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

SPONSOR Sharer **ORIGINAL DATE** 2/13/15 **LAST UPDATED** **HB**

SHORT TITLE No STB Projects in Certain Counties **SB** 184

ANALYST van Moorsel

APPROPRIATION (dollars in thousands)

Appropriation					Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**	**FY18**	**FY19**		
Negative in certain municipalities and counties.					Recurring	Severance Tax Bond Proceeds

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 184 creates a new section of the Severance Tax Bonding Act that would prohibit the issuance of severance tax bonds (STBs) to benefit projects in counties or municipalities that have enacted ordinances that result in a 25 percent or more increase in costs to extractive industries.

Specifically, the bill would require the Oil Conservation, Mining, and Coal Surface Mining commissions to examine ordinances regulating the citing, drilling and operation of oil, gas, CO2, and geothermal wells; mines; and coal surface mines, respectively, to identify municipalities and counties that have enacted ordinances that would increase drilling, operating, or permitting costs by 25 percent or more.

Within 10 days after conducting a hearing pursuant the Oil Conservation Commission, the Mining Commission, and the Coal Surface Mining Commission must notify the State Board of Finance and the appropriate legislative committee about the identified municipalities and counties. The State Board of Finance may neither issue nor sell STBs to fund a project to be located within the planning and platting jurisdiction of a municipality or the area of a county outside the planning and platting jurisdiction of a municipality if an ordinance of the municipality or county increases the costs of extraction by 25 percent or more.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

At the state level this bill is not estimated to have a fiscal impact. If a particular county or municipality is found to have imposed ordinances to increase the cost of extraction by 25 percent or more, that local government will be prohibited to receive STB proceeds for capital projects. It is assumed that this would free up bonding capacity for other projects.

However, local governments that impose ordinances that disqualify them from STB eligibility may see a reduction in capital funding for local projects.

It is unclear whether an ordinance prohibiting certain extractive industries can be construed as increasing costs by 25 percent or more. As such it is unclear whether a local government imposing such an ordinance would be eligible to receive STB proceeds.

SIGNIFICANT ISSUES

It is unclear whether any local governments currently ordinances described above.

EMNRD reports the bill appears to address the growing number of local government ordinances that regulate and limit the development of the mineral extractive industries. Several counties have now enacted ordinances that regulate oil and gas and/or mining activities including Santa Fe, San Miguel and Rio Arriba Counties. The recent federal court decision in SWEPI, LP v. Mora County found that an ordinance that prohibits oil and gas development conflicts with state law and is therefore preempted. However, SWEPI also followed the earlier New Mexico decision on County regulation of mining, San Pedro Mining v. Santa Fe County, 1996-NMCA-002, and found that there is room for concurrent regulation of mining or oil and gas by a county in areas not addressed by state law and regulation.

EMNRD adds the bill would require the commissions to make judgment calls on whether a particular local regulation increases the cost of permitting or operating a mine or well by 25 percent. EMNRD states many questions need to be answered. Are local ordinances considered individually or cumulatively? Well drilling and particularly, mine development operations come in greatly varying sizes. Which type of hypothetical mine or well operation should be used as a baseline to determine the impacts of the ordinance? The risk of arbitrary and inconsistent determinations is fairly high, and the consequences for the local communities are fairly significant.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes the bill will require the agency to conduct research, prepare analyses and conduct public hearings. EMNRD may need to hire additional staff or, more likely, contract for the research and analysis. Additional costs will be associated with the public hearings, including costs for court reporters and transcripts, and possible witness fees. The costs may be significant but difficult to estimate.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

PvM/aml