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In the Know: Primer on Colorado's Senate Bill 181

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On March 1, 2019, Senate Majority Leader Steve Fenberg and House Speaker KC Becker introduced [Senate Bill 181](#), which proposes significant changes to Colorado's oil and gas regulatory framework. This bill has initiated immediate public debate that is sure to continue as it proceeds through the legislature.

While it may undergo revision during that process, here is a summary of the changes that Senate Bill 181 (as originally proposed) would usher in:

(1) Redefining the COGCC

- C.R.S. § 34-60-102 articulates the legislative goals of the Oil and Gas Conservation Act (the "Act"), which currently declares it "in the public interest" to "**foster**" oil and gas development "**in a manner consistent with protection of**" public health and safety, and to promote oil and gas development in a way that avoids "waste" of the state's natural resources.
 - S.B. 181 would amend that declaration by directing the COGCC to "**regulate**" oil and gas development "**in a manner that protects**" public health and safety, and redefining "waste" to establish that non-production of oil and gas does not constitute "waste" that the COGCC must work to minimize.
- C.R.S. § 34-60-128 currently directs the COGCC to administer the Act "so as to minimize adverse impacts to wildlife resources affected by oil and gas operations," and in doing so the COGCC must consider the "**cost-effectiveness and technical feasibility**" of its mitigation-based decisions.
 - S. B. 181 would amend the definition of "minimize adverse impacts" in C.R.S. § 34-60-103(5.5) to **remove cost-efficiency and technical feasibility entirely** from the COGCC's necessary considerations in administering the Act.
- S. B. 181 would also restructure the COGCC's membership qualifications set out in C.R.S. 34-60-104 by (i) reducing the minimum number of those with industry experience from three to one (and in turn eliminating the mandate that industry member experience include petroleum engineering and geology); and (ii) increasing the membership qualifications that must be achieved with respect to public health and environmental protection. The COGCC would remain at nine total members.

(2) Expanding Local Control

- S.B. 181 would overhaul C.R.S. § 29-20-104 by clarifying the power of local governments to regulate land use and the siting of oil and gas facilities and broadly expanding local authority to protect against potential, adverse impacts of operations, including the authority to conduct regular on-site inspections, monitor emissions and other externalities often associated with well sites, and impose administrative fees and non-compliance penalties.
 - In line with the above, S.B. 181 would end the long-standing exemption for oil and gas facilities from compliance with local noise ordinances [C.R.S. § 30-15-401].
 - Similarly, S.B. 181 would eliminate parts of C.R.S. §§ 24-65.1-202 and -302 that currently empower the COGCC to establish primary jurisdiction over designated "areas of state interest."



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- S.B. 181 would also reconfigure the COGCC’s procedures under C.R.S. § 29-20-106 to introduce a new condition to the COGCC’s permitting procedure by requiring that, prior to filing any drilling permit application with the COGCC, all permit applicants provide evidence of prior application to and approval by relevant local governments authorizing the proposed drilling site.
- S.B. 181 would also require under the amended C.R.S. § 29-20-106 that the COGCC establish a new regulatory process to conduct an “alternate location analysis” for new oil and gas facilities that may be proposed “near populated areas.”

(3) Increased Facility Monitoring

- S.B. 181 would create a new legislative mandate that the state’s air quality control commission adopt new regulations that require on-site “continuous emission monitoring equipment” for **all oil and gas facilities** located in the state.
- S.B. 181 would create a new legislative mandate that the COGCC establish rules “to ensure proper wellhead integrity” of production wells and revisit its existing rules governing flowlines and shut-in or abandoned wells in light of the commission’s redefined legislative directive.

(4) Revising Pooling Applications

In addition to the above general, fundamental changes sought by S.B. 181, the bill also makes notable revisions to Colorado’s compulsory pooling system:

- First, a pooling order could no longer be sought by “any interested person,” but instead would require that all pooling order applicants obtain consent to pooling from those owning **more than half** of the interest to be pooled.
- Second, any pooling order issued by the COGCC **must prohibit** the operator from using any surface area owned by a nonconsenting, pooled owner (absent that owner’s written permission for such surface use).
- Also, S.B. 181 would increase the statutory royalty due to nonconsenting, pooled owners **from 12.5% to 15%** [C.R.S. § 34-60-116(7)(c)].

(5) Implementation Concerns

- S.B. 181 includes the new C.R.S. § 34-60-106(1)(f)(III) that many see as a potentially lengthy moratorium on new drilling permits by allowing the COGCC to delay permit issuances until it “has promulgated every rule required to be adopted by legislation enacted in 2019” that may impact oil and gas development under C.R.S. Article 60, and all such rules have become effective.

As most local readers will know, the sweeping Senate Bill 181 has already become a topic of vibrant public debate in our state. After clearing its first two Senate committees last week, the bill’s potential and final form should become clear in the near future.

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