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FISCAL IMPACT REPORT

BILL NUMBER: House Memorial 56

SHORT TITLE: Study Transferring Ownership of Orphaned Wells

SPONSOR: Lara

LAST ORIGINAL
UPDATE: _____ **DATE:** 2/13/26 **ANALYST:** Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD	No fiscal impact	\$1,000	No fiscal impact	\$1,000	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Energy, Minerals and Natural Resources Department

State Ethics Commissions

Agency or Agencies That Were Asked for Analysis but did not Respond

New Mexico Attorney General

SUMMARY

Synopsis of House Memorial 56

House Memorial 56 (HM56) requests the Energy, Minerals and Natural Resources Department (EMNRD), and in particular its Oil Conservation Division (OCD), to study, in consultation with interested companies, work related to the conversion and/or use of orphaned wells for energy storage and hydrocarbon recovery. The bill also requests OCD to study and estimate the initial investments needed to support companies working in this potential space.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Memorials do not contain appropriations and are not enforceable as state law. However, the study requested in this memorial is outside of the normal operations of the agency involved and is likely to result in additional costs for the agency. EMNRD estimates the cost for the study to

be up to \$2.5 million, the estimate based on previous work done studying the San Juan Generating Station Facility and the Comprehensive Energy transition Strategy. The staff estimate takes into account the agency’s estimate and, given the lack of existing funding in OCD’s contracts budget, estimates the agency could need up to \$1 million to supplement its existing funds for the study.

SIGNIFICANT ISSUES

EMNRD notes that, because OCD does not have in-house expertise to carry out the scope of the study requested in the bill, it would need to contract out the study, and that the New Mexico Bureau of Geology & Mineral Resources would be better suited to carry it out. The Bureau already serves as the state’s main geological surveyor, and a portion of the bureau’s mission is to conduct research to facilitate the prudent use of the state’s geological resources.

EMNRD further noted that the truncated timeline for conducting the study—roughly beginning May 20, 2026, and requiring reporting to the pertinent interim committee by November 1, 2026—would be a very difficult timeline for either EMNRD or the bureau to meet. This is due to the sheer number of orphaned wells and their individual complexity.

The State Ethics Commission (SEC) noted that the subject matter of the study could touch on issues that may implicate the Anti-Donation Clause if further legislation were created or if the agency took further action based on the study’s results. More specifically, SEC noted that if the study resulted in, for example, the transfer of state-held property interests and the assumed liabilities associated with those interests, and/or the provision of financial incentives tied to the property, the state would need to consider:

- whether the transfer involves public money or a thing of value
- whether the State receives adequate consideration
- the specificity and enforceability of obligations imposed on the recipient
- whether the arrangement resembles a bargained-for exchange rather than a subsidy

SEC notes to completely avoid issues with the Anti-Donation clause, the state would need to gain:

Something of value in exchange for its provision of public property or funds— which, in the language of contract law, is called “consideration”—then there is no donation and, thus, no application of the Anti-Donation Clause.¹ The conditions identified by the study may be relevant to an Anti-Donation Clause analysis insofar as they link payment to measurable outcomes and ongoing compliance.

SEC concludes the ultimate constitutionality of the new laws the study could potentially create depends on if the subsequent programs are correctly implemented, have specific and enforceable recipient obligations, and if the payments from the programs are contingent on verified performance rather than projected or estimated benefits. SEC provides an example, noting that if the state were to create a program where it would receive nothing in exchange for the transfer of wells, this would be a donation and thus would be out of compliance with the Anti-Donation Clause. While there are exceptions to this clause, the program would have to be deemed sufficiently in the public’s interest to remove them from the Clause’s, “anti-subsidy scope.”