

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.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}***Date Prepared:** Feb. 14, 2025*Check all that apply:***Bill Number:** HB 35sOriginal ☐ Correction ☐Amendment ☐ Substitute ☒

Sponsor:	Reps. Debra M. Sariñana and	Agency Name	State Land Office – 539
	Joanne J. Ferrary	and Code	
Short	CHILDREN'S HEALTH	Number:	
Title:	PROTECTION ZONES	Person Writing	Sunalei Stewart
		Phone: <u>505-827-5755</u>	Email <u>sstewart@nmslo.gov</u>

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
No Fiscal Impact	Unknown but minimal	Unknown but minimal		Land Grant Permanent Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Fiscal Impact	No Fiscal Impact	No Fiscal Impact			Land Maintenance Fund

(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:

House Energy, Environment and Natural Resources Committee Substitute

The HENRC Substitute for HB 35 would amend the Oil and Gas Act to prohibit approval of new oil and gas wells within one mile of schools and related facilities (defined in the bill as “children’s health protection zones”), and impose requirements on existing oil and gas operations in these children’s health protection zones. 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 OCD would consult with the Environmental Improvement Board (EIB) in its rulemaking pertaining to operations in children’s health protection zones.

The HENRC Substitute would amend the Air Quality Control Act to direct the EIB to establish standards for operator emissions detection systems in children’s health protection zones.

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 mile of schools. However, the Commissioner lacks the legal authority to restrict development rights under existing leases. 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 State Land Office 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.

However, given that industry is regularly drilling lateral wells where the drilling pad, wellhead and surface facilities are located 2-3 miles from the end of the well, industry should be able to access underground oil and gas resources located within one mile of a school by locating the wellhead and other facilities outside of the children's health protection zone. As a result, there is a likelihood that this bill would have minimal if any negative fiscal impact on State Land Office earnings.

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 pose 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,¹ cardiac disease,² cancer,³ and pregnancy

¹ 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).

²See 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>

³See 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

complications.⁴

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.⁵ 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.⁶

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.⁷ 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 pose 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,⁸ 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 35 would protect schools and schoolchildren with a one-mile buffer prohibiting new 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.

⁴ 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).

⁵ 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

⁶ 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).

⁷https://www.biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/Letter-NM-Governor-Lujan-Grisham-Health-Buffer-Zones-080923.pdf

⁸https://www.nmlegis.gov/entity/lfc/Documents/Finance_Facts/finance%20facts%20oil%20and%20gas%20production.pdf

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(C)(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.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS