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

SPONSOR Lopez/Shendo/ Caballero/Allison **ORIGINAL DATE** 02/19/19 **LAST UPDATED** ______ **HB** ______

SHORT TITLE Hydraulic Fracturing Permits & Reporting **SB** 459

ANALYST Hanika-Ortiz/Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**		
*	($215,650.0)	($328,350.0)	($435,550.0)	($547,300.0)	Recurring	General Fund (operating)
*	($54,900.0)	($92,750.0)	($90,200.0)	($83,200.0)	Recurring	Tax Stabilization Reserve (General Fund reserves)
*	($63,850.0)	($121,400.0)	($142,700.0)	($163,100.0)	Recurring	Severance Tax Bonding Fund
*	($136,950.0)	($197,850.0)	($244,400.0)	($283,550.0)	Recurring	Land Grant Permanent Fund
*	($34,750.0)	($72,450.0)	($97,650.0)	($122,450.0)	Recurring	Local Governments
*	**($506,100.0)**	**($812,800.0)**	**($1,010,500.0)**	**($1,199,600.0)**	**Recurring**	**TOTAL**

Parenthesis ( ) indicate revenue decreases

* See fiscal implications

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Land Office (SLO)
New Mexico Department of Health (DOH)
New Mexico Attorney General (NMAG)
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 459 amends the Oil and Gas Act by including a definition for "hydraulic fracturing" and prohibiting the issuance of new permits issued by the Energy, Minerals and Natural Resources Department that allow hydraulic fracturing for the purpose of extracting oil or natural gas. The bill repeals this provision on June 1, 2023.

Furthermore, SB459 adds annual reporting requirements for EMNRD on the number of active permits and applications received related to oil and gas development that involves hydraulic fracturing, and trends regarding methane and greenhouse gas emissions. The bill also requires additional annual reporting from various state agencies for the number of workers employed by the industry and the number injured and environmental and public health implications. Included in the annual reports would be recommendations for legislation and funding for research.

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

FISCAL IMPLICATIONS

The LFC brief on the December 2018 *Consensus Revenue Estimate* reported considerable dependence on revenues from the oil and gas industry. Direct revenues from this industry – including severance and production taxes, bonuses and royalty payments on state and federal lands, and gross receipts taxes (GRT) – make up about 35 percent of the entire FY19 general fund revenue estimate. Substantial changes to how this industry operates in New Mexico – such as a temporary ban on hydraulic fracturing – would cause severe revenue losses. Without a source of revenues to replace these losses, this bill would have a substantial negative budgetary impact. The following table identifies the estimated revenue impact by funding source.

Estimated Minimum Impact ($ millions)				
General Fund	**FY20**	**FY21**	**FY22**	**FY23**
Oil & Gas School Tax	$ 0.0	$ (11.0)	$ (31.8)	$ (56.1)
Oil & Gas Conservation Tax	$ (2.9)	$ (5.5)	$ (6.5)	$ (7.4)
Gross Receipts Tax	$ (42.7)	$ (102.8)	$ (163.3)	$ (223.2)
Federal Mineral Leasing (Royalties & Bonuses)	$ (120.1)	$ (158.4)	$ (181.5)	$ (204.4)
State Land Office Bonuses	$ (50.0)	$ (50.0)	$ (50.0)	$ (50.0)
Land Grant Permanent Fund Distribution	$ -	$ (0.7)	$ (2.6)	$ (6.3)
Total General Fund	$ (215.7)	$ (328.4)	$ (435.6)	$ (547.3)
Tax Stabilization Reserve (School Tax)	$ (54.9)	$ (92.8)	$ (90.2)	$ (83.2)
Severance Tax Bonding Fund (Severance Tax)	$ (63.9)	$ (121.4)	$ (142.7)	$ (163.1)
Land Grant Permanent Fund (SLO Royalties)	$ (137.0)	$ (197.9)	$ (244.4)	$ (283.6)
TOTAL STATE REVENUES	**$ (471.4)**	**$ (740.4)**	**$ (912.9)**	**$ (1,077.2)**
Local Governments				
Gross Receipts Tax	$ (12.6)	$ (30.4)	$ (48.2)	$ (65.9)
Ad Valorem Production	$ (22.2)	$ (42.1)	$ (49.5)	$ (56.6)
Total Local Government	$ (34.8)	$ (72.5)	$ (97.7)	$ (122.5)
TOTAL REVENUE CHANGE	**$ (506.1)**	**$ (812.8)**	**$ (1,010.5)**	**$ (1,199.6)**

