



Colorado Senate Amends Oil And Gas Bill, Sends It To The House

Senate Bill 181 was introduced in the Colorado General Assembly on March 1, 2018. The bill started in the Senate and passed through three committees. Some amendments were adopted during that process. The Senate then debated the bill late into the evening of March 12 and adopted a number of significant amendments. On March 13, the Senate gave its final approval to the bill, which now goes to the House of Representatives. This client alert provides a summary of the bill as approved by the Senate.

1. Guardrails. One of the biggest concerns about the bill was that it provided few meaningful guardrails on actions taken by local governments and the Colorado Oil and Gas Conservation Commission. The Senate adopted two amendments to at least partially address this concern.
 - While local governments may elect to regulate oil and gas activities, an amendment adopted on March 12 limits that regulation to protection and minimization of adverse impacts to public health, safety, and welfare and the environment. The bill defines what “minimize adverse impacts” means.
 - A parallel provision specifies that the Commission must not act arbitrarily or capriciously in regulating oil and gas in order to protect and minimize adverse impacts to public health, safety and welfare.

These provisions are new and provide some greater certainty about the scope of local government and Commission authority. However, the Senate provided little additional direction on how these provisions should be interpreted and they likely will be the subject of intense debate before the Commission during future rulemakings.

2. Commission. Given the challenges a voluntary Commission has encountered in managing its caseload and the numerous, complex rulemakings required by this legislation, industry has strongly urged the General Assembly to establish a professional, full-time Commission. The legislation does not do so, but mandates that the director report to the General Assembly by January 1, 2021, on structural changes to the Commission, including the possibility of replacing a volunteer Commission with a professional Commission.

In the meantime, the legislation changes the composition of the Commission. Instead of having three members with experience in oil and gas, the new commission will have one member with experience in the industry. The legislation mandates instead that the Commission include a member with experience in public health and a member with experience in wildlife protection.

The Senate did adopt an amendment stating that one member must have formal training in a technical expertise relevant to the issues considered by the Commission or soil conservation or reclamation.

3. Permit Issuance. As introduced, Senate Bill 181 would have permitted the Director to refuse to issue any permit if the Director determined the permit requires additional analysis. The Director's discretion was largely unbounded. As amended, the bill now permits the Director to refuse to issue a permit if he concludes it needs further analysis, but requires the Director to establish objective criteria for such a decision. Those criteria must be published within 30 days following a public comment period. This authority will terminate after the Commission completes its rulemakings on alternative site analysis and flowline integrity.

4. Technical Review Board. During floor debate, the Senate added an entirely new provision that allows either a local government or an operator to ask the Director to empanel a technical review board to review a local government's decision and address the issues in dispute. The areas of dispute could include whether the local government proposes to require technologies that are not available or are impracticable. The Board would be composed of impartial experts in relevant fields. This was a significant addition supported by the oil and gas industry.

5. Waste. The Senate did not amend or revise the bill's declaration that "waste" does not include nonproduction of oil or gas if necessary to protect public health, safety or the environment. The implications of this new definition of waste likely will be significant.

6. Tribal Lands. During floor debate, the Senate adopted an amendment clarifying that the bill's provisions would not authorize the Commission or local governments to regulate federally recognized Indian tribes that undertake oil and gas activities within the exterior boundaries of a reservation.

7. Affected Local Governments. The original bill suggested that more than one local government might have siting or regulatory authority over an oil and gas permit. The Senate adopted an amendment clarifying that an operator would only be required to first seek a permit from the local government with jurisdiction to approve the siting of a proposed location (if the local government elects to address siting and regulation).

8. Pooling. On this issue, the bill has not changed from its original language. It still requires that the person seeking statutory pooling must have the consent of owners of more than 50% of the interests to be pooled. The bill also prohibits an operator from using the surface owned by a non-consenting owner without that person's consent.

9. Royalties. As introduced, the bill would have increased the statutory minimum royalty from 12.5% to 15%. An amendment offered on the Senate floor reduced the statutory royalty to 13%.

For further information regarding amendments to SB 181, or the potential impacts on your operations, please contact [Jim Martin](#).