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Colorado's SB 181 – What Does the New Law REALLY Do?

In many states, spring is not only the time when the grass turns green and flowers bloom but also when legislatures are in session and new laws and policies are debated. During the 2019 legislative session, it probably is safe to say that no piece of energy-related legislation received more attention than Colorado's SB 181 which, as a newly enacted law, has a significant impact on oil and gas operations in Colorado.

Much has been written about SB 181, often in hyperbolic language from both proponents and opponents. We have tried to cut through the rhetoric to distill SB 181 into a few salient points which we set forth below.

The Stated Intent of SB 19-181 was to:

- clarify local government authority over land use and nuisance powers to regulate oil and gas
- eliminate state preemption of municipalities and counties and allow local governments to regulate oil and gas operations in partnership with state agencies
- allow local governments the option to impose fees to cover the costs of regulating, monitoring, and permitting sites
- reform the makeup and scope of the Colorado Oil and Gas Conservation Commission (the "COGCC")
- make changes to the forced pooling application and process

Four Key Elements to SB 19-181 as Enacted:

1. increase local control and changes to preemption law
2. public health, safety and environment have greater focus, with reduced significance to costs, operational issues
3. extensive changes to forced pooling
4. substantially revised COGCC

Increased Local Control Under SB 181:

- expands local government jurisdiction over oil and gas operations
- removes limitations on local governments to charge taxes or fees for inspections and monitoring
- allows local governments to regulate noise from facilities by repealing a current exemption
- clarifies that local governments have land-use authority to regulate the siting of oil and gas locations and to regulate land use and surface impacts, including the ability to inspect facilities and impose fines and fees
- prior to being granted a permit from the COGCC, an operator must show that either the relevant local government has authorized its operations or the local government does not regulate the siting of oil and gas operations
- specifies that local governments' regulations may be "more protective or stricter than state requirements"

thus radically altering the law of preemption

- requires that local regulations must be “necessary and reasonable”
- clarifies that local government authority is only over surface impacts of oil and gas operations and is limited to its own jurisdiction

Under SB 181, Public Health, Safety and Environment have Greater Focus; Reduced Significance to Costs, Operational Issues:

- gives preeminence to health and environmental issues; the intent and purpose of the Act is to permit oil and gas production “subject to the protection of public health, safety, and welfare, the environment, and wildlife resources and the prevention of waste”
- changes the priorities of the Oil and Gas Act and the COGCC from one of fostering responsible development of resources to “regulating” oil and gas development to “protect” public health, safety, welfare, the environment and wildlife resources
- grants COGCC authority to address a range of health and environmental impacts
- removes considerations of cost effectiveness and technical feasibility when taking action to mitigate impacts to wildlife
- changes the definition of “waste” to permit non-production of oil and gas to protect health and safety
- requires the COGCC to adopt rules to:
 - require alternate location analyses for oil and gas facilities proposed to be located near populated areas;
 - address abandoned/inactive wells and ensure proper well head integrity; and
 - require worker safety certification for certain workers who deal with compliance or whose work involves materials that could pose a risk to public safety
- defines “minimize adverse impacts” as “the extent necessary and reasonable, to protect public health, safety, and welfare and the environment, and wildlife resources”

SB 181 Enacts Substantial Changes to Forced Pooling:

- changes the threshold for the required percent of mineral interests to 45%
- requires mineral-rights owners to obtain local government authorization or show that the local government does not regulate siting before obtaining a pooling order
- operators cannot use the surface owned by a non-consenting owner without the non-consenting owner's permission
- requires financial assurance sufficient to provide adequate coverage to plug all abandoned wells and comply with all current and future rules

SB 181 Will Result in a Substantially Revised COGCC:

- professionalizes the COGCC by making Commission positions governor-appointed, senate-confirmed, full-time, and paid
- Starting in July 2020, only one (1) member of the COGCC will be required to have oil and gas experience. Three (3) other members will be required to have experience in: (1) environmental protection, wildlife protection, or reclamation; (2) public land use; and (3) public health.

Put this all together, and it is hard to overstate the significance of SB 181. As is often the case, though, the

complexity is in the details, and many questions remain unanswered regarding SB 181, including how it will affect operations in Colorado and how operators (and their investors) should react to it. Dickie McCamey's Denver office is dealing with SB 181 and advising operators and other interested parties on a daily basis and is ready to discuss any questions or issues you have.



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