

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0640.01 Thomas Morris x4218

SENATE BILL 18-063

SENATE SPONSORSHIP

Jones,

HOUSE SPONSORSHIP

Benavidez,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING INCREASED REQUIREMENTS FOR OIL AND GAS
102 OPERATORS, AND, IN CONNECTION THEREWITH, ADDING
103 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.

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

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

4 **SECTION 2.** In Colorado Revised Statutes, 34-60-106, **amend**
5 (7), (12), and (13) introductory portion as follows:

6 **34-60-106. Additional powers of commission - rules -**
7 **definition.** (7) (a) The commission has the authority to establish, charge,
8 and collect docket fees for the filing of applications, petitions, protests,
9 responses, and other pleadings. ~~No such~~ EXCEPT AS SPECIFIED IN
10 SUBSECTION (7)(b) OF THIS SECTION, THE fees ~~shall~~ MUST NOT exceed two
11 hundred dollars for any application, petition, or other pleading initiating
12 a proceeding nor one hundred dollars for any protest or other responsive
13 pleadings, and any party to any commission proceeding ~~shall~~ NEED NOT
14 pay ~~no~~ more than one such fee for each proceeding in which it is a party.
15 All ~~such~~ fees shall be deposited in the oil and gas conservation and
16 environmental response fund established by section 34-60-122 and ~~shall~~
17 ~~be~~ ARE subject to appropriations by the general assembly for the purposes
18 of this ~~article~~ ARTICLE 60.

19 (b) THE COMMISSION BY RULE SHALL ESTABLISH THE FEE FOR THE
20 FILING OF AN APPLICATION THAT REQUIRES APPROVAL OF A NEW
21 FINANCIAL ASSURANCE OR AMENDMENT TO AN EXISTING FINANCIAL

1 ASSURANCE IN AN AMOUNT SUFFICIENT TO RECOVER THE COMMISSION'S
2 REASONABLY FORESEEABLE DIRECT AND INDIRECT COSTS IN CONDUCTING
3 THE UP-FRONT FINANCIAL VIABILITY ANALYSIS CONDUCTED PURSUANT TO
4 SUBSECTION (13) OF THIS SECTION.

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

10 (13) The commission shall require every operator to provide
11 assurance that it is financially capable of fulfilling ~~any~~ EVERY obligation
12 imposed under ~~subsections (11), (12), and (17) of this section~~ THIS
13 ARTICLE 60. THE COMMISSION SHALL NOT ACCEPT ANY OF THE TYPES OF
14 FINANCIAL ASSURANCE AVAILABLE PURSUANT TO THIS SUBSECTION (13)
15 UNLESS THE OPERATOR DEMONSTRATES, BY CLEAR AND CONVINCING
16 EVIDENCE, THAT THE FINANCIAL ASSURANCE WILL BE SUFFICIENT TO
17 FINANCE EVERY REASONABLY FORESEEABLE EVENTUALITY RELATED TO
18 ENSURING COMPLIANCE WITH THIS ARTICLE 60, INCLUDING FULL
19 RECLAMATION AS REQUIRED BY SECTION 34-60-131, SPILLS, LEAKS, AIR
20 POLLUTION IMPACTS, EXPLOSIONS, DISEASES, INJURIES, AND DEATHS. THE
21 COMMISSION SHALL CALCULATE THE TOTAL FINANCIAL ASSURANCE
22 REQUIRED BY MULTIPLYING THE NUMBER OF OIL AND GAS FACILITIES
23 SUBJECT TO THE APPLICATION BY THE PROJECTED COST TO FINANCE EVERY
24 REASONABLY FORESEEABLE EVENTUALITY RELATED TO ENSURING
25 COMPLIANCE WITH THIS ARTICLE 60 WITH REGARD TO EACH TYPE OF
26 FACILITY. THE COMMISSION SHALL CONDUCT AN UP-FRONT FINANCIAL
27 VIABILITY ANALYSIS OF THE OPERATOR BEFORE APPROVING ANY

1 FINANCIAL ASSURANCE. THE OPERATOR SHALL PAY THE COST OF THE
2 ANALYSIS AS ESTABLISHED PURSUANT TO SUBSECTION (7)(b) OF THIS
3 SECTION. For purposes of this subsection (13), ~~references to "operator"~~
4 ~~shall include~~ INCLUDES an operator of an underground natural gas storage
5 cavern and an applicant for a certificate of closure under subsection (17)
6 of this section. In complying with this requirement, an operator may
7 submit for commission approval, without limitation, one or more of the
8 following:

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

11 **34-60-128. Habitat stewardship - rules.** (3) In order to
12 minimize adverse impacts to wildlife resources, the commission shall:

