

Colorado Deals With Pooling, Flowlines

DENVER—The Colorado Legislature passed two bills that oil industry leaders called meaningful and important, managed a compromise on the state's energy office, and avoided bills that would have placed new restrictions on development as activity steadily increases across the Denver-Julesburg Basin.

A session that began with still fresh memories of a fatal explosion one year ago in Firestone, Co., which was determined by state inspectors to have been caused by an improperly isolated well and kept alive by opposition interests, ended in May without any bills passing that could be considered damaging to the industry, confirms Dan Haley, president and chief executive officer of the Colorado Oil & Gas Association.

Haley acknowledges that it was a difficult session, "but ultimately, compromise and bipartisanship carried the day."

Importantly, two bills were passed that "will improve Colorado energy development practices," he adds.

During hearings on a bill to update and clarify the state's pooling laws, Haley says he was encouraged by the uniform support from "conservationists, neighborhood representatives and industry leaders," and the ensuing bipartisan votes in the Senate and House.

"It was a remarkable highlight from a productive 2018 session," he assesses.

The 2018 session saw a total of 786 bills introduced, observes House Majority Leader KC Becker, D-Boulder, in a Twitter posting at the end of the session. According to Becker, Democrats did "not get everything we wanted, but we will keep working on the things that matter."

She adds that "reauthorizing the Colorado Energy Office, addressing orphan wells, revamping the 811 system to include oil and gas, and fixes to forced pooling are all important steps."

Energy Office

A milestone for energy issues this year came midway through the session when the House passed a bill to reauthorize the Colorado Energy Office (CEO) on a 48-14 vote.

SB18-003 revived the agency, which originally was known as the Governor's Energy Office, after the two chambers could not agree on priorities last session. This year, legislators approved funding of \$3.1 million in addition to the CEO's annual \$16.5 million appropriation while

removing several renewable energy grant programs and adding nuclear and fossil fuel energy to its roster.

According to Senator Ray Scott, R-Grand Junction, the bill's sponsor, it eliminates several unused renewable energy grant programs while emphasizing an "all of the above" approach to promoting energy.

Discussing what he saw as the biggest accomplishments this year during a session wrap-up hosted May 11 by COGA, Assistant Majority Leader Scott said approval of a transportation bill and another, referred to as a compromise that sustained the public employee pension program, were session highlights from his perspective.

Haley commented that passing the pooling and flowline inspection bills topped the list for COGA.

Pooling Modified

SB 18-230, sponsored by Senator Vicki Marble, R-Ft. Collins, and Representatives Lori Saine, R-Firestone, and Matt Gray, D-Broomfield, clarifies that a drilling unit may contain more than one well, protects nonconsenting mineral owners from liabilities during drilling and production, adjusts development cost recovery schedules, and modifies conditions to be considered before pooling orders are issued.

The bill, which passed the House with a single no vote and the Senate by a margin of 28-6, extends the notice period operators must provide to 60 from 35 days before a mineral owner can be considered nonconsenting. A lease offer to any mineral owner must include a state-produced brochure that "clearly and concisely describes pooling procedures" and options available to mineral owners, the bill reads.

According to Representative Gray, the provision that protects nonconsenting mineral owners from liability for such things as spills or fires during production was critical to his sponsorship. Published reports quoted Gray saying that mineral owners often signed leases primarily to protect themselves from liability, and that previously, nonconsenting owners were considered co-operators under Colorado law and potentially liable for damages.

If signed by Governor John Hickenlooper, as Gray said he expected, nonconsenting owners would receive a 12.5 percent royalty on production until the operator recovered 200 percent of well

development costs. Once that milestone is crossed, nonconsenting owners receive their full proportionate share.

An early version of the bill provided nonconsenting owners a 15.0 percent royalty during the cost recovery period while allowing the operator to recover 300 percent of development costs for horizontal wells and wells deeper than 5,000 feet. Both provisions were amended as compromises to gain support for the final measure, Gray says.

