

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 2/5/2024

Bill No: HB 133

Sponsor: K. Ortez; M. McQueen
Short Title: OIL & GAS ACT CHANGES

Agency Name and Code DFA-Economic Analysis Unit: 341
Number: _____
Person Writing Delgado L.
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

	Estimated Revenue					Recurring or Nonrecurring	Fund Affected
	FY24	FY25	FY26	FY27	FY28		
Application Fees	\$2,731	\$3,642	\$3,642				OCD Systems and Hearing Fund
Oil and Gas Severance Tax		(\$219)	(\$3,220)	(\$11,703)	(\$16,579)	R	Severance Tax Bonding Fund

Severance Tax Bonding Capacity		Unknown but negative				R	Capital Outlay
Oil and Gas Emergency School Tax		(\$219)	(\$3,220)			R	Early Childhood Trust Fund
Oil and Gas Emergency School Tax			(\$2,793)	(\$9,635)	(\$14,453)	R	Severance Tax Permanent Fund
Oil and Gas Conservation tax		(\$11)	(\$163)	(\$561)	(\$840)	R	General Fund
Oil and Gas Ad Valorem Production Tax		Unknown but negative				R	Locals
Oil and Gas Ad Valorem Equipment Tax		Unknown but negative				R	Locals
State Land Office Rental and Bonus Income		Unknown but negative				R	General Fund
State Land Office Royalty Payments		(\$288)	(\$4,225)	(\$14,524)	(\$21,722)	R	Land Grant Permanent Fund
Federal Land Rental and Bonus Income		No impact due to EMNRD rule 19.15.8.9 NMAC				R	General Fund
Federal Land Royalty Payments		No impact due to EMNRD rule 19.15.8.9 NMAC				R	Early Childhood Trust Fund
Federal Land Royalty Payments		No impact due to EMNRD rule 19.15.8.9 NMAC				R	Severance Tax Permanent Fund
Investment Income Distributions from Permanent Funds		Unknown but negative in out years				R	General Fund
GRT		(\$118)	(\$1,860)	(\$6,352)	(\$9,426)	R	General Fund
GRT		(\$35)	(\$549)	(\$1,876)	(\$2,784)	R	Locals

(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						

(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:

The HJC substitute bill for HB133 makes multiple changes to the Oil and Gas act, specifically amending section 70-2-12 NMSA 1978. The substitute bill regulates the transfer of oil and gas wells by adding conditions when a entity owns more than twenty-five percent of interest or fails to provide adequate financial assurance as required by the division. The substitute bill also authorizes the conversion of an oil and gas well to a facility that supports energy storage or geothermal development, including establishing fees and financial assurance requirements specific to an energy storage or geothermal use. Lastly, the substitute bill creates a tiered system of financial assurances for operators ranging from a financial assurance of \$250k for operates with fewer than 50 wells up to \$10 million for operators with more than 500 wells.

House Bill 133 (HB133) amends the Oil and Gas Act to allow the Energy, Minerals and Natural Resources Department to:

- Regulate certain transfers of oil and gas wells and authorize the conversion of oil and gas wells for energy storage and geothermal development.
- HB133 also increases the amount of fees and financial assurance associated with operating oil and gas wells.
- The bill also increases civil penalties and allows for an inflation adjustment over time.
- The bill also requires the capture of ninety-eight percent of natural gas produced in 2027.

Section 1: Amends Section 70-2-12 NMSA 1978 allowing EMNRD to regulate (a) the transfer of oil and gas wells or facilities, including limitations on transfers when the transferor, the transferee or an entity that owns more than a twenty-five percent interest in a transferor or transferee has a significant history of noncompliance with the Oil and Gas Act or rules adopted under that act. (b) the transferee fails to provide adequate financial assurance as required by the division. (c) the transferee lacks sufficient financial capacity to manage liabilities associated with the oil and gas wells or facilities. (d) the division deems the limitations to be necessary for mitigating risk to the state from potential inactive or abandoned oil and gas wells or facilities.

Section 1: A23: allows EMNRD to authorize the conversion of an oil and gas well to a facility that supports energy storage or geothermal development, including establishing fees and financial assurance requirements specific to energy storage or geothermal use.

Section 2: Requires any person, firm, corporation or association who operates an oil, gas or service well with the state shall as a condition to drilling or producing the well to furnish financial assurance. Section 2 increases the blanket plugging assurance from \$250,000 to \$10,000,000 or the operator must provide a one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the well or wells covered by the

financial assurance.

