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FISCAL IMPACT REPORT

ORIGINAL DATE 1-24-2008

SPONSOR Wirth LAST UPDATED _____ HB 248

SHORT TITLE Oil and Gas Development and Public Health SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1				Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

See Narrative

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Department of Health (DOH)
 Environment Department (NMED)

SUMMARY

Synopsis of Bill:

House Bill 248 seeks to amend the Oil and Gas Act to ensure that oil and gas are developed in a manner consistent with the protection of public health, safety, and welfare while balancing development with wildlife conservation. The amendments include the following: to the extent necessary to protect public health, safety and welfare, including the protection of the environment and wildlife resources and taking into consideration cost-effectiveness and technical feasibility, regulate oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on air, water, soil or biological resources. The legislation also proposes

to ensure that oil and gas operations are otherwise conducted in a manner that will protect the health, safety and welfare of the general public. There is no appropriation attached to the legislation.

SIGNIFICANT ISSUES

EMNRD notes that, specifically, the legislation amends NMSA 1978, Sections 70-2-11 and 70-2-12 to assign additional duties to the Oil Conservation Division (OCD) and the Oil Conservation Commission (OCC) as follows:

Section 70-2-11 currently states that the OCD and the OCC have the duties of preventing waste and protecting correlative rights. HB 248 adds two duties: 1) fostering responsible, balanced development, production and utilization of oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including the protection of the environment and natural resources; and 2) planning and managing oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources and the hunting, fishing and recreation traditions that they support.

Section 70-2-12, the "enumeration of powers" section, currently refers to the protection of public health and the environment only in two subparagraphs relating to regulation of the disposition of waste. HB 248 expressly adds the power to regulate oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on air, water, soil or biological resources; to ensure that oil and gas operations are conducted in a manner that will protect the health, safety and welfare of the general public; and to minimize adverse impacts of oil and gas operations on wildlife resources

EMNRD adds that the legislation enlarges the powers and responsibilities of the OCD and the OCC and, by adding the new duties to Section 70-2-11, it puts protection of public health, safety and welfare, protection of the environment and wildlife resources, and wildlife conservation on an equal footing with the traditional duties of preventing waste and protecting correlative rights. Although the powers of the OCD and OCC currently include protection of public health and the environment in connection with the regulation of oil and gas waste, HB 248 expands on those powers and applies them to all of OCD's regulatory functions. Protection of the environment will need to be considered throughout the development, production and utilization of oil and gas resources, and not only in the regulation of waste. The bill also specifically requires the OCD and OCC to consider public safety and welfare in addition to public health and the environment. Under HB 248 protection of the environment includes protection of the air – which until now has been under the jurisdiction of the Department of Environment. Protection of the environment also expressly includes protection of wildlife resources and reclamation of wildlife habitat

As background, DOH explains that oil and gas operations can be associated with releases of petroleum products to the atmosphere and water sources. These include hydrocarbons including polycyclic aromatic hydrocarbons (PAHs), benzene, toluene, xylene and other potentially toxic hydrocarbons such as hexane, as well as hydrogen sulfide. Benzene is known to cause cancer in humans including childhood and adult leukemias. PAHs, particularly benzo(a)pyrene, are also associated with cancer. Many of these volatile hydrocarbons are also associated with both central and peripheral neurological effects such as headaches, narcosis, nausea, numbness in

extremities, muscle weakness, and loss of coordination. Hydrogen sulfide is associated with increased pregnancy loss. To have a complete human exposure pathway, these releases must reach a human population and it is important to identify this potential for current as well as future human receptors who may be exposed. For example current receptors would include inhalation of volatile compounds directly released to air, whereas contamination of soils could result in exposures to future inhabitants of contaminated areas.

FISCAL IMPLICATIONS

EMNRD suggests that the additional duties assigned to the OCD and OCC by HB 248 are resource and personnel intensive, and will require substantial additional funding and personnel. HB 248 expressly requires the OCD to engage in rulemaking to address the new issues raised in HB 248. The OCD will need to address new issues on public safety, health and welfare and wildlife conservation in deciding administrative applications and in conducting administrative hearings. The bill expressly requires consultation with the New Mexico Game Commission on wildlife issues. The OCD will need to develop expertise in the area of air quality, which has been addressed by the New Mexico Environment Department. Finally, the OCD will have to enforce the new requirements. EMNRD concludes that “It is not known how much additional funding will be required to carry out the goals of HB 248, but it will be significant.”¹

ADMINISTRATIVE IMPLICATIONS

EMNRD notes that the OCD will need to engage in rulemaking to carry out the objectives of HB 248. It will need to consider additional issues in reviewing administrative applications, including applications for permits to drill wells. The OCD receives between 1000 and 2000 such applications each year. The OCD will also need to consider additional issues in conducting administrative hearings. It will need to establish procedures for working with the State Game Commission on issues related to wildlife resources, and will need to develop expertise on air quality issues.

