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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/13
 SPONSOR HJC LAST UPDATED 03/06/13 HB CS/286/HJCS
 SHORT TITLE Oil & Gas Financial Assurance SB _____
 ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 136

Conflicts with SB 547 and HB 335

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 State Land Office (SLO)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for the House Energy and Natural Resources Committee substitute for House Bill 286 (HB 286) amends sections of the Oil and Gas Act concerning financial assurance, powers of the Commission, civil and criminal and disposition of waste and appeals.

Section 1:

- when the financial assurance proves inadequate to cover the cost of plugging a well, the division is authorized to bring suit against the operator, the most recent owner of the minerals under the tract where the well or wells are located, or the most recent lessee of the minerals under the tract where the well is located in the district court of the county in which the well is located or in the first judicial district for indemnification

Section 2:

- adds the language “The remedies provided by this section are cumulative and do not limit any other rights or remedies of the division or the commission with respect to any violation of the Oil and Gas Act or of any rule, order or permit issued pursuant to that act.”

Section 3:

- eliminates the “knowingly and willfully” requirement for violations of the Act changes the civil penalty from a total of \$1,000 to \$1,000 per day;
- increases violations related to unauthorized discharges to \$10,000 per day for a continuing violation and clarifies that this subsection shall only apply to unauthorized discharges that are not subject to regulation and penalties under the Water Quality Act;
- the division or the commission may assess the civil penalties provided after notice and an opportunity for a public hearing. In assessing the penalty, the division or the commission may consider the seriousness of the violation and any good-faith efforts to comply with the applicable requirement;
- expands the permissive venue for suits by the Oil Conservation Division (OCD) or the Attorney General on behalf of the OCD to collect plugging cost reimbursements or civil penalties, or to enforce the Oil and Gas Act or rules, orders or permits issued under the Act, to include “the first judicial district”; and
- provides for criminal penalty if certain administrative actions change or falsify records

Section 4 adds definitions for commission, and division.

Section 5 establishes the effective date as July 1, 2013.

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

The Energy, Mineral and Natural Resources Department (EMNRD) contributes the following:

Civil penalties. The bill provides the OCD with the authority to assess civil penalties by order with an opportunity for an administrative hearing, increases civil penalties provided in the Oil and Gas Act for some violations, and deletes a limitation that penalties can only be imposed for violations that are “knowing and willful.” In place of the present statutory requirement that only “knowing and willful” violations are subject to penalty, the bill would require the OCD, in fixing penalties for particular violations, to consider the seriousness of the infraction and any good-faith efforts by an operator to comply. The OCD’s assessment of the current penalty structure is that there are sufficient measures in place now to enforce the OCD regulations. The bill provides a new civil penalty of up to \$10,000 per violation or each day of continuing violation for unauthorized discharges of water contaminants, not subject to regulation and penalties under the Water Quality Act, which pollute or threaten to pollute water in excess of any state or federal water quality standard. Penalties not paid within 30 days after an order would be recoverable by a civil suit filed by the Attorney General. The OCD has been enforcing water quality standards and does not believe the large increase in the fine structure is needed.

Further, the bill would authorize the OCD to assess civil penalties by administrative order after notice and hearing. This provision would reverse the New Mexico Supreme Court's holding in *Marbob Energy Corp. v. New Mexico Oil Conservation Com'n*, 2009-NMSC-011, which held that the OCD does not have that power under present law. The OCD has developed a series of enforcement options after the *Marbob* decision that allows it to adequately enforce its rules. These include significant actions such as permit denials.

The additional civil penalty provision for violations that cause a discharge of water contaminants which threatens to exceed water quality standards is undercut by the limitation that it does not apply to a discharge subject to regulation and penalties under the Water Quality Act. The Water Quality Act provides for broad enforcement actions against any violation of water quality standards, Sections 74-6-10, -10.1, -10.2 NMSA 1978.

Venue of suits. The bill expands the permissive venue for suits by the OCD or the Attorney General on behalf of the OCD to collect plugging cost reimbursements or civil penalties, or to enforce the Oil and Gas Act or rules, orders or permits issued under the Act to include the first judicial district. The OCD has not been consulted in this proposed change and does not feel an added venue is necessary for enforcement.

Criminal penalties. The bill revises the criminal penalties provision to reword much of the subsection and to reclassify the penalty as that of a third degree felony, and to change the requirement of “knowingly and willfully” to “knowingly”. The current wording has been sufficient in the OCD's enforcement proceedings.

MW/svb:blm