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## FISCAL IMPACT REPORT

ORIGINAL DATE 3-9-09

SPONSOR SCONC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Oil & Gas Drilling Site Enclosure SB 516/SCONCS

ANALYST Woods

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

#### No Response Received From

New Mexico Attorney General (AGO)<sup>1</sup>

### SUMMARY

#### Synopsis of Bill

Senate Conservation Committee Substitute for Senate Bill 516 would prohibit an oil and gas operator from fencing an area around a well site greater than necessary to secure the site from unauthorized access. The committee substitute adds the following provisions not in the original bill:

- (1) it provides that in no case will the area fenced exceed 100 feet by 150 feet unless it is erected pursuant to a rule of the Oil Conservation Division (OCD);
- (2) it requires 180-days advance notice to the surface owner prior to fencing;
- (3) it requires the oil and gas operator to pay a prorated amount of ad valorem taxes on the surface estate during the time the fence is in place; and
- (4) it expressly requires the OCD of the Energy, Minerals and Natural Resources Department to adopt a rule to implement the bill's provisions.<sup>2</sup>

<sup>1</sup> Request for comments sent 3-5-09. Upon receipt FIR will be updated to reflect the AGO comments if appropriate.

<sup>2</sup> Excerpted from EMNRD response dated 3-6-09.

## **FISCAL IMPLICATIONS**

EMNRD notes that the legislation has no direct fiscal implications; however, "...it requires OCD to adopt a new rule, which would involve significant staff time and other resources."

## **SIGNIFICANT ISSUES**

EMNRD advises the following:

The maximum area allowed to be fenced under the rule is extremely small (100 feet X 150 feet=15,000 square feet=approximately 1/3 acre). Drill sites are frequently much larger than this, even if only one well is being drilled on a pad. In any event the provision would effectively prohibit use of larger pads so that multiple wells could be concentrated on a single pad, unless the pad were left unfenced. It would seem that even an OCD rule cannot allow fencing a larger area, though this is not entirely clear (see technical issues). Thus the substitute bill could actually result in oil and gas operations using a larger amount of the surface than would otherwise be the case.

The requirement that an oil and gas operator give 180-days advance notice to the surface owner is problematic since practical considerations such as lease expirations and necessity to prevent drainage from neighboring wells may force oil and gas operators to commence wells within shorter time frames, thus effectively requiring well sites to be left unfenced.

## **ADMINISTRATIVE IMPLICATIONS**

EMNRD advises that SB 516 would require adoption of a new OCD rule on the subject of well-site fencing.

## **TECHNICAL ISSUES**

EMNRD states, "It would seem that the language 'unless the fence is erected pursuant to a rule of the oil conservation division of the energy, minerals and natural resources department' modifies only the requirement for surface owner consent, and not the maximum well-site size provision. If this is the correct interpretation, OCD would have no power to authorize fencing an increased area, as might be necessary for public safety, or environmental protection, including limiting overall surface footprint, wildlife protection and proper waste management. See suggested amendment below."

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EMNRD suggests that oil and gas operators and surface owners will continue to have the ability to address enclosure requirements when negotiating surface use agreements, which an oil and gas operator is required to propose under the Surface Owner Protection Act [NMSA 1978, Sections 70-12-1, *et seq.*], enacted in 2007. In situations where the parties fail to reach a surface use agreement, and the oil and gas operator proceeds to drill under the bonding provisions of the Surface Owner Protection Act, the operator will continue to be liable for damages under the common law if the operator uses more of the surface than reasonably necessary.

**AMENDMENTS**

EMNRD notes that to resolve the ambiguity suggested above under “technical issues,” and to allow OCD flexibility to allow fencing larger areas when necessary to protect the public safety and the environment, amend the bill by inserting a comma in Line 2 on Page 2, after the word “fence”.

BW/mt