

Senator David P. Hinkins proposes the following substitute bill:

OIL AND GAS OPERATIONS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill deals with the state preemption of local regulation of oil and gas operations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ states that oil and gas operations are of statewide concern;
- ▶ states that, subject to relevant federal law, state regulation of oil and gas operations occupies the whole field of potential regulation in the state;
- ▶ prohibits a political subdivision from regulating oil and gas operations, except in certain circumstances; and
- ▶ modifies the regulatory authority of the Board of Oil, Gas, and Mining.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

40-6-5, as last amended by Laws of Utah 2012, Chapter 342



26 ENACTS:

27 40-6-2.5, Utah Code Annotated 1953

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **40-6-2.5** is enacted to read:

31 **40-6-2.5. Preemption.**

32 (1) As used in this section:

33 (a) "Commercially reasonable" means a condition that permits a reasonably prudent
34 operator to fully, effectively, and economically exploit, develop, produce, process, and
35 transport oil and gas.

36 (b) "Oil and gas operation" means activity associated with the exploration,
37 development, production, processing, and transportation of oil and gas, including:

38 (i) drilling;

39 (ii) hydraulic fracture stimulation;

40 (iii) completion, maintenance, reworking, recompletion, disposal, plugging, and
41 abandonment;

42 (iv) secondary and tertiary recovery techniques; and

43 (v) remediation activities.

44 (2) Subject to relevant federal law, regulation of oil and gas operations is of statewide
45 concern and state regulation occupies the whole field of potential regulation.

46 (3) The authority of a political subdivision to regulate an oil and gas operation is
47 expressly preempted, except that a political subdivision may enact, amend, or enforce an
48 ordinance or other local measure that:

49 (a) regulates only surface activity that is incident to an oil and gas operation;

50 (b) is commercially reasonable;

51 (c) does not effectively prohibit an oil and gas operation; and

52 (d) is not otherwise preempted by state or federal law.

53 Section 2. Section **40-6-5** is amended to read:

54 **40-6-5. Jurisdiction of board -- Rules.**

55 (1) The board has jurisdiction over all persons and property necessary to enforce this
56 chapter. The board shall enact rules in accordance with the Utah Administrative Rulemaking

57 Act.

58 (2) The board shall adopt rules and make orders as necessary to administer the
59 following provisions:

60 (a) Ownership of all facilities for the production, storage, treatment, transportation,
61 refining, or processing of oil and gas shall be identified.

62 (b) Well logs, directional surveys, and reports on well location, drilling, and production
63 shall be made and filed with the division. Logs of wells marked "confidential" shall be kept
64 confidential for one year after the date on which the log is required to be filed, unless the
65 operator gives written permission to release the log at an earlier date. Production reports shall
66 be:

67 (i) filed monthly;

68 (ii) accurate; and

69 (iii) in a form that reasonably serves the needs of state agencies and private fee owners.

70 (c) Monthly reports from gas processing plants shall be filed with the division.

71 (d) Wells shall be drilled, cased, operated, and plugged in such manner as to prevent:

72 (i) the escape of oil, gas, or water out of the reservoir in which they are found into

73 another formation;

74 (ii) the detrimental intrusion of water into an oil or gas reservoir;

75 (iii) the pollution of fresh water supplies by oil, gas, or salt water;

76 (iv) blowouts;

77 (v) cavings;

78 (vi) seepages;

79 (vii) fires; and

80 (viii) unreasonable:

81 (A) loss of a surface land owner's crops on surface land;

82 (B) loss of value of existing improvements owned by a surface land owner on surface

83 land; and

84 (C) permanent damage to surface land.

85 (e) The drilling of wells shall not commence without an adequate and approved supply

86 of water as required by Title 73, Chapter 3, Appropriation. This provision is not intended to

87 impose any additional legal requirements, but to assure that existing legal requirements

88 concerning the use of water have been met prior to the commencement of drilling.

89 (f) The operator shall furnish a reasonable performance bond or other good and
90 sufficient surety, conditioned for the performance of the duty to:

91 (i) plug each dry or abandoned well;

92 (ii) repair each well causing waste or pollution;

93 (iii) maintain and restore the well site; and

94 (iv) except as provided in Subsection (8), protect a surface land owner against
95 unreasonable:

96 (A) loss of a surface land owner's crops on surface land;

97 (B) loss of value of existing improvements owned by a surface land owner on surface
98 land; and

99 (C) permanent damage to surface land.

100 (g) Production from wells shall be separated into oil and gas and measured by means
101 and upon standards that will be prescribed by the board and will reflect current industry
102 standards.

103 (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and
104 any accumulation of nonmerchantable waste crude oil shall be treated and processed, as
105 prescribed by the board.

106 (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or
107 processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced
108 recovery, or salt water disposal in this state shall maintain complete and accurate records of the
109 quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or
110 injected for a period of at least six years. The records shall be available for examination by the
111 board or its agents at any reasonable time. Rules enacted to administer this subsection shall be
112 consistent with applicable federal requirements.

113 (j) Any person with an interest in a lease shall be notified when all or part of that
114 interest in the lease is sold or transferred.

115 (3) [The] To the extent not preempted by federal law, and notwithstanding any other
116 provision of state law, the board has the exclusive authority to regulate:

117 (a) all operations for and related to the production of oil or gas including:

118 (i) drilling, testing, equipping, completing, performing hydraulic fracturing or other

119 stimulation techniques, operating, producing, and plugging of wells; and
120 (ii) reclamation of sites;
121 (b) the spacing and location of wells;
122 (c) operations to increase ultimate recovery, such as:
123 (i) cycling of gas;
124 (ii) the maintenance of pressure; and
125 (iii) the introduction of gas, water, or other substances into a reservoir;
126 (d) the disposal of salt water and oil-field wastes;
127 (e) the underground and surface storage of oil, gas, or products; and
128 (f) the flaring of gas from an oil well.
129 (4) For the purposes of administering this chapter, the board may designate:
130 (a) wells as:
131 (i) oil wells; or
132 (ii) gas wells; and
133 (b) pools as:
134 (i) oil pools; or
135 (ii) gas pools.
136 (5) The board has exclusive jurisdiction over:
137 (a) class II injection wells, as defined by the federal Environmental Protection Agency
138 or any successor agency; and
139 (b) pits and ponds in relation to these injection wells.
140 (6) The board has jurisdiction:
141 (a) to hear any questions regarding multiple mineral development conflicts with oil and
142 gas operations if there:
143 (i) is potential injury to other mineral deposits on the same lands; or
144 (ii) are simultaneous or concurrent operations conducted by other mineral owners or
145 lessees affecting the same lands; and
146 (b) to enter its order or rule with respect to those questions.
147 (7) The board has enforcement powers with respect to operators of minerals other than
148 oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple
149 mineral development issues.

150 (8) The provisions of Subsection (2)(f)(iv) do not apply if the surface land owner is a
151 party to, or a successor of a party to:

152 (a) a lease of the underlying privately owned oil and gas;

153 (b) a surface use agreement applicable to the surface land owner's surface land; or

154 (c) a contract, waiver, or release addressing an owner's or operator's use of the surface
155 land owner's surface land.

156 Section 3. **Effective date.**

157 If approved by two-thirds of all the members elected to each house, this bill takes effect
158 upon approval by the governor, or the day following the constitutional time limit of Utah
159 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
160 the date of veto override.