

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/15/2025

Check all that apply:

Bill Number: HB35

Original ☐

Correction ☐

Amendment ☐

Substitute ☒

Sponsor: Rep. Debra M. Sariñana, Rep.
Joanne J. Ferrary

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

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Zones

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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: This bill would create “Children’s Health Protection Zones” extending 5,280 feet (1 mile) from the property lines of elementary, secondary, middle, junior, and high schools, and restrict and monitor oil and gas production activities within those zones.

Section 1 amends and adds definitions to Section 70-2-33 NMSA, including adding a definition of a “children’s health protection zone,” “operator,” “production facility” and “school,” and adding “common source of supply” to the definition of “pool.”

Section 2 of the bill amends Section 70-2-12 NMSA and would allow the oil conservation division (OCD) to *adopt* rules (changing this from “make rules and order”) to effectuate the provisions of the oil and gas act that concern operations within a children’s health zone. [clarified language in **committee substitution**]

Section 3 of the bill amends Section 70-2-31 NMSA to authorize civil penalties for violations of these standards, assessed either by OCD or the oil conservation commission (OCC) after a hearing, or by a court. **The committee substitution** increases the maximum penalty amount assessed after a hearing to \$3 million dollars.

Section 4 of the bill creates a new section of the Oil and Gas Act that would prohibit OCD from approving new oil and gas wells in these zones unless a proposed well met the standards for a variance. Variances would be granted for plugging and abandonment operations, or in instances where the Oil Conservation Commission (OCC) after a hearing determined that denial of a permit to drill in a zone would result in severe economic harm to the applicant. However, even with these standards met, OCD would be required to deny a variance if OCC determined that such variance would harm public health. **The committee substitution** incorporates minor clarifying language and removes previously added Subsection (G) discussing the adoption of rules and guidelines by OCC.

Section 5 adds a new section to the Oil and Gas Act requiring all operators applying to OCD for a permit to drill would be required to submit documentation showing nearby protection zones and production assets within and around that zone.

Section 6 of the bill creates a new section of the Oil and Gas Act providing that existing wellheads and production facilities within protection zones would be required to adhere to a new set of standards, including operational measures and produced water analysis and

reporting.

Section 7 of the **substituted** bill provides that an oil and gas operator shall immediately suspend operations if a leak is detected within a children's health protection zone.

Section 8 of the **substituted** bill creates a new section within the oil and gas act providing that an operator within a protection zone who received a permit to drill under an exception would be required to provide notice to the surrounding property owners of intent to drill, and be required to offer to sample and test water wells and surface water on those properties prior to drilling. If the operator collects a baseline sample prior to drilling, the operator shall collect another sample from the same source no later than sixty days after drilling is complete. All sample analysis would be provided to both the property owner and OCD.

Section 9 of the **substituted** bill modifies NMSA 1978, § 74-2-2 of the Air Quality Control Act (AQCA) to provide definitions of "children's health protection zone," "oil and gas operator," and "school."

Section 10 of the **substituted** bill amends Section 74-2-5 of the AQCA to empower the Environmental Improvement Board (EIB) under the AQCA to adopt rules setting implementation and performance standards for emissions detection systems in children's health protection zones, rules defining leak detection and response plans, and other rules necessary to effectuate the provisions that concern children's health protection zones.

Section 11 of the **substituted** bill creates a new section within AQCA that requires the development of a leak detection and response plan for any operation within a children's health protection zone. Said plan must identify the chemicals of highest concern and include an emissions detection system and an alarm response protocol. NMED shall review the plans every five years and shall make the plans available online.

Section 12 of the **substituted** bill creates a new section within the AQCA to establish reporting requirements for operators in protection zones, requiring annual submission of information concerning their leak detection systems and any water testing done. NMED would be required to report annually to the Legislature based on this information.

Section 13 of the **substituted** bill creates a new section in AQCA Act, providing that the operator of an oil and gas production facility within a zone must immediately suspend operations if the facility is not in compliance with the AQCA, or if the operator has failed to implement a leak detection and response plan.

FISCAL IMPLICATIONS

Under various sections, see Administrative Implications, below, the Attorney General may be required to perform additional legal analysis and/or representation. No appropriations have been designated for this additional work.

SIGNIFICANT ISSUES

Presently, the regulatory powers of the OCC and OCD under Section 70-2-11 NMSA are limited to preventing waste and protecting correlative rights. HB 35 would create numerous duties unrelated to waste and correlative rights. Although this bill touches on multiple areas of environmental law—drinking water, air quality—it is primarily concerned with data collection

and the imposition of additional permitting restrictions.

Section 3(F) provides for civil penalties to be assessed by a court, OCD, or OCC up to \$30,000, apparently without a hearing. This may bring due process challenges. The second portion of Section 3(F) provides that a penalty may be assessed by OCD or OCC after a hearing, not to exceed \$3,000,000, and expressly states that that limitation does not apply to penalties assessed by a court. There is no discussion in the bill regarding the relevant process or appeal from such a determination.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

Under Section 70-2-4(C) NMSA, the Attorney General is counsel to the OCC. HB35's addition of new monitoring and permitting requirements about other areas of environmental law and agency authority could lead to additional legal analysis required by NMDOJ.

Under Section 74-1-8.1 NMSA, the Attorney General is one option available to the EIB for obtaining independent legal advice. HB35's addition of new monitoring and permitting requirements about other areas of environmental law and agency authority could lead to additional legal analysis required by NMDOJ.

Furthermore, under Section 74-2-12.1 NMSA, NMED is to be represented by the attorney general in actions to enforce the provisions of the AQCA, including regulations and permits issues pursuant to that act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB34 is a companion to this Bill. HB34 would expand the powers of OCD to include the protection of public health and the environment. HB34 does not require HB35 to pass, but HB35 likely requires HB34 to function.

HB35 may conflict with HB 259, as both modify the statutory structure, including the amount of penalty, in NMSA 1978, Section 70-2-31.

TECHNICAL ISSUES

N/A.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.