

<b>LFC Requester:</b>	<b>Helen Gaussoin</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**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**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1-17-24  
**Bill No:** SB 24

**Sponsor:** Sen. Tallman / Rep. McQueen  
**Short Title:** Oil & Gas Royalty Rate

**Agency Name and Code**    State Land Office - 539  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25-FY27	FY28	FY29		
NFI	\$50 million	\$50 million	Recurring	Land Grant Permanent Fund
Indeterminate but minimally negative	Indeterminate but minimally negative	Indeterminate but minimally negative	Recurring	Land Maintenance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	0	0

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Duplicate of House companion HB 48.  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

When issuing oil and gas leases for state trust lands, existing law requires the Commissioner of Public Lands to use one of three statutory lease forms. NMSA 1978 § 19-10-4 (1985). The particular form of lease depends on whether the lands are within a restricted district (area of historical oil and gas production) established by the Legislature or the Commissioner (see Section 19-10-16, NMSA 1978 (1931)) and whether the tract within a restricted district is categorized as “premium” or “regular.” Categorizing a tract as “regular” or “premium” involves an assessment of the following statutorily prescribed factors relating to the tract: (1) oil and gas trends; (2) oil and gas traps; (3) reservoir volume and recovery rating; (4) lease bonus rating; and (5) exploration and activity. See NMSA 1978, § 19-10-3 (1985); 19.2.100.11 NMAC. The statutory factors are more specifically defined in the State Land Office’s oil and gas leasing rule.

The royalty rates under the existing statutory oil and gas lease forms are as follows:

Exploratory Form	1/8 (12.5%)
Discovery Form	1/6 (16.66%)
<b>Development Form</b>	<b>3/16 (18.75%) – 1/5 (20%)</b>

See NMSA 1978, §§ 19-10-4.1 to 19-10-4.3; 19.2.100.13 NMAC.

SB 24 would revise the statutory form that is used for oil and gas “development” leases issued by the State Land Office for lands classified as restricted lands and categorized as “premium” (see Section 19-10-3 NMSA 1978). The changes would only apply to new leases issued on or after July 1, 2024 and to leasing areas of demonstrated production that include the most productive oil and gas tracts.

Under current law, the royalty rate for a development lease ranges from three-sixteenths (18.75%) to a maximum of one-fifth (20%). The revised form of the lease would increase the high end of the applicable royalty rate to one-fourth (25%) to enable the State Land Office to set the royalty at a rate that is reflective of the market for the most productive and highly sought-after parcels.

The bill makes other non-substantive Legislative Counsel Service technical changes to the lease form.

## **FISCAL IMPLICATIONS**

SB 24 is expected to significantly increase State Land Office revenue from royalties in the coming years. However, because the bill only applies to leases issued after July 1, 2024, it is difficult to calculate with precision how many leases will go to auction, when they will begin production, market factors such as price that may impact development timelines, how new technologies may affect production levels, and other related variables.

Since the bill only applies to new leases, and most leases do not begin production for two-three years, revenue increases would likely begin to be realized in FY 2026. The State Land Office estimates that the bill would eventually result in an average annual increase in revenue of \$50 - \$84 million from the bill's royalty rate increase. This range reflects the amount of additional revenue that would be transferred to the Land Grant Permanent Fund (LGPF). The revenue estimate does not include the much more significant value of the LGPF distributions to beneficiary institutions that would occur over the decades the leases would be in effect (oil and gas leases are "held by production," meaning they do not expire as long as they are producing in paying quantities). This estimate is derived by evaluating wells completed within the past ten years and considering a royalty rate at 25% rather than 20% or 18.75%. Prices used for the estimate were based on the annual price averages for oil and gas. The estimate takes into account annual production growth.

Bonus payments, which are onetime payments at the monthly oil and gas auction for the right to obtain a lease, are generally a little lower for leases with higher royalty rates. The higher royalty rate could result in a very small decrease in bonus payments on leases, which are distributed through the Land Maintenance Fund. However, even assuming that these payments are reduced in out years for the most productive tracts, the royalty payments received that go to the Land Grant Permanent Fund for investment over the next decades would vastly outweigh any reduction in bonuses received by the State Land Office through the Land Maintenance Fund.

## **SIGNIFICANT ISSUES**

The Commissioner of Public Lands has a fiduciary responsibility to ensure that the state land trust receives appropriate value for the resources being leased to oil and gas producers. Under the Constitution and by statute, the Commissioner has jurisdiction over and is entrusted with the management, care, custody, control and disposition of state trust lands in accordance with the Enabling Act. N.M. Const. art. XII, § 2; NMSA 1978 § 19-1-1 (1912). The Commissioner's responsibility is as a fiduciary serving the long-term interests of the Enabling Act trust and the supported institutions to ensure that the land is managed solely for the long-term support of those institutions. Furthermore, the State as a whole has a trust responsibility to ensure that state trust lands serve their intended purposes; i.e., providing the maximum support to the trust land beneficiaries while stewarding the land for future generations. *See State ex rel. State Highway Commission v. Walker*, 1956-NMSC-080, ¶ 5, 61 N.M. 374 (noting that the Enabling Act requires management of state trust lands "for the purpose of the trust imposed – that is, for the benefit of the various state institutions to which the lands were granted").

The last time New Mexico's royalty rate was updated was in the 1970s. Neighboring states with significant volumes of oil and gas production, such as Texas, already collect one-fourth royalty on all oil and gas production. Texas has had the higher 25% royalty rate since the 1990s. North Dakota sets a statutory minimum but not a maximum royalty rate, which instead is determined by that state's equivalent to the State Land Office. This bill would bring New

Mexico closer to parity with those states as well as the many private landowners who charge 25%.

The new royalty rate will not impact New Mexico's competitiveness. New Mexico's competitor in the Permian Basin is Texas, which already has a 25% royalty rate. The Permian Basin is one of the world's best oil and gas plays and operators will drill where the resource exists. Mike Sommers, CEO of the American Petroleum Institute, recently noted: "We expect that the Permian Basin is going to continue to be the most prolific basin in the United States for years and even decades to come." (*Santa Fe New Mexican*, National Fossil Fuel Group Touts Permian Basin's Importance to Future of Oil and Gas, January 10, 2024). There is no reason to prevent the State Land Office from seeking the market rate for premium oil and gas tracts. This is especially true considering the fact that if a lease did not attract bidders at 25%, the State Land Office could simply place the lease on a future month's auction at the 20% rate. The agency should, however, have the ability to seek the appropriate market rate in meeting its trust obligation to generate revenue for public schools, universities and hospitals across the state.

## **PERFORMANCE IMPLICATIONS**

The bill would advance the State Land Office's core mission of generating revenue for trust beneficiaries as well as adherence to the agency's legislative performance measures. While the immediate and short-term impact is difficult to determine, particularly given the uncertainty about how many new leases would be issued each month, the time it takes for a newly issued lease to go into production, future oil and gas price and production levels, etc., it is clear that the legislation would result in significant increases in State Land Office annual royalty transfers to the LGPF, which in turn would result in substantial increases in distributions from the LGPF to beneficiaries as these contributions are invested and gain additional value over the long-term.

## **ADMINISTRATIVE IMPLICATIONS**

The bill would require the agency to revise its oil and gas development form templates in IT systems and processes. This would be a very minor administrative burden.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 24 is identical to HB 48.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**