Section 3: Increases the civil penalty assessed by a court or by the division or commission for noncompliance from \$2,500 to \$10,000 per day unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm in which case the civil penalty is increased from \$10,000 to \$25,000 per day of noncompliance.

Section 4: Increases various fees to be paid to the division and allows for the fees to be adjusted for inflation beginning on January 1, 2027, and every year after that. Section 4D also creates the Oil Conservation Division Systems and Hearings Fund. Fees from Section 4 are to be paid to this fund and subject to appropriation to develop and modernize the division's online application system and data reporting tools.

Section 5: Requires an operator to capture ninety-eight percent of natural gas produced by the operator's facilities in a calendar year beginning on January 1, 2027.

Section 6: Establishes various setbacks from human and environmental receptors. This section details various distances that new well pads, production facilities, tank batteries, compressor stations, or gas plants will be from health facilities, correctional facilities, residential structures, and private, public, and charter schools. As well as community colleges and state education institutions.

Section 6C: This section allows for the commission to approve deviations from the setbacks established in section 6 upon an application from the impacted operator demonstrating that: (1) disallowing development within the setback is inconsistent with a directive or order from another state or federal agency; (2) disallowing development will significantly impair correlative rights even after accounting for the division's or commission's ability to authorize variances from well spacing or other development requirements; or (3) disallowing development will significantly contribute to underground waste. If a deviation is approved, reporting is required from the operator to the commission.

Section 6F: This section allows for the commission to adopt rules to increase setbacks if an impairment is identified.

Section 6G: This section allows for an expansion at an existing facility so long as the new development at an existing facility does not result in a one-time expansion of the external boundary of more than fifteen percent as determined by the boundaries in existence as of May 15, 2024. The burden is on the operator to establish the boundaries, unless the operator demonstrates to the division that the one-time expansion will consolidate development and provide a demonstrable reduction of overall impacts on human health and the environment, in which case the division may approve an expansion of up to thirty percent.

FISCAL IMPLICATIONS

DFA defined small producers as operators with less than 1,000,000 barrels of production (or less than 2.74 thousand barrels per day) in 2023. Using Rystad data, these operators account for 2.26 percent of total production in 2023. Additionally, this data was refined further by EMNRD analysis which expects operators with less than 100,000 barrels of production to see no change in

their financial assurance tiers. These producers are expected to remain in the \$250 thousand FA tier. This reduces the percentage of potential impacted production from 2.26 percent to 1.75 percent. This 1.75 percent was applied to Rystad’s forecast of yet to be permitted oil and natural gas production in New Mexico. While not all small producers will be impacted by HB133, this assumption establishes a maximum impact to production which then can be used to calculate a fiscal impact range detailed in the revenue table above.

The assumed lost production of 1.75 percent in conjunction with baseline oil and natural gas prices determined by the December 2023 consensus estimate was used to produce baseline differences for oil and gas emergency school tax impacts to the general fund as well differences to various revenue transfers. This analysis was used to determine lost production values and apply the relevant tax rates to determine the revenue impacts to general fund and non-general fund programs listed in the revenue table above. A regression analysis was employed to estimate GRT impacts for both the state and local governments.

Additionally, HB133 also sets the natural gas capture requirement at 98 percent beginning in 2027. Currently, Rystad data illustrates the average capture rate for natural gas in New Mexico was 93.5 percent, 94.9 percent, and 95.5 percent in 2021, 2022, and 2023 respectively. A marginal increase up to 98 percent in 2027 is expected to have minimal impact on production since the capture rate is already high.

The increases in HB133 to fees, penalties, and financial assurance are expected to be weathered by producers given the strong well economics in New Mexico where producers benefit from the highest producing yields in the country with breakeven prices at about \$40/barrel.

Lastly, the impact on activity on federal lands was ruled out due to the EMNRD’s Administrative Code 19.15.8.9 NMAC which details: “An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, **unless the well is covered by federally required financial assurance.**”

This analysis anticipates an impact range from an unknown minimal amount up to the maximum amounts illustrated in the revenue impacts table above.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

According to the EMNRD FIR: “The projectable fiscal impact of this legislation on EMNRD is primarily the increased revenues to the Oil Conservation Division Systems and Hearings Fund. The fee increases in Section IV will generate approximately \$3,641,600 in additional revenue to the Oil Conservation Division Systems and Hearings Fund per year”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS