INTRODUCED

LLS NO. 18-0640.01 Thomas Morris x4218

SENATE BILL 18-063

SENNATE SPONSORSHIP

Jones,

HOUSE SPONSORSHIP

Benavidez,

Senate Committees
Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

CONCERNING INCREASED REQUIREMENTS FOR OIL AND GAS OPERATORS, AND, IN CONNECTION THEREWITH, ADDING FINANCIAL ASSURANCE AND RECLAMATION REQUIREMENTS.

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://leg.colorado.gov.)

Section 2 of the bill prohibits the Colorado oil and gas conservation commission from accepting any of the available types of financial assurance unless the operator demonstrates, by clear and convincing evidence, that the financial assurance will be sufficient to finance all reasonably foreseeable expenses related to ensuring

Shading denotes HOUSE amendment  Double underlining denotes SENATE amendment
Capital letters or bold & italic numbers indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.
compliance with the oil and gas law if the operator fails to meet its compliance obligations. The commission shall calculate the total financial assurance required by multiplying the number of oil and gas facilities subject to the application by the projected cost to finance every reasonably foreseeable eventuality related to ensuring compliance with regard to each type of facility.

Section 4 adds reclamation requirements that are adapted from the reclamation requirements applicable to hard rock mines.

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

SECTION 1. Short title. The short title of this act is the "Taxpayer Protection from Oil and Gas Costs Act".

SECTION 2. In Colorado Revised Statutes, 34-60-106, amend (7), (12), and (13) introductory portion as follows:

34-60-106. Additional powers of commission - rules - definition. (7) (a) The commission has the authority to establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. No such fees shall exceed two hundred dollars for any application, petition, or other pleading initiating a proceeding nor one hundred dollars for any protest or other responsive pleadings, and any party to any commission proceeding shall need not pay more than one such fee for each proceeding in which it is a party. All such fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and shall be subject to appropriations by the general assembly for the purposes of this article article 60.

(b) The commission by rule shall establish the fee for the filing of an application that requires approval of a new financial assurance or amendment to an existing financial
ASSURANCE IN AN AMOUNT SUFFICIENT TO RECOVER THE COMMISSION’S REASONABLY FORESEEABLE DIRECT AND INDIRECT COSTS IN CONDUCTING THE UP-FRONT FINANCIAL VIABILITY ANALYSIS CONDUCTED PURSUANT TO SUBSECTION (13) OF THIS SECTION.

(12) The commission, in consultation with the state agricultural commission and the commissioner of agriculture, shall promulgate rules to ensure proper reclamation of the land and soil affected by oil and gas operations and to ensure the protection of the topsoil of said THE land during such OIL AND GAS operations AS SPECIFIED IN SECTION 34-60-131.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling any EVERY obligation imposed under subsections (11), (12), and (17) of this section THIS ARTICLE 60. THE COMMISSION SHALL NOT ACCEPT ANY OF THE TYPES OF FINANCIAL ASSURANCE AVAILABLE PURSUANT TO THIS SUBSECTION (13) UNLESS THE OPERATOR DEMONSTRATES, BY CLEAR AND CONVINCING EVIDENCE, THAT THE FINANCIAL ASSURANCE WILL BE SUFFICIENT TO FINANCE EVERY REASONABLY FORESEEABLE EVENTUALITY RELATED TO ENSURING COMPLIANCE WITH THIS ARTICLE 60, INCLUDING FULL RECLAMATION AS REQUIRED BY SECTION 34-60-131, SPILLS, LEAKS, AIR POLLUTION IMPACTS, EXPLOSIONS, DISEASES, INJURIES, AND DEATHS. THE COMMISSION SHALL CALCULATE THE TOTAL FINANCIAL ASSURANCE REQUIRED BY MULTIPLYING THE NUMBER OF OIL AND GAS FACILITIES SUBJECT TO THE APPLICATION BY THE PROJECTED COST TO FINANCE EVERY REASONABLY FORESEEABLE EVENTUALITY RELATED TO ENSURING COMPLIANCE WITH THIS ARTICLE 60 WITH REGARD TO EACH TYPE OF FACILITY. THE COMMISSION SHALL CONDUCT AN UP-FRONT FINANCIAL VIABILITY ANALYSIS OF THE OPERATOR BEFORE APPROVING ANY
FINANCIAL ASSURANCE. THE OPERATOR SHALL PAY THE COST OF THE
ANALYSIS AS ESTABLISHED PURSUANT TO SUBSECTION (7)(b) OF THIS
SECTION. For purposes of this subsection (13), references to "operator"
shall include an operator of an underground natural gas storage
cavern and an applicant for a certificate of closure under subsection (17)
of this section. In complying with this requirement, an operator may
submit for commission approval, without limitation, one or more of the
following:

SECTION 3. In Colorado Revised Statutes, 34-60-128, amend
(3)(d) introductory portion as follows:

34-60-128. Habitat stewardship - rules. (3) In order to
minimize adverse impacts to wildlife resources, the commission shall:

(d) Promulgate rules, by July 16, 2008; in consultation with the
parks and wildlife commission, to establish standards for minimizing
adverse impacts to wildlife resources affected by oil and gas operations
and to ensure the proper reclamation of wildlife habitat during and
following such OIL AND GAS operations AS SPECIFIED IN SECTION
34-60-131. At a minimum, the rules shall address:

SECTION 4. In Colorado Revised Statutes, add 34-60-131 as
follows:

34-60-131. Reclamation plans - required components -
implementation - annual reports. (1) EVERY OPERATOR TO WHOM A
PERMIT OR PERMIT AMENDMENT IS ISSUED PURSUANT TO THIS ARTICLE 60
SHALL SUBMIT, AS PART OF THE PERMIT APPLICATION, A PROPOSED
RECLAMATION PLAN AND SHALL PERFORM SUCH RECLAMATION AS IS
PRESCRIBED BY THE RECLAMATION PLAN APPROVED BY THE COMMISSION
PURSUANT TO THIS SECTION. RECLAMATION IS REQUIRED ON ALL THE
AFFECTED LAND.