"Pooling mineral interests is critical for modern horizontal drilling practices, but pooling laws had not been updated since the middle of the last century," comments Haley. "This bill brings those practices into the modern era with a lengthier and improved public notification process, as well as a clarified liability waiver for those who prefer not to negotiate or sign a lease."

The forced pooling bill was called "an important start" by the leader of a local opposition group, adding that compensating nonconsenting mineral owners must be addressed further.

The final version of the bill was reported to have broad support, including from the state Department of Natural Resources and the Colorado Municipal League.

One Call Locates

The second bill that received widespread support during the second half of the session was considered a keystone to making Colorado's flowline regulations "far and away the toughest and most comprehensive in the country," says Scott Prestidge, COGA director of communications and public affairs.

Sponsored by Representative Lori Saine, R-Firestone, and Senator Scott, the 811 Locate bill, SB18-167, strengthens the state's line-location rules while adding protections against public access to specific line-location data.

The bill passed the House 61-1 and the Senate unanimously the final week of the session.

With the creation of the Underground Damage Prevention Safety Commission, an independent agency within the Colorado Department of Labor and Employment, SB 167's fiscal note anticipates \$577,000 in additional spending by the state for administration and compliance costs the first year and \$1.13 million in 2020.

Colorado's one-call line-locating serv-

ice is provided by an independent non-profit. SB 167 directs the new commission to write rules and approve a memorandum of understanding with Colorado 811 by July 2019.

Haley says the bill effectively moves all oil and gas operators into Tier 1 status and by Jan. 1, 2021, excavators will not need to contact individual line owners to arrange a line locate.

The bill provides, "Location of the underground facility is exempt from the Colorado Open Records Act," although that information will be provided for lines considered "critical infrastructure," and to local governments on request.

Penalties for failure to contact Colorado 811 for a line locate can be \$250 for a first violation and up to \$75,000 for a fourth violation in 12 months, according to the bill.

Other Issues

The legislature also passed a bill allowing the Colorado Oil & Gas Conservation Commission to allocate unspent dollars from its environmental response fund toward its orphan well plug-and-abandon program. The bill, HB18-1098, passed unanimously through both houses and was signed by Governor Hickenlooper on April 9.

Also this year, according to the state legislative website, lawmakers approved SB 18-1400, which increases by 25 percent, permit fees for operators of stationary emission sources with annual increases for inflation. The increased fees are intended to reduce permit processing times at the Colorado Department of Public Health and Environment.

During COGA's end-of-session review, Senator Scott commented that the political divide in the capitol was as deep as any he could remember. "Energy does not have to be partisan issue," Scott held. "Unfortunately, some people just go into a foxhole during the session and refuse to even discuss it. Most of them don't understand that oil and gas funds all the things they depend on and how much their taxes would go up if we stopped producing."

Rising oil prices are expected to result in state severance tax revenue doubling

from fiscal 2017-18 to 2019-20, according to a March report by the State Legislative Council. Oil severance taxes were projected at \$76.8 million for the year ending June 30, the report states. For the next biennium, oil severance revenue is projected at \$135.2 million in 2018-19, increasing to \$153.9 million in 2019-20.

Representative Paul Rosenthal, D-Denver, agreed that partisan differences and party allegiance likely cost him his seat in primary elections this spring. Recalling that in last year's session, he was one of only two Democrats to vote against a bill granting increased authority over

oil and gas regulations to local governments, he surmised, "That cost me the primary."

Scott and Rosenthal told COGA they agreed with an idea floated this session to change the COGCC to a professional, paid group from its current structure of seven volunteer members and two ex-officio state employees.

Such a professional body "could be modeled after the commissions in the big oil states," Scott commented. "If the commission had expertise at such a high level, neither party would have undue influence on it." □

Coming In July

The Oklahoma Independent Petroleum Association held its 2018 annual meeting, June 8-11 at the Four Seasons Resort and Club in Las Colinas, Tx. See the Official Convention Coverage in the July issue of The American Oil & Gas Reporter.