAS FACILITIES.

7 **SECTION 8. Safety clause.** The general assembly hereby finds,  
8 determines, and declares that this act is necessary for the immediate  
9 preservation of the public peace, health, and safety.