(2) A RECLAMATION PLAN MUST BE BASED UPON PROVISIONS FOR, OR SATISFACTORY EXPLANATION OF, ALL GENERAL REQUIREMENTS FOR THE TYPE OF RECLAMATION CHOSEN. THE DETAILS OF THE PLAN MUST BE APPROPRIATE TO THE TYPE OF RECLAMATION DESIGNATED BY THE OPERATOR AND MUST BE BASED UPON THE ADVICE OF EXPERIENCED AND TECHNICALLY TRAINED PERSONNEL.

(3) ON THE ANNIVERSARY DATE OF THE PERMIT EACH YEAR, THE OPERATOR SHALL SUBMIT TO THE COMMISSION A REPORT AND MAP SHOWING THE EXTENT OF EXISTING DISTURBANCES TO LAND INCLUDED UNDER THE PERMIT, RECLAMATION ACCOMPLISHED TO DATE AND DURING THE PRECEDING TWELVE MONTHS, NEW DISTURBANCES THAT ARE ANTICIPATED TO OCCUR DURING THE UPCOMING YEAR, AND RECLAMATION THAT WILL BE PERFORMED DURING THE UPCOMING YEAR.

(4) RECLAMATION PLANS AND THEIR IMPLEMENTATION MUST CONFORM TO THE FOLLOWING GENERAL REQUIREMENTS:

(a) GRADING SHALL BE CARRIED ON SO AS TO CREATE A FINAL TOPOGRAPHY APPROPRIATE TO THE FINAL LAND USE SELECTED IN ACCORDANCE WITH SUBSECTION (4)(c) OF THIS SECTION.

(b) WHERE REVEGETATION IS PART OF THE RECLAMATION PLAN, LAND SHALL BE REVEGETATED IN SUCH A WAY AS TO ESTABLISH A DIVERSE, EFFECTIVE, AND LONG-LASTING VEGETATIVE COVER THAT IS CAPABLE OF SELF-REGENERATION AND AT LEAST EQUAL IN EXTENT OF COVER TO THE NATURAL VEGETATION OF THE SURROUNDING AREA. NATIVE SPECIES SHOULD RECEIVE FIRST CONSIDERATION, BUT INTRODUCED SPECIES MAY BE USED IN THE REVEGETATION PROCESS WHEN FOUND DESIRABLE BY THE COMMISSION.
(c) (I) On all affected land, the operator, in consultation with the landowner and subject to the approval of the commission, shall determine which parts of the affected land will be reclaimed for forest, range, agricultural or horticultural crops, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Prior to approving any new reclamation plan or approving a change in any existing reclamation plan as provided in this section, the commission shall confer with the local board of county commissioners and the board of supervisors of the conservation district if the oil and gas operations are within the boundaries of a conservation district.

(II) If the reclamation plan includes native grasses, the operator shall restore the affected land to slopes commensurate with the proposed land use.

(III) If the reclamation plan includes agricultural or horticultural crops that normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization, and seeding or planting rates are governed by general agricultural and horticultural practices, except where research or experience in those operations differs with these practices.

(IV) If the reclamation plan includes the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the operator must propose and the commission must
APPROVE THE BASIC MINIMUM REQUIREMENTS NECESSARY FOR THE
RECLAMATION.

(d) THE OPERATOR SHALL CARRY TO COMPLETION ALL
RECLAMATION PROVIDED FOR IN THIS SECTION WITH ALL NECESSARY
DILIGENCE AND THE RECLAMATION SHALL BE CONDUCTED CONCURRENTLY
WITH OIL AND GAS OPERATIONS TO THE EXTENT TECHNOLOGICALLY
PRACTICABLE, TAKING INTO CONSIDERATION THE OIL AND GAS
DEVELOPMENT PLAN, SAFETY, THE AVAILABILITY OF EQUIPMENT AND
MATERIAL, AND OTHER SITE-SPECIFIC CONDITIONS RELEVANT AND UNIQUE
TO THE AFFECTED LAND AND TO THE POST-PRODUCTION LAND USE. UPON
TERMINATION OF THE ENTIRE OIL AND GAS OPERATION AND IN
ACCORDANCE WITH THE RECLAMATION PLAN, THE OPERATOR SHALL
COMPLETE EACH PHASE OF FINAL RECLAMATION WITHIN TWO YEARS AFTER
THE DATE ON WHICH THE OPERATOR ADVISES THE COMMISSION THAT THE
PHASE HAS COMMENCED.

SECTION 5. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly (August 8, 2018, if adjournment sine die is on May 9,
2018); except that, if a referendum petition is filed pursuant to section 1
(3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2018 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable
effective date of this act.