

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/09

SPONSOR Heaton LAST UPDATED \_\_\_\_\_ HB 823

SHORT TITLE Oil Conservation & Water Quality Rules SB \_\_\_\_\_

ANALYST Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

House Bill 823 is related to House Bill 108. Please see the narrative.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

Energy, Minerals and Natural Resources Department (ENMRD)

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 823 amends the Oil and Gas Act in NMSA 1978, §70-2-12.B (15) and (21) in regard to the powers of the Oil Conservation Division (OCD) of the ENMRD for making rules, regulations and orders related to the disposition of water produced or used in connection with the drilling for or producing of oil and natural gas, and the disposition of non-domestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas.

House Bill 823 would limit the OCD's rulemaking powers over the disposal of oil field produced water in NMSA 1978, §70-2-12.B (15) by requiring that any rule adopted relative to the management of pits shall ensure protection of groundwater and surface water quality consistent with the provisions of the Water Quality Act and the regulations and standards established by Water Quality Control Commission (WQCC). House Bill 823 would also limit OCD's rulemaking powers over the disposal of oil field non-domestic wastes in NMSA 1978, §70-2-

12.B(21) by requiring that any rule adopted shall ensure the protection of groundwater and surface water quality consistent with the provisions of the Water Quality Act and the regulations and standards established by WQCC.

The AGO<sup>1</sup> states that House Bill 823 proposes to make certain technical and grammatical changes to Subsection 12(A) that do not alter the substantive provisions of the statutory section.

### **FISCAL IMPLICATIONS**

House Bill 823 makes no appropriations.

Neither the ENMRD nor the NMED reported any additional operating budget impact from this bill.

### **SIGNIFICANT ISSUES**

The ENMRD contributed the following information.

Under the Oil and Gas Act, OCD regulates most activities related to the exploration, production, development, transportation, processing, refinement, and treatment of oil and natural gas. That includes the disposition of water produced or used in connection with the drilling for or producing of oil and natural gas in a manner that will afford protection for fresh water supplies designated by the State Engineer as well as the disposition of non-domestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas for the protection of public health and the environment.

House Bill 823 would limit OCD authority to adopt rules related to the above activities by requiring that the rules ensure the protection of groundwater and surface water quality consistent with the provisions of the Water Quality Act and the regulations and standards established by WQCC. HB 823 appears to be attempting to create consistency between the rules, regulations and standards adopted under Oil and Gas Act and those adopted under the Water Quality Act.

The NMED comments that the intent and effect of House Bill 823 are not clear. The literal language of the statute would seem to require OCC and OCD to protect ground and surface water *at least* to the extent required by the provisions, rules and standards existing under the Water Quality Act. Arguments made in litigation concerning existing OCC rules have focused on whether OCC has power under the Oil and Gas Act to adopt rules for ground water protection that may, in some instances, arguably be more stringent than the rules and standards adopted by the Water Quality Control Commission (WQCC). If this bill is adopted, advocates of less stringent regulation might contend that it impacts that debate by limiting the authority of the OCC.

### **RELATIONSHIP**

House Bill 108 is related to House Bill 823 on the basis of substantial similarity. House Bill 108 proposes identical changes to House Bill 823 in Subsection A of NMSA 1978, § 70-2-12. The proposed changes to Subsection B in House Bill 108 are similar to those proposed in House Bill 823, although not identical. In Parts 15 and 21 of Subsection B, House Bill 108 proposes to add the following language:

¶ 15: provided that any rule adopted relative to management of pits shall allow for reasonable degradation that does not exceed water quality standards adopted pursuant to the Water Quality Act;

¶ 21: provided that any rule adopted shall allow for reasonable degradation that does not exceed water quality standards adopted pursuant to the Water Quality Act; and

House Bill 823 proposes to the following alternative language:

¶ 15: provided that any rule adopted for the management of pits shall assure protection of ground water and surface water quality consistent with the provisions of the Water Quality Act and the regulations and standards established under that act by the water quality control commission;

¶ 21: provided that any rule adopted shall assure protection of ground water and surface water quality consistent with the provisions of the Water Quality Act and the regulations and standards established under that act by the water quality control commission; and

CH/mt

---