

STATE REGULATION OF OIL AND GAS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill deals with the regulation of oil and gas activity.

Highlighted Provisions:

This bill:

- ▶ defines the term "oil and gas activity";
- ▶ states that, subject to federal law, state regulation of oil and gas activity occupies the whole regulatory field;
- ▶ provides that a municipality or county may regulate surface activity that is incident to an oil and gas activity in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

10-9a-102, as last amended by Laws of Utah 2007, Chapter 363

17-27a-102, as last amended by Laws of Utah 2015, Chapter 465

ENACTS:

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 **10-9a-102** is amended to read:31 **10-9a-102. Purposes -- General land use authority.**

32 (1) The purposes of this chapter are to provide for the health, safety, and welfare, and
 33 promote the prosperity, improve the morals, peace and good order, comfort, convenience, and
 34 aesthetics of each municipality and its present and future inhabitants and businesses, to protect
 35 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural
 36 and other industries, to protect both urban and nonurban development, to protect and ensure
 37 access to sunlight for solar energy devices, to provide fundamental fairness in land use
 38 regulation, and to protect property values.

39 (2) To accomplish the purposes of this chapter, municipalities may enact all
 40 ordinances, resolutions, and rules and may enter into other forms of land use controls and
 41 development agreements that they consider necessary or appropriate for the use and
 42 development of land within the municipality, including ordinances, resolutions, rules,
 43 restrictive covenants, easements, and development agreements governing uses, density, open
 44 spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and
 45 public or alternative transportation, infrastructure, street and building orientation and width
 46 requirements, public facilities, fundamental fairness in land use regulation, considerations of
 47 surrounding land uses and the balance of the foregoing purposes with a landowner's private
 48 property interests, height and location of vegetation, trees, and landscaping, unless expressly
 49 prohibited by law.

50 (3) (a) Any ordinance, resolution, or rule enacted by a municipality pursuant to its
 51 authority under this chapter shall comply with the state's exclusive jurisdiction to regulate oil
 52 and gas activity, as described in Section [40-6-2.5](#).

53 (b) A municipality may enact an ordinance, resolution, or rule that regulates surface
 54 activity incident to an oil and gas activity if the municipality demonstrates that the regulation:

55 (i) is necessary for the purposes of this chapter;

56 (ii) does not effectively or unduly limit, ban, ~~or~~ prohibit ~~or otherwise~~
 56a ~~infringe on~~ an oil

57 and gas activity; and

58 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas

59 activity, as described in Section [40-6-2.5](#).

60 Section 2. Section **17-27a-102** is amended to read:

61 **17-27a-102. Purposes -- General land use authority.**

62 (1) (a) The purposes of this chapter are to provide for the health, safety, and welfare,
63 and promote the prosperity, improve the morals, peace and good order, comfort, convenience,
64 and aesthetics of each county and its present and future inhabitants and businesses, to protect
65 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural
66 and other industries, to protect both urban and nonurban development, to protect and ensure
67 access to sunlight for solar energy devices, to provide fundamental fairness in land use
68 regulation, and to protect property values.

69 (b) To accomplish the purposes of this chapter, counties may enact all ordinances,
70 resolutions, and rules and may enter into other forms of land use controls and development
71 agreements that they consider necessary or appropriate for the use and development of land
72 within the unincorporated area of the county or a designated mountainous planning district,
73 including ordinances, resolutions, rules, restrictive covenants, easements, and development
74 agreements governing uses, density, open spaces, structures, buildings, energy-efficiency, light
75 and air, air quality, transportation and public or alternative transportation, infrastructure, street
76 and building orientation and width requirements, public facilities, fundamental fairness in land
77 use regulation, considerations of surrounding land uses and the balance of the foregoing
78 purposes with a landowner's private property interests, height and location of vegetation, trees,
79 and landscaping, unless expressly prohibited by law.

80 (2) Each county shall comply with the mandatory provisions of this part before any
81 agreement or contract to provide goods, services, or municipal-type services to any storage
82 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive
83 waste, may be executed or implemented.

84 (3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority
85 under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas
86 activity, as described in Section [40-6-2.5](#).

87 (b) A county may enact an ordinance, resolution, or rule that regulates surface activity
88 incident to an oil and gas activity if the county demonstrates that the regulation:

89 (i) is necessary for the purposes of this chapter;

90 (ii) does not effectively or unduly limit, ban, ~~§~~ or ~~←§~~ prohibit ~~§~~ [~~or otherwise~~
 90a ~~infringe on~~ ~~←§~~ an oil
 91 and gas activity; and

92 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas
 93 activity, as described in Section [40-6-2.5](#).

94 Section 3. Section **40-6-2.5** is enacted to read:

95 **40-6-2.5. Preemption.**

96 (1) (a) As used in this section, "oil and gas activity" means activity associated with the
 97 exploration, development, production, processing, and transportation of oil and gas as set forth
 98 in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, including:

99 (i) drilling;

100 (ii) hydraulic fracture stimulation;

101 (iii) completion, maintenance, reworking, recompletion, disposal, plugging, and
 102 abandonment of wells;

103 (iv) construction activities;

104 (v) secondary and tertiary recovery techniques;

105 (vi) remediation activities; and

106 (vii) any other activity identified by the Board of Oil, Gas, and Mining.

107 (b) Oil and gas activity does not include any activity or authority directly authorized or
 108 granted to a political subdivision by the state.

109 (2) Subject to relevant federal law, regulation of oil and gas activity is of statewide
 110 concern and the state regulation of oil and gas activity occupies the whole field of potential
 111 regulation.

112 (3) The legislative body of a political subdivision may enact, amend, or enforce a local
 113 ordinance, resolution, or rule consistent with its general land use authority that:

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

115 (b) does not effectively or unduly limit, ban, ~~§~~ or ~~←§~~ prohibit ~~§~~ [~~or otherwise~~
 115a ~~infringe on~~ ~~←§~~ an oil
 116 and gas activity; and

117 (c) is not otherwise preempted by state or federal law.

118 Section 4. **Effective date.**

119 If approved by two-thirds of all the members elected to each house, this bill takes effect
 120 upon approval by the governor, or the day following the constitutional time limit of Utah

121 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
122 the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel