

LFC Requester:

Ismael Torres

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X Amendment _____
Correction _____ Substitute _____

Date Prepared: 1/17/2024

Bill No: HB 133

Sponsor: Kristina Ortiz, Matthew McQueen

Short Title: OIL & GAS ACT CHANGES

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill (“HB”) HB 133 would amend the Oil and Gas Act to:

- Authorize Oil Conservation Division (“OCD”) to regulate the transfer of oil and gas wells and facilities, and limit transfers in certain circumstances, including where a party has a history of noncompliance with OCD rules, where the transferee lacks sufficient finances to manage liabilities, where OCD deems necessary to mitigate risk from inactive or abandoned wells.
- Authorize OCD to authorize the conversion of an oil and gas well to a facility to support geothermal development, and establish related fees and financial assurance requirements.
- Increase the maximum blanket financial assurance requirement from \$250,000 to \$10 million.
- Remove the requirement that the Attorney General collect a forfeiture of financial assurance and instead provide that OCD shall collect it.
- Increase the maximum civil penalty for noncompliance with the Act from \$2,500 to \$10,000, and, where a risk to public health and safety or the environment exists, from \$10,000 to \$25,000 per violation.
- Remove the cap on administrative penalties of \$200,000.
- Provide other fee increases and provide OCD with authority to increase fees in accordance with the increases in the Consumer Price Index annually beginning in 2027.
- Expand the uses of the OCD Systems and Hearings Fund to include online data reporting and visualization systems, other equipment upgrades, and for hiring IT personnel.

- Impose a 98% capture requirement for natural gas produced or gathered in a calendar year, with exceptions for emergencies and beneficial use, and require OCD to adopt implementation rules.
- Impose various set-back requirements on certain oil and gas facilities, in relation to certain types of structures and water bodies, and allow the OCD to provide deviations under certain conditions.
- Allow but not require OCC to develop additional set-back requirements in regulations.
- Provide definitions related to the set-back provisions.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Section 5 of the bill provides that operators shall ensure at least a 98% natural gas capture percentage from their facilities on an annual basis beginning in 2027, and requires OCD to adopt rules implementing this provision. However, regulations promulgated by the Division in 2021 already require a 98% natural gas capture rate by December 31, 2026. *See* NMAC 19.15.27.9. The proposed statutory amendments thus appear to be redundant with regulations already adopted under existing statutory authority. Also, because the bill language requiring 98% gas capture is more general than the existing regulatory provisions, it is difficult to determine whether the bill is intended to impose any requirements not already in place.

Because courts presume the legislature is aware of existing law including administrative regulations, *El Paso Elec. Co. v. New Mexico Pub. Regulation Comm'n*, 2010-NMSC-048, ¶ 14, and that when the legislature amends a statute, it intends to change the existing law, *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 14, enactment of this section of HB 133 could be used to argue that existing NMAC 19.15.27.9 does not comport with legislative intent.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

By eliminating the requirement that the Attorney General collect forfeited financial assurance, the bill would reduce the potential administrative burden on NM DOJ.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict/relationship with HB 31, in that both amend NMSA 70-2-12. Although the amendments themselves do not conflict, some reconciliation may be required for logical structure and flow.

TECHNICAL ISSUES

On page 8, line 16 of the bill, it is proposed to delete “and” and replace it with “or a,” as the conjunction between blanket plugging financial assurance and one-well plugging financial assurance. It seems that “and” is correct as used in the current statute, because this provision requires OCD to establish categories of financial assurance, including at a minimum these two types.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A