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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11
 SPONSOR Taylor LAST UPDATED 02/28/11 HB 530/aHENRC
 SHORT TITLE Natural Gas Production Regulations SB _____
 ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
NFI	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	0	0	0			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

The AGO's analysis is accompanied by the following disclaimer. "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of House Energy and Natural Resources Committee Amendment

The House Energy and Natural Resources Committee amendment to House Bill 530 clarifies that the bill would apply to wellhead purchases of natural gas.

Synopsis of Original Bill

House Bill 530 (HB 530) would prohibit any “natural gas service provider” from:

- charging any fee, engaging in any practice or requiring any terms or conditions of service for natural gas gathering, processing or treating that are unfair or unduly discriminatory; or
- unreasonably refusing to provide open access natural gas gathering, processing or treating, including the redelivery of natural gas to existing redelivery points, for a fee to any person seeking the service.

A person aggrieved by a “fee, practice, term or condition” required by a provider of natural gas, could file a complaint requesting a hearing before the Oil Conservation Commission (OCC). The OCC would determine if the fee, practice, term or condition complained of is “unfair or unduly discriminatory,” and if found so, the OCC would then have authority to require the provider to provide its services on terms prescribed by the OCC. In prescribing terms, the OCC is directed to determine the fee, practice, term or condition that would result from arms length bargaining in good faith.

HB 530 specifically prohibits the OCC from adopting a “rate of return” approach” or otherwise regulating natural gas service providers as public utilities. The OCC can act only in response to a complaint, and not on its own motion.

HB 530 excludes “producer-owned or controlled facilities” that provide services only to owners of interests in a well. Thus it would not give the OCC any additional jurisdiction (beyond what may be inferred from existing provisions of the Oil and Gas Act) over the terms on which an operator provides gathering, processing or treatment services to a non-operator or royalty owner.

HB 530 would apply only in the San Juan Basin, in Rio Arriba, San Juan, Sandoval and McKinley Counties. The OCC would be required to define the limits of the San Juan Basin to which this law would apply.

FISCAL IMPLICATIONS

The bill seeks to limit fiscal impact on OCC by imposing costs of any proceeding it authorizes upon the parties. However, the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department, as the administrative arm of OCC, might be required to incur some additional costs in connection with judicial appeals from OCC orders issued under the bill and enforcing OCC orders if the parties did not comply.

SIGNIFICANT ISSUES

The *business* of gathering, processing and treating natural gas (as distinguished from the environmental effects of facilities used to provide those services) is not presently regulated in New Mexico. The Oil and Gas Act as it now exists, is written in very broad terms and may authorize the OCC and OCD to exercise regulatory authority over the business aspects of these activities, but that authority, if it exists, has not been exercised. Accordingly, the OCC has no institutional expertise in such regulation.

Additionally, the Bill allows the OCC to consider the terms and conditions provided to customers by other natural gas service providers for similar services within the area, but does not provide a means for the commission to acquire or maintain that information. Any dispute between the parties would have to be determined on information provided by the parties to that dispute.

Enforcing the OCC decisions could also be problematic due to OCC's lack of authority to assess penalties for violations of its orders.

The AGO states it is not clear that the term "open access" has a meaning under New Mexico law-it might need to be defined; the requirement that natural gas service providers must provide service under terms that are not unfair or unduly discriminatory may be too vague-if so, it should be defined (possibly remove the word unduly); the terms unfair and unduly discriminatory in section 1E, describing the commission's finding, may be too vague-again, it might help to remove the word unduly. Also, gathering is already mandated under NMSA 62-6-4.1 if the natural gas service provider is already a utility

ADMINISTRATIVE IMPLICATIONS

The EMNRD reports that by adopting specific and limited provisions for the exercise of regulatory authority over the business aspects of natural gas gathering, treatment and processing, the bill could be construed as precluding broader regulation of those aspects, authority for which may already exist under the broad provisions of the Oil and Gas Act [NMSA 1978, Sections 70-2-6 and 70-2-11.A].

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO states there will be no way to compel gathering companies to provide their services to producers.

According to the EMNRD, the business aspects of natural gas gathering, processing and treatment will continue to be unregulated, in the San Juan Basin, as well as elsewhere.

JCH/mew