

LFC Requester:**Helen Gaussoin****AGENCY BILL ANALYSIS
2024 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:****Analysis.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** 2/2/2024**Bill No:** SB 249**Sponsor:** Senators Greg Nibert, Joseph Cervantes, George K. Munoz, and Steven McCutcheon II
Short Title: Oil & Gas Fund Accounting**Agency Name and Code** EMNRD - 521
Number: _____**Person Writing Analysis:** Dylan Fuge, Deputy Secretary**Phone:** (505) 490-2551 **Email:** dylan.fuge@emnrd.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	NA	NA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	33,000.0	33,000.0	Recurring	Reclamation, General

(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	0	450	450	450	Recurring	General, Reclamation

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act – N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 249 (SB 249) proposes to modify the funding, distribution, and accounting of the Oil and Gas Reclamation Fund.

Section 1 of SB 249 proposes to amend the Tax Administration Act to modify distributions to the Oil and Gas Reclamation Fund from the Oil and Gas Conservation Tax, 7-30-4 NMSA 1978. Currently, distributions to the Reclamation Fund are made at rates dependent upon the effective tax rate for the production period as established in the Oil and Gas Conservation Tax Act, creating a tiered distribution structure which hinges upon the price of oil per barrel in the previous quarter. SB 249 replaces the tiered distribution structure, and instead requires a flat monthly distribution of \$5 million monthly to the reclamation fund. While the distribution to the reclamation fund is modified to a flat monthly distribution, the tax rates of the underlying Oil and Gas Conservation Tax remain in effect.

Section 2 of SB 249 proposes to amend the Oil and Gas Act, 70-2-37 NMSA 1978, to require that the Oil and Gas Reclamation Fund separately account for deposited money from federal sources. This section requires that any funds from federal sources must be expended before any other money is available in the fund. The section also requires that any unexpended or unencumbered money from nonfederal sources reverts to the general fund at the end of the fiscal year.

SB 249 does not provide any appropriation to implement the bill, nor does SB 249 address 70-2-38 NMSA 1978, which also addresses reclamation fund expenditures.

FISCAL IMPLICATIONS

SB 249 more than doubles the typical monthly distribution to the Oil and Gas Reclamation Fund, regardless of market conditions or the effective tax rate at the time. This increase in distribution may require a reduction in other distributions made from the Oil and Gas Conservation Tax; however, those distributions are not to EMNRD programs and therefore are beyond the scope of the analysis here. This additional funding will be helpful to EMNRD’s Oil Conservation Division (OCD). However, because SB 249 makes the funding subject to revision to the general fund each year, the bill will require an immediate and dramatic ramp-up in the size and speed of the OCD’s plugging program. Historically, the plugging program has managed 3 to 6 million per year in

appropriations from the Reclamation Fund. More recently (FY23 and FY24), the plugging program has managed \$25 to \$30 million, as OCD is currently able to deploy significant Bipartisan Infrastructure Law (BIL) funding for well plugging. In total, New Mexico is expected to receive \$97 million dollars under the BIL orphan well plugging program. Further scaling up of OCD's plugging program will require additional FTEs, which are not accounted for in SB 249.

SIGNIFICANT ISSUES

SB 249 has several significant operational issues. First, the Reclamation Fund was established as a non-reverting fund so that the state would always have resources available to it to manage both orphan and abandoned oil and gas facilities. Unfortunately, the existence of orphan and abandoned facilities is, over time, an inevitability. Market upsets and other circumstances can cause operators to fail to meet the end-of-life obligations of their wells. Since the type of events which cause operators to orphan or abandon oil and gas facilities cannot be predicted, funds need to be available to the state to address them whenever they occur. SB 249's proposal to make the Reclamation Fund revert every fiscal year may complicate the availability of those funds early in a given fiscal year when the state funds in the Reclamation Fund have reverted but the monthly contributions have yet to accumulate in amounts necessary to address significant clean up needs.

Second, consistent with standard state practice, OCD does not commingle federal funds with state funds in the Reclamation Fund. Instead, federal and state funds are held in separate accounts. EMNRD cannot manage them in a different matter and satisfy our fiscal obligations to the federal government.

Third, the requirement to exhaust federal funds first before having access to any state funds complicates OCD's ability to respond to situations on the ground – e.g., the federal money may have more requirements and conditions regarding the circumstances in which it may be used. State funds are generally more flexible and allow the OCD to respond to a broad range of circumstances. For example, state funds enable the OCD to respond to near term needs, as the division did in 2023 when an operator walked away from their responsibilities, but had not fully declared bankruptcy. As a result, that operator had not technically orphaned their wells for purposes of using federal funding to plug them. Unfortunately, the operator's facilities were also near to homes and were causing releases into a residential neighborhood. OCD was able to use state funds to address those wells in a timely manner. Had SB 249's restrictions been in place, it is not clear that OCD would have been able to access Reclamation Fund dollars to address the issue.

Fourth, by having the funds in the Reclamation Fund revert annually, the revised fund may preclude the OCD from initiating long-term remediation projects which can stretch over multiple fiscal years.

Finally, SB 249 may result in the inappropriate reversion of significant Oil and Gas Reclamation Funds to the General Fund. The reclamation fund may accept deposits from myriad sources, including donations and financial assurance forfeited for reimbursement of actions taken by the division. Section 2.C. of SB 249 provides for the reversion of "money from nonfederal sources." As written, this bill would trigger the reversion of donations made specifically to the reclamation fund and any financial assurance forfeited which may have been effectively unavailable for use by the division during the fiscal year due to the timing of the deposit.

PERFORMANCE IMPLICATIONS

See other sections.

ADMINISTRATIVE IMPLICATIONS

See other sections.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

See other sections.

OTHER SUBSTANTIVE ISSUES

See other sections.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 249 is not enacted, current severance tax structure under the Oil and Gas Conservation Tax Act and distributions to the Oil and Gas Reclamation Fund under the Tax Administration Act will remain in effect. Nonfederal monies including donations and forfeited financial assurance will not revert to the general fund if the division is unable to fully expend the reclamation fund by the end of each fiscal year.

AMENDMENTS

None.