13 (d) Promulgate rules, ~~by July 16, 2008,~~ in consultation with the
14 parks and wildlife commission, to establish standards for minimizing
15 adverse impacts to wildlife resources affected by oil and gas operations
16 and to ensure the proper reclamation of wildlife habitat during and
17 following ~~such~~ OIL AND GAS operations AS SPECIFIED IN SECTION
18 34-60-131. At a minimum, the rules shall address:

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

21 **34-60-131. Reclamation plans - required components -**
22 **implementation - annual reports.** (1) EVERY OPERATOR TO WHOM A
23 PERMIT OR PERMIT AMENDMENT IS ISSUED PURSUANT TO THIS ARTICLE 60
24 SHALL SUBMIT, AS PART OF THE PERMIT APPLICATION, A PROPOSED
25 RECLAMATION PLAN AND SHALL PERFORM SUCH RECLAMATION AS IS
26 PRESCRIBED BY THE RECLAMATION PLAN APPROVED BY THE COMMISSION
27 PURSUANT TO THIS SECTION. RECLAMATION IS REQUIRED ON ALL THE

1 AFFECTED LAND.

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

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

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

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

20 (b) WHERE REVEGETATION IS PART OF THE RECLAMATION PLAN,
21 LAND SHALL BE REVEGETATED IN SUCH A WAY AS TO ESTABLISH A
22 DIVERSE, EFFECTIVE, AND LONG-LASTING VEGETATIVE COVER THAT IS
23 CAPABLE OF SELF-REGENERATION AND AT LEAST EQUAL IN EXTENT OF
24 COVER TO THE NATURAL VEGETATION OF THE SURROUNDING AREA.
25 NATIVE SPECIES SHOULD RECEIVE FIRST CONSIDERATION, BUT
26 INTRODUCED SPECIES MAY BE USED IN THE REVEGETATION PROCESS WHEN
27 FOUND DESIRABLE BY THE COMMISSION.

1 (c) (I) ON ALL AFFECTED LAND, THE OPERATOR, IN CONSULTATION
2 WITH THE LANDOWNER AND SUBJECT TO THE APPROVAL OF THE
3 COMMISSION, SHALL DETERMINE WHICH PARTS OF THE AFFECTED LAND
4 WILL BE RECLAIMED FOR FOREST, RANGE, AGRICULTURAL OR
5 HORTICULTURAL CROPS, HOMESITE, RECREATIONAL, INDUSTRIAL, OR
6 OTHER USES, INCLUDING FOOD, SHELTER, AND GROUND COVER FOR
7 WILDLIFE. PRIOR TO APPROVING ANY NEW RECLAMATION PLAN OR
8 APPROVING A CHANGE IN ANY EXISTING RECLAMATION PLAN AS PROVIDED
9 IN THIS SECTION, THE COMMISSION SHALL CONFER WITH THE LOCAL BOARD
10 OF COUNTY COMMISSIONERS AND THE BOARD OF SUPERVISORS OF THE
11 CONSERVATION DISTRICT IF THE OIL AND GAS OPERATIONS ARE WITHIN THE
12 BOUNDARIES OF A CONSERVATION DISTRICT.

13 (II) IF THE RECLAMATION PLAN INCLUDES NATIVE GRASSES, THE
14 OPERATOR SHALL RESTORE THE AFFECTED LAND TO SLOPES
15 COMMENSURATE WITH THE PROPOSED LAND USE.

16 (III) IF THE RECLAMATION PLAN INCLUDES AGRICULTURAL OR
17 HORTICULTURAL CROPS THAT NORMALLY REQUIRE THE USE OF FARM
18 EQUIPMENT, THE OPERATOR SHALL GRADE SO THAT THE AREA CAN BE
19 TRAVERSED WITH FARM MACHINERY. PREPARATION FOR SEEDING OR
20 PLANTING, FERTILIZATION, AND SEEDING OR PLANTING RATES ARE
21 GOVERNED BY GENERAL AGRICULTURAL AND HORTICULTURAL PRACTICES,
22 EXCEPT WHERE RESEARCH OR EXPERIENCE IN THOSE OPERATIONS DIFFERS
23 WITH THESE PRACTICES.

24 (IV) IF THE RECLAMATION PLAN INCLUDES THE DEVELOPMENT OF
25 THE AFFECTED LAND FOR HOMESITE, RECREATIONAL, INDUSTRIAL, OR
26 OTHER USES, INCLUDING FOOD, SHELTER, AND GROUND COVER FOR
27 WILDLIFE, THE OPERATOR MUST PROPOSE AND THE COMMISSION MUST

1 APPROVE THE BASIC MINIMUM REQUIREMENTS NECESSARY FOR THE
2 RECLAMATION.

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

16 **SECTION 5. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 8, 2018, if adjournment sine die is on May 9,
20 2018); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2018 and, in such case, will take effect on the
25 date of the official declaration of the vote thereon by the governor.

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