

1                                   **STATE REGULATION OF OIL AND GAS**

2   2018 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Kevin T. Van Tassell**

5                                   House Sponsor: Carl R. Albrecht

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7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11           This bill:

12           ▶ defines the term "oil and gas activity";

13           ▶ states that, subject to federal law, state regulation of oil and gas activity occupies the  
14 whole regulatory field;

15           ▶ provides that a municipality or county may regulate surface activity that is incident  
16 to an oil and gas activity in certain circumstances; and

17           ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24           **10-9a-102**, as last amended by Laws of Utah 2007, Chapter 363

25           **17-27a-102**, as last amended by Laws of Utah 2015, Chapter 465

26 ENACTS:

27           **40-6-2.5**, Utah Code Annotated 1953



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

Section 1. Section **10-9a-102** is amended to read:

**10-9a-102. Purposes -- General land use authority.**

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

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

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

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

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

(ii) does not effectively or unduly limit, ban, prohibit, or otherwise infringe on an oil and gas activity; and

(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, prohibit, or otherwise 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, prohibit, or otherwise 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.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**