TECHNICAL ISSUES

EMNRD advises that, currently, issues related to air quality are regulated under the Air Quality Control Act (Chapter 74, Article 2 NMSA 1978) through the Department of Environment. HB 248 requires the OCD and OCC to regulate oil and gas operations “so as to prevent and mitigate significant adverse environmental impacts on air...” If the intent of HB 248 is to give the OCD power to enforce the Air Quality Control Act, that power should be expressly stated. If the intent of HB 248 is to leave that power with the Department of Environment, but also require the OCD and OCC to protect the air, that may create conflicts with the Air Quality Control Act. EMNRD further suggests the legislation requires the OCD to consult with the State Game Commission. However, since that body only meets periodically, to facilitate communication on wildlife issues, it would be preferable to require the OCD to consult with the full-time professional staff of the Department of Game and Fish.

OTHER SUBSTANTIVE ISSUES

¹ It should be noted that the agency does not supply any projections of costs or FTE requirements.

NMED raises a number of operational and definitional considerations associated with the legislation primarily drawn from the following language:

Section 70.2.12.B(16) and (17) of HB248 authorizes OCG to make rules:

“(16) to the extent necessary to protect public health, safety and welfare, including the protection of the environment and wildlife resources and taking into consideration cost-effectiveness and technical feasibility, to regulate oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on air, water, soil or biological resources;

(17) to the ensure that oil and gas operations are otherwise conducted in a manner that will protect the health, safety and welfare of the general public;

(25) to minimize adverse impacts of oil and gas operations on wildlife resources by:

(b) implementing, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources; and”

NMED suggests that these provisions are confusing and duplicative of each other. The standards of protection for the environment and wildlife to be met are not clear because of the use of different terms such as “to the extent necessary,” “taking into consideration cost-effectiveness and technical feasibility,” “minimize impacts,” “minimize adverse impacts,” “prevent and mitigate significant environmental impacts,” and “whenever reasonably practicable.” It is not clear based on all these provisions to what extent impacts must be addressed, what factors must be taken into account, and whether only “significant” impacts must be addressed. Also, the terms “conserve” and “protect” as they apply to wildlife are used interchangeably in HB248, but they could be interpreted to have different meanings, i.e., “conserve” meaning to conserve for hunting, fishing and recreational purposes and “protect” meaning to protect the species.

NMED further observes that, similarly, different terms are also used for wildlife – “wildlife,” “wildlife resources,” and “biological resources” – and therefore it is not clear whether traditional wildlife, such as deer, mountain lions, fish, birds, and the like are to be protected or whether insects and other biota also are to be protected or whether wildlife is to be protected only as a “resource” or a species.

NMED opines that, currently, Sections 70-2-12.B(21) and (22) already allow for protection of public health and the environment as they are affected by the “disposition of nondomestic waste” resulting from “upstream” oil and gas operations (Section 70-2-12.B(21)) and “downstream” oil and gas operations (Section 70-2-12.B(22)). Therefore, amended Sections 70-2-12.B(16) and (17) are somewhat duplicative of the existing statutory authority. Moreover that Section 70-2-12.B(25)(b) authorizes OCD to establish procedures to consult with the State Game Commission on “decision-making that affects wildlife resources.” It is not clear what “decision-making” is referred to, whether it is OCD decision making, only OCD rulemaking, or decision making of oil and gas operators. The provision appears to be intended to apply to OCD rulemaking.

In conclusion, NMED indicates that OCD already regulates protection of ground water under the Water Quality Act (WQA), and NMED regulates protection of surface water under the WQA

and protection of air under the Air Quality Control Act (AQCA). Soil is not expressly protected, although soil cleanups are often required in order to protect ground water under the WQA. Therefore, it is not clear to what extent amended Section 70-2-12.B(25)(b) duplicates or would expand upon protections beyond the protections already in place in the WQA and AQCA. NMED.²

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD states that the OCD and OCC will “continue to regulate the oil and gas industry to prevent waste and protect correlative rights, with additional limited powers to protect public health and the environment with regard to oil and gas wastes.”

AMENDMENTS

EMNRD suggests the following amendments:

Page 8, line 10, delete “state game commission” and insert “department of game and fish.”

Page 8, lines 15-16, delete “state game commission” and insert “department of game and fish.”

To clarify what appears to be the intent of HB248, the sponsor may want to propose the following amendments in lieu of HB248’s amended Sections 70-2-12.B(16), (17) and (25):

NMED suggests the following language:

“(23) to minimize the adverse impacts of oil and gas operations on wildlife, taking into consideration cost-effectiveness and technical feasibility, by:

(a) implementing best management practices and other measures to protect wildlife; and

(b) establishing standards to minimize the adverse impacts on wildlife habitat during oil and gas operations and to ensure reclamation of wildlife habitat following oil and gas operations.

The oil conservation division shall establish a timely and efficient procedure for consultation with the state game commission on development of rules under this paragraph.”

BFW/mt

² In an effort to address at least some of its concerns, NMED proposes language that is included in the *Amendments* section.