

<b>LFC Requester:</b>	<b>Helen Gaussoin</b>
-----------------------	-----------------------

**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** 1-17-24  
**Bill No:** HB 32

**Sponsor:** Rep. Debra Sariñana/Sen. Harold Pope  
**Short Title:** OIL AND GAS PRODUCTION IN CHILDREN'S HEALTH PROTECTION ZONES  
**Agency Name and Code:** State Land Office - 539  
**Number:** \_\_\_\_\_  
**Person Writing:** Sunalei Stewart  
**Phone:** 505-827-5755    **Email:** sstewart@slo.state.nm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

(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>	NFI	Unknown	Unknown	Unknown		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 32 would amend the Oil and Gas Act to prohibit approval of new oil wells within one mile of schools and related facilities (defined in the bill as “children’s health protection zones”), and to phase out ongoing oil and gas operations in children’s health protection zones in four years. The bill empowers the Oil Conservation Division (OCD) to grant a variance upon an operator or owner’s application, provided the applicant shows that denial of a new permit to drill or cessation of existing development would have serious defined economic consequences, but no variance shall be granted if doing so would harm public health.

The bill also provides additional specific measures to regulate oil and gas development in children’s health protection zones, such as requirements that operators:

- \*provide OCD with a zone inventory and map identifying (inter alia) the operator’s oil and gas operations within children’s health protection zones;
- \*post signage at oil and gas facilities located within children’s health protection zones providing contact information for complaints and concerns about noise and other adverse effects, limit noise levels and light at night, employ dust mitigation measures, and provide OCD with a chemical analysis of produced water transported away from the facility;
- \*develop and implement a leak detection and response plan including protocols for emergency response;
- \*suspend operations in the case of leaks or violations associated with wells in children’s health protection zones, or Air Quality Control Act violations;
- \*provide notice to affected residents and water quality testing for new wells in children’s health protection zones; and
- \*report certain events to OCD, such as emissions detection system failures and leaks.

The bill anchors its substantive provisions, including oil and gas setbacks from schools, in Article 11, Section 14 of the New Mexico Constitution, which provides the state with general police powers.

In addition, the bill requires the Oil Conservation Division (in consultation with the Environmental Improvement Board) to promulgate rules for emissions detection systems, and as otherwise may be necessary to enforce the restrictions on oil and gas operations in children’s health protection zones. The bill provides for civil penalties for violations located in children’s health protection zones.

## **FISCAL IMPLICATIONS**

In an effort to address the serious risks that oil and gas development poses to children, in June 2023 Commissioner Stephanie Garcia Richard issued a moratorium on new oil and gas leasing on state trust lands located within one miles of schools in. However, the Commissioner lacks the legal authority to restrict development rights under existing leases. There are an undetermined number of existing wells that lie within the described “children’s protection zone” that could be phased out over the four-year period outlined in HB32. The State Land Office is unable to assess how many of these wells may or may not be shut down as there is an exemption process built

into the bill and the agency has no way of knowing how many companies would seek exemptions and under which circumstances. As such, the State Land Office is unable to assess any future impact on oil and gas earnings may or may not be.

## **SIGNIFICANT ISSUES**

The State Land Office is strongly supportive of establishing a meaningful setback for oil and gas operations to protect public health, especially with regard to children. The health risks oil and gas development poses to human health are significant and well-established in the scientific literature. Oil and gas operations are routinely linked to negative health impacts including asthma and other respiratory afflictions,<sup>1</sup> cardiac disease,<sup>2</sup> cancer,<sup>3</sup> and pregnancy complications.<sup>4</sup>

While some of these negative effects are diffuse, others are clearly correlated with individuals' proximity to oil and gas operations. Health harms affecting children are especially conspicuous. For instance, a sweeping study by the University of Pittsburgh for the Pennsylvania Department of Health found that children living within a mile of a gas well are five to seven times more likely to develop lymphoma than children living far away from a gas well; children diagnosed with four types of cancer (lymphoma, leukemia, brain tumors, and bone tumors) were four times more likely to live within a half-mile of a gas well.<sup>5</sup> In addition, women living near oil and gas wells (within three miles of a large number of oil and gas wells) had an increased likelihood of premature birth, compared with women who did not live near oil and gas wells.<sup>6</sup>

---

<sup>1</sup> See Buonocore, Reka, Yang et al., *Air Pollution and Health Impacts of Oil & Gas Production in the United States*, ENVIRONMENTAL RESEARCH: HEALTH, 1 021006 (2023).

<sup>2</sup>See Concerned Health Professionals of New York- Physicians for Social Responsibility, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Oil and Gas Infrastructure* (8th ed. 2022), available at <https://psr.org/wp-content/uploads/2022/04/compendium-8.pdf>

<sup>3</sup>See University of Pittsburgh/Pennsylvania Department of Health, *Final Report for Pennsylvania Department of Health, Bureau of Epidemiology Hydraulic Fracturing Epidemiology Research Studies: Childhood Cancer Case-Control Study*, August 3, 2023, available at [https://paenv.pitt.edu/assets/Report\\_Cancer\\_outcomes\\_2023\\_August.pdf](https://paenv.pitt.edu/assets/Report_Cancer_outcomes_2023_August.pdf)

<sup>4</sup> See Cushing, Vavra-Musser, Khang Chau et al., *Flaring from Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas*, 128 ENVIRONMENTAL HEALTH PERSPECTIVES 7 (2020).

