

LFC Requester:	Ismael Torres / Helen Gaussoin
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**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 1/18/2024
Bill No: HB 133

Sponsor: Reps. Ortez and McQueen
Short Title: Oil and Gas Act Changes

Agency Name and Code EMNRD 521
Number: _____
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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		
2,731.2	3,641.6	3,641.6	Recurring	Oil Conservation Division Systems and Hearings Fund

(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: Conflicts with HB 30, HB 31, HB 32
Duplicates/Relates to Appropriation in the General Appropriation Act – N/A

SECTION III: NARRATIVE

BILL SUMMARY

HB 133 proposes to make a suite of changes to the Oil and Gas Act (NMSA 70-2-1 *et seq*) that are intended to modernize and update the Act and allow the Energy, Minerals and Natural Resources Department (EMNRD)'s Oil Conservation Division (Division) to keep pace with the growth of oil and gas development in New Mexico.

Section I proposes to amend NMSA 70-2-12 (Enumeration of Powers) to allow the Division to consider operator compliance and other risk factors when evaluating applications for well transfers. It also authorizes the division to allow conversions of wells to energy storage or geothermal applications.

Section II changes NMSA 70-2-14 (Financial Assurance) to raise the maximum amount of blanket bonds from \$250,000 to \$10 million and give the division the authority to retire bonds directly instead of going through the Attorney General.

Section III amends NMSA 70-2-31 (Penalties) to increase the daily penalty cap from \$2,500 to \$10,000 and the high risk/noncompliance daily cap from \$10,000 to \$25,000. It also removes the \$200,000 cap on administrative penalties.

Section IV amends NMSA 70-2-39 (Fees) to increase all the fees that the Division is authorized to collect for different applications except for commercial surface waste management facilities. All of the fees are proposed to be tripled from current statutory amounts. The section authorizes the Division to increase the fees administratively based on CPI increases beginning Jan. 1, 2027. Finally, the section authorizes the Division to use money in the Oil Conservation Division Systems and Hearings Fund (where the fees are directed) for data management and information technology purposes, including funding to support IT personnel.

Section V proposes a new section of the Oil and Gas Act that requires that operators capture 98% of natural gas produced by their facilities in a given year starting on January 1, 2027. It authorizes the division to promulgate rules to meet this requirement.

Section VI proposes a new section of the Oil and Gas Act establishing setback requirements for

certain human and environmental features. It requires a setback of 2,250 feet from certain congregate care facilities such as hospitals, schools, and multifamily residential structures. It requires a setback of 2,250 feet from single family homes unless the homeowner consents to it being no closer than 750 feet. It establishes a setback requirement of 660 feet from certain water features and a 300 foot setback from other environmental features, state parks, game commission lands and critical habitat.

The section creates three exceptions from the setback requirements where operators can show significant impairment of correlative rights, underground waste, or inconsistency with a directive from another state or federal agency. Operators obtaining exceptions are subject to heightened scrutiny for compliance and inspections. Section VI authorizes the division to increase setback distances to protect particularly sensitive environmental features or human health. It grandfathers in existing producing facilities and establishes conditions for increasing well pad size within the setback.

FISCAL IMPLICATIONS

Section III

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.

Section II

There is a foreseeable positive impact to the State of New Mexico in the form of reduced taxpayer liability for the plugging and remediation of orphaned inactive wells. The transfer changes in Section I and the financial assurance changes in Section II will combine to allow the division to reduce the prevalence of orphaned inactive wells as well as assess and collect dollar amounts that are more reflective of the true cost of plugging and remediating well sites.

The current \$250,000 cap on blanket bonds means that most operators are heavily incentivized to pursue a blanket bond, even if the covered wells number in the hundreds. The current average cost to the division to plug a well is \$125,000. Environmental remediation costs can drive this number far higher, into the millions. This means that the blanket bond amount is generally only sufficient to cover the plugging of two to three wells. As a result the state of New Mexico frequently assumes liability for plugging activities by paying contractors out of the Reclamation Fund. Increasing the cap on blanket bonds to \$10 million will significantly reduce the number of wells that are underbonded and give the division more tools to protect taxpayers from assuming liability for plugging and clean up. The Division estimates that reducing unfunded clean-up liabilities could reduce future costs to the state by hundreds of millions of dollars.

SIGNIFICANT ISSUES

Section I

The increased scrutiny on well transfers plays an important role in HB 133's modernization efforts. Currently the division has little authority to scrutinize transfers of wells between the large operators that drill, complete, and operate wells at their most productive, and the smaller operators

that buy those wells later in the well lifespan when average production is at much lower volumes. Frequently these smaller operators are less capable of providing adequate financial assurance, and have fewer resources to comply with division requirements for reducing waste, reporting, and plugging and remediation. As a result, these well transfers are frequently the first domino to fall in the chain of events that ends with the state assuming liability for orphaned wells. HB 133 gives the division the ability to consider additional factors in approving a well transfer, such as those which would suggest a higher liability to the state. These additional factors of consideration will allow the division to resolve liability issues before they become critical enough that taxpayer funds are implicated.

Additionally, there is an increasing amount of interest in repurposing abandoned (or late in life) wellbores for purposes not related to oil and gas development or wastewater reinjection. Two of these purposes are kinetic energy storage and geothermal development. The proposed language in Section I would authorize the division to create a regulatory structure for these uses, expanding the economic possibilities of the oilfield.

Section III

The proposed changes to the penalty provisions in Section III are designed to make the division's enforcement authority more nimble and responsive to the realities of the oil and gas development landscape. Given that most notices of violation are resolved in settlement, the existing daily and overall caps on penalties tend to result in enhanced bureaucratic workload for the division to justify proposed penalty amounts, rather than actually limiting the penalties that non-compliant operators incur. The proposed changes to the penalties provision will serve to reduce that administrative burden on staff and increase the deterrent effective of the oil and gas act's penalty provision.

Section VI

Currently the state of New Mexico does not require setbacks for oil and gas wells. It only requires them for certain other types of non-well facilities. This means that human populations near new oil and gas development are potentially exposed to an array of harmful air toxics such as benzene, ethylbenzene, and n-hexane. The emission of these air toxics is typically frontloaded, with the bulk of emissions attributable to initial drilling and completion processes. This means that a setback is particularly meaningful for new wells and features located near human populations and environmentally sensitive features like waterbodies and critical habitat. The setback distances established in HB 133 are intended to provide a meaningful buffer zone to mitigate the health impacts of mineral development while also respecting the property interests of mineral lessees and lessors.

The exceptions available in Section VI are designed to fit within the scope of the division's existing workload. The first exception in subsection 6(C)(1) will function to avoid cross-agency conflict, allowing the Division to grant variances to align with requirements established by the State Land Office or the federal Bureau of Land Management. The second exception is intended to ensure that existing division requirements around spacing and surface waste are not in conflict with the new setbacks. The third exception will allow the division to balance the interest of the people and environment protected by the setback against the interest of the state as a whole in the efficient development of its mineral resources.

PERFORMANCE IMPLICATIONS

The Division will likely see improved performance of its enforcement and regulatory duties under the reforms instituted by HB 133.

ADMINISTRATIVE IMPLICATIONS

This bill will require EMNRD to promulgate rules updating, at a minimum, NMAC 19.15.7., 19.1.58, 19.15.15, 19.15.25, and 19.15.107.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 133 duplicates in part and conflicts in part with HB 30, HB 31, and HB 32.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB 133 is not enacted there will be no changes to the Oil and Gas Act. The state will remain under-bonded with regards to plugging and remediation liability and will continue to lack some of the authority needed to keep pace with a quickly evolving oil and gas industry in New Mexico.

AMENDMENTS

None.