F I S C A L   I M P A C T   R E P O R T

SPONSOR: HENRC DATE TYPED: 03/10/03 HB 490/HENRCS/aHJC

SHORT TITLE: Change Pipeline Safety Oversight SB

ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
	$0.0		$350.0	Recurring	General Fund
		Transfer	$263.0	Recurring	General Fund
		Transfer	$187.6	Recurring	Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	**FY04**			
	See Narrative		Recurring	Federal

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HJR 13 & 14
Relates to Appropriation in the General Appropriation Act for the PRC Public Safety Program

SOURCES OF INFORMATION

- *Report of the Legislative Finance Committee to the Forty-sixth Legislature*, First Session, January 2003 for Fiscal Year 2003 – 2004, pp. 390 – 401.
- *Report to the Legislative Council from the Public Regulation Commission Subcommittee,* in Response to SJM 41, 2001 Legislative Session, December 2002.

Responses Received From
Public Regulation Commission (PRC)
Energy, Minerals and Natural Resources Department (EMNRD)
Department of Environment (NMED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee (HJC) amendment to House Energy and Natural Resources Committee substitute to House Bill 490 makes technical corrections and corrects the definition for "interstate pipelines" as being those regulated by the Federal Energy Regulatory Commission (FERC).

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee (HAFC) amendment to amended House Energy and Natural Resources Committee substitute to House Bill 490 deletes the $325.0 appropriation from the general fund.

Synopsis of Original Bill

The House Energy and Natural Resources Committee (HENRC) substitute for House Bill 490 appropriates $325.0 from the general fund to Oil Conservation Division (OCD) of EMNRD for the purpose of employing 12 FTE to inspect and enforce provisions of the Pipeline Safety Act with respect to intrastate pipeline facilities and to assume oversight responsibilities from the federal Department of Transportation for interstate pipeline inspection duties. The bill also transfers the functions of, and the Pipeline Safety Bureau of the Public Regulation Commission, to the OCD.

Sections 1 to 6 transfer the statutory authority under 62-14-2 and 62-14-7.1 from the Public Regulation Commission and to the Oil Conservation Division.

Sections 7 to 14 transfer the statutory authority under the Pipeline Safety Act from the Public Regulation Commission and to the Oil Conservation Division. In Section 7, a definition for "interstate pipelines" has been added. Section 8 authorizes OCD to assume oversight responsibilities for interstate pipelines and assess/collect reasonable fees for its activities involving intra- and interstate pipelines.

Section 15 transfers personnel, property, contracts and references in law for pipeline safety from the PRC to the Oil Conservation Division.

Section 16 makes the appropriation.

Section 17 makes the effective date July 1, 2003.

Significant Issues

The subject of state pipeline inspection has been discussed recently by a special subcommittee of the Legislative Council, called the Public Regulation Commission Subcommittee. The task of the subcommittee was to make recommendations on the structure of the PRC. The conclusion was that the PRC be restructured to focus only on utility and telecommunications regulation. To do this effectively, the non-utility functions from the PRC were recommended to be transferred to other departments. A specific recommendation was to transfer the responsibilities for on-site field inspection and enforcement related to pipeline safety to the OCD, which has the on-site field offices and staff to better perform these duties.

Several issues surround this bill: can this transfer be made without an amendment to the state constitution? What are the financial implications of such a transfer? What are the implications of the state taking over federal primacy for interstate pipeline inspection?

Constitutional Amendment or Statutory Revision. A key question taken up by the PRC subcommittee was the legislative mechanism for transferring the Pipeline Safety Bureau from the PRC to EMNRD. The subcommittee's report states that this transfer can be accomplished through statutory revision, which supports the provisions of this bill. The PRC reports that the constitutional language that created the Commission clearly confers upon the PRC the responsibility for regulating transmission and pipeline companies[1]. If enacted, the PRC reports the bill could be unconstitutional. The PRC would have standing to challenge and overturn the bill.

House Joint Resolutions 13 and 14 have been introduced to delete the PRC authority from the state Constitution and rather have it developed in statute.

State Assumes Primacy for Interstate Pipeline Inspection. Federal statutes give states all or part of the intrastate regulatory and enforcement responsibility through annual certifications and agreements. The federal Department of Transportation provides grants to states to assume more responsibility for pipeline safety. The Office of Pipeline Safety can reimburse a state agency up to 50 percent of the actual costs of a safety program, including the cost of personnel and equipment.

According to EMNRD, the Pipeline Safety Bureau has not scored well in its annual performance reviews for the intrastate program. The PRC reports that its scoring is a reflection in the few number of staff for the program: there are 5 FTE in the program. EMNRD further reports that the federal Office of Pipeline Safety would not likely transfer its primacy for interstate pipeline inspection to the PRC until the staffing level is increased to 9 FTE. The bill would remedy this concern, potentially improving the state's opportunity to gain primacy in this area.

FISCAL IMPLICATIONS

The appropriation of $325.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

The transfer of the pipeline safety bureau would increase the OCD organization by 5 FTE and $450.6 ($263.0 from the general fund and $187.6 from federal funds), not including the $325.0 general appropriation made in this bill. Additionally, the Governor's FY03 initiatives include $350.0 for taking over federal inspection of pipelines. This funding generates from the dissolution of the Tobacco Settlement Revenue Fund. However, SB 655 does not include this funding.

ADMINISTRATIVE IMPLICATIONS

[1] New Mexico Constitution, Article XI, Section 2

The new employees would have to be housed and supported by EMNRD.

TECHNICAL ISSUES

EMNRD reports the following technical issues:

> The provision in Section 16 of the bill that appropriates $325,000 to employ "twelve full-time-equivalent positions to assume primacy … for interstate pipeline inspection duties …" might be read to provide that the appropriation is intended to provide for twelve *additional* positions. The program needs about twelve people to perform both the intrastate and interstate functions to meet federal guidelines. EMNRD reads this section to provide for the employment of twelve FTEs total to perform both functions. The provision might also be read as providing funding only for personal services rather than for capital outlay, equipment and other items that might be needed. EMNRD assumes that funding for these needs will be available through the budget of the Pipeline Safety Bureau through the PRC when transferred.
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> Section 8 of the bill (amending NMSA 1978, Section 70-3-13(A)) leaves in place language that grandfathers safety standards "in existence on the date the safety standards are adopted." EMNRD interprets this language to pertain to facilities in existence on the date the safety regulations were initially adopted by the PRC. However, since the Oil Conservation Commission (OCC) will have to re-adopt safety standards shortly after the effective date of the bill, some may read such language as grandfathering facilities in existence on the date of the OCC's action, rather than the previous adoption of safety regulations by the PRC, years ago. This issue (which does not appear to EMNRD to be a proper reading of the bill) could be eliminated by amending the second full sentence of 70-3-13(A) as follows: Safety standards shall not be applicable to oil, hazardous liquid or gas pipeline facilities in existence on the date the safety standards ~~are~~ were first adopted by the Public Regulation Commission …"

POSSIBLE QUESTIONS

1. Can the Oil Conservation Division house the five staffers from the Pipeline Safety Bureau?

2. What fees are collected by the PRC from pipeline companies and how much on an annual basis? In what state fund is the revenue deposited?

MFV/prr:sb:njw