<sup>5</sup> University of Pittsburgh/Pennsylvania Department of Health, *Final Report for Pennsylvania Department of Health, Bureau of Epidemiology Hydraulic Fracturing Epidemiology Research Studies: Childhood Cancer Case-Control Study*, August 3, 2023, available at [https://paenv.pitt.edu/assets/Report\\_Cancer\\_outcomes\\_2023\\_August.pdf](https://paenv.pitt.edu/assets/Report_Cancer_outcomes_2023_August.pdf)

<sup>6</sup> Cushing, Vavra-Musser, Khang Chau et al., *Flaring from Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas*, 128 ENVIRONMENTAL HEALTH PERSPECTIVES 7 (2020).

A substantial population of New Mexico children attend school in very close proximity to oil and gas operations: according to one recent estimate from a coalition of environmental and public health advocates, faith organizations, and tribal officials, more than 34,000 schoolchildren attend schools located within one mile of oil and gas wells.<sup>7</sup> The Oil and Gas Act, and New Mexico law generally, do not impose clear limitations on how closely oil and gas wells or other infrastructure can be located near schools.

In recognition of the serious risks that oil and gas development poses to children, Commissioner Stephanie Garcia Richard issued a moratorium on new oil and gas leasing on state trust lands located within one miles of schools in June 2023. About 35% of statewide oil and gas production takes place on state land,<sup>8</sup> so the moratorium will have a significant but not universal effect on future leasing activities. To address the issue in a more uniform and effective manner, protective health setbacks should be incorporated into state law with oversight of the Oil Conservation Division.

HB 32 would protect schools and schoolchildren with a one-mile buffer prohibiting new development, and eventually phasing out existing development, on a statewide basis. The bill would also require greater accountability and transparency with respect to oil and gas operations near schools, for example by requiring leak detection and emergency response plans and various forms of testing and notification.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

The bill states a "school" means an elementary, secondary, middle, junior high or high school or any combination of those, including a public school, state-chartered or locally chartered charter school or private school that students attend in person, including a daycare center, and a park, playground or sports or recreation facility associated with a school." It may be helpful to further define, as to private or daycare centers, be registered with the State of New Mexico.

Section 4(B) seeks to shut in "oil and gas operations" within one mile of the children's health protection zone by January 1, 2028. However, "oil and gas operations" is not defined. It is unclear if this provision seeks to shut in oil and gas activity at a wellhead or to extend to parts of a lateral or the toe of an oil well where no surface locations are within one mile of a children's health protection zone.

Section 4(C) states no Application for Permit to Drill (APD) shall be approved after July 1, 2024 in the children's health protection zone. It is unclear if the APD restriction applies to just surface locations or to all portions of an APD and appears to apply to all laterals of an APD.

---

<sup>7</sup>[https://www.biologicaldiversity.org/programs/public\\_lands/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/Letter-NM-Governor-Lujan-Grisham-Health-Buffer-Zones-080923.pdf](https://www.biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/Letter-NM-Governor-Lujan-Grisham-Health-Buffer-Zones-080923.pdf)

<sup>8</sup>[https://www.nmlegis.gov/entity/lfc/Documents/Finance\\_Facts/finance%20facts%20oil%20and%20gas%20production.pdf](https://www.nmlegis.gov/entity/lfc/Documents/Finance_Facts/finance%20facts%20oil%20and%20gas%20production.pdf)

Section 4(D)(2)(a) does not define “property.” It is unclear whether the “property” refers to the personal property of the wellbore, the drilled well, or the leasehold property.

“Production facility” includes pipelines, tanks, and other surface equipment over which the OCD does issue permits. It is unknown at the time of APD issuance whether a separator, pipeline, etc. is within the protection zone, as that infrastructure generally occurs on a lease basis. And, in the case of off-lease activity, would require a separate approval from a different government agency (e.g. BLM or NMSLO). Further, there is the potential for companies to increase venting and flaring by not obtaining pipeline connections so as not to add banned equipment which would have a seemingly adverse impact of the bill’s intent.

## **OTHER SUBSTANTIVE ISSUES**

The bill states that it is “not intended, and shall not be construed as authorizing, the state or an agency of the state to exercise its power to grant or deny a permit in a manner that will take private property for public use without the payment of just compensation.” (Section 4(A) at p. 17). The bill requires that existing oil and gas operations located within children’s health protection zones, which are extensive, cease entirely by January 1, 2028, unless a variance is granted. This mandate may expose OCD and the state as a whole to significant takings claims, which – if successful – will may result in additional litigation cost.

## **ALTERNATIVES**

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

## **AMENDMENTS**