The fiscal impact table uses oil and gas price and volume assumptions from the Consensus Revenue Estimating Group as a starting point. The December 2018 consensus revenue estimate assumed substantial growth in oil and gas production and associated revenues. According to EMNRD, the overwhelming majority of new oil and gas wells involve hydraulic fracturing; therefore, under this bill the drilling of new wells will largely come to a hault. EMNRD points out existing wells will continue to produce but the production from existing wells will decline over time. Therefore, the fiscal impact estimate assumes no growth in oil and gas production starting in FY20 and compares this against the growth assumptions in the consensus estimate for revenue sources directly related to oil and gas production.

Notably, this estimate should be considered a minimum impact, as it assumes current oil and gas production remains constant. However, as stated above, production from existing wells will decline over time, with the largest percentage declines occurring after the first year of production. The process for stimulating additional production from existing wells involves re-fracking a well, a permit for which would be denied under the provisions of this bill. Additionally, the no-growth assumptions do not consider changes to industry behavior and decision-making in reaction to the new provisions. It is reasonable to assume that a ban on new hydraulic fracturing would induce the industry to pull back operations in the state, resulting in additional production declines and associated revenue losses.

Some agencies may need additional resources to help with the new reporting requirements.

SIGNIFICANT ISSUES

EMNRD provides the following analysis in response to this bill:

> The New Mexico Oil and Gas Act (Act) has allowed for and has regulated the development of oil and gas resources in New Mexico since 1935. The OCD has rules promulgated under the Act to ensure the protection of correlative rights, prevention of waste, and protection of human health and the environment. Placing a 4-year moratorium on hydraulic fracturing will essentially halt the development of new oil and gas wells in New Mexico. Halting Oil and Gas development in New Mexico would violate Section 21, Article 20 of the N.M. constitution as the proposed moratorium is not "consistent with the use and development of these resources for the maximum benefit of the people."

Under current law, an applicant for an Oil Conservation Division (OCD) drilling permit is not required to disclose whether the well will be hydraulically fractured. Thus, a district office may issue a drilling permit without knowing the manner of completion. After an operator completes a frac, the operator submits a frac disclosure form, which includes the chemicals and volumes used in the fracturing. To implement a ban on fracking, OCD would need to amend its permitting process.

SLO reports it lacks the authority to directly regulate fracking but is taking steps to hold companies accountable if they act in an irresponsible manner. This includes limiting the use of fresh water, encouraging the re-use of produced water, making sensitive areas off-limits to further oil and gas development, and requiring that industry use best practices when operating on state lands.

DOH reported residents living near fractured sites are subject to issues associated with the potential changes in water and air quality, and the workforce is subject to occupational hazards.

ADMINISTRATIVE IMPLICATIONS

According to EMNRD,

> [This bill] directs EMNRD to halt "the issuance of new permits allowing hydraulic fracturing for the purpose of extracting oil or natural gas." However, the OCD does not issue "hydraulic fracturing" permits, but processes application's for permits to drill (APD's) for new wells. OCD's primary objective in the issuance of APD's, and other administrative decisions related to drilling, are to insure the protection of correlative rights and the prevention of waste. Hydraulic fracturing is a completion process in developing a well. The OCD does not specifically regulate how wells are completed. That is a business/engineering decision made by an operator. The statute is vague on which permits the OCD could or could not issue.
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> [This bill] does not specify which lands are covered by the moratorium and wells on federal and tribal lands would likely not be covered. APDs for wells on federal or tribal agencies are issued by federal and tribal agencies; OCD does not issue the APDs.

DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

Relates and Conflicts in part with Senate Bill 186 – Oil Conservation Division Powers & Duties – which also amends Section 70-2-33.

May overlap with requirements set forth in the HENRC committee substitute for HB206, short title Environmental Review Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OCD would continue to issue new drilling permits without knowing the manner of completion, and various state agencies would not be required to report on any potential environmental and health impacts from hydraulic fracturing for the purpose of extracting oil or natural gas.

AHO/DI/gb/al