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FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR Muñoz LAST UPDATED _____ HB _____

SHORT TITLE Surface Owner Protection Property Taxes SB 530

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
NFI	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

The Attorney General's Office provides the following disclaimer: "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 530 would amend Section 70-12-4 NMSA 1978 of the Surface Owners Protection Act which ensures that a landowner is compensated for damages resulting from oil and gas operations. Under the current statute, damages specified in the Act include the following.

1. loss of agricultural production and income
2. lost land value

3. lost use of and lost access to the surface owner's land
4. lost value of improvement caused by oil and gas operations

Senate Bill 530 proposes to specify that damages include annual property taxes proportional to:

1. the amount of land from which the landowner was excluded, and
2. the period of time the landowner was excluded.

SB 530 proposes a penalty that would also require the oil and gas operator to pay the landowner \$20,000 per day for each day the landowner is excluded from property that is not affected by the oil and gas operations.

The bill also changes current references in Section 70-12-7 NMSA 1978 from section references of the Surface Owners Protection act to the section numbers of state code.

FISCAL IMPLICATIONS

SB530 does not make any appropriations.

The AOC states that any fiscal impact on the judiciary would be proportional to actions commenced in the district courts under this law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The AOC is currently working on possible parameters to measure resulting case increase. In addition, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

The AOC submitted the following discussion on punitive damages.

The Surface Owner's Protection Act currently provides that landowners be compensated for **actual** damages. The proposed amendment adds punitive damages of \$20,000 for each day that the landowner is deprived of access to their property that is not affected by the operations.

Punitive damages are designed to punish bad conduct and act as a deterrent. The U.S. Supreme Court has ruled in *BMW of N. America v. Gore*, 517 U.S. 559, 568 (1996) that if punitive damages are grossly excessive compared to actual damages, they may be unconstitutional under the Due Process clause of the U.S. Constitution. U.S. Const. Amend. XIV, § 1. The Court in *Gore* set forth a three-part test to evaluate whether punitive damage awards are excessive: (1) the reprehensibility of the defendant's conduct; (2) the disparity between the harm actually suffered and the punitive damages award; and (3) the difference between the remedy in the specific case and the remedies imposed in comparable cases.

If enacted, the constitutionality of the \$20,000 per day award may be challenged if actual damages in a particular case are low.

TECHNICAL ISSUES

The EMNRD identified the following potential technical issues in the bill as drafted.

The new provisions in SB530 contain a number of ambiguities. These ambiguities could be resolved by agreement between the surface owner and the oil and gas producer. Absent such agreement, these ambiguities could lead to litigation.

1. The reference to “annual property taxes for that . . . time for which the surface owner is deprived” is ambiguous in its application where a portion of the property is used for less than one year. For example, if the oil and gas producer uses six acres out of a 40-acre tract for six months, and only two acres for the remainder of the year, is the amount due the surface owner 6/40ths of the annual property taxes (prorating the entire “annual” taxes by the maximum amount of surface used), or 4/40ths (6/40ths times ½ year plus 2/40ths times ½ year)?
2. Similarly, the provision for \$20,000 per day for blocking access to the portion of the property not used for oil and gas operations is unclear as to its application where access is blocked for less than an entire day, a very likely occurrence when dealing with movement of equipment. If access is blocked for six hours, does the producer owe the surface owner \$20,000 (interpreting “per day” as meaning per day or partial day), \$5,000 (\$20,000 per day times 1/4th day), or nothing (\$20,000 time 0 whole days)?
3. Section 70-12-4 already provides that a surface owner may recover compensation that includes “lost access to the surface owner’s land.” The bill is unclear as to whether the \$20,000 per day is an additional recovery allowed to the surface for the same element of damages (deprivation of access to land not actually used for oil and gas operations), or whether it is a separate, additional element of damages, added on the assumption that the sentence in the present law reading “[t]he payments contemplated by this section only cover land affected by oil and gas operations” now preclude the surface owner from recovering damages for deprivation of access to other portions of the land.
4. It is unclear whether the \$20,000 per day is a *minimum* recovery, a *maximum* recovery, or a penal sum imposed in addition to actual damages. If a surface owner is blocked from access by oil and gas operations for one day, and proves \$10,000 in resulting actual damages, is his recovery under the bill \$20,000 (interpreting the \$20,000 per day as a minimum) or \$30,000 (interpreting the \$20,000 as, in effect, statutory punitive damages)? Conversely, if he proves \$25,000 actual damages, is his recovery (\$20,000, interpreting the \$20,000 per day as an exclusive remedy), \$25,000 (interpreting the \$20,000 as a minimum), or \$45,000 (interpreting the \$20,000 as a penal sum)?

JCH/ bym