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FISCAL IMPACT REPORT

SPONSOR <u>Dixon/Small</u>	LAST UPDATED <u>2/22/23</u>
	ORIGINAL DATE <u>1/27/23</u>
SHORT TITLE <u>Underground Injection Fund</u>	BILL NUMBER <u>House Bill 174</u>
	ANALYST <u>Sanchez</u>

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
No Fiscal Impact	\$1,000.0	Recurring	General Fund
No Fiscal Impact	\$1,400.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$1,000.0	At least \$1,800.0	Indeterminate but substantial	Recurring	Oil Conservation Division (See Fiscal Implications)
	No fiscal impact	\$1,160.3	\$1,160.3	\$2,320.6	Recurring	Oil Conservation Division (included in HB2)
Total	NFI	\$2,160.3	At least \$2,960.3	Indeterminate but substantial	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
State Treasurer's Office (STO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Bill 174

House Bill 174 proposes amending Section 74-6 NMSA 1978, also known as the “Water Quality Act,” to include a new section that creates the “underground injection control fund” at the State Treasury. The fund is to be administered by the Energy, Minerals and Natural Resources Department (EMNRD) and would be used to carry out a statewide underground injection control program. Money in the fund would be disbursed from the Department of Finance and Administration pursuant to vouchers signed by the Secretary of EMNRD.

House Bill 174 appropriates \$1.4 million to the underground injection control fund from the general fund for the purposes of carrying out a statewide underground injection control program (program). The bill further appropriates \$1 million from the general fund to EMNRD for the purposes of funding the staff needed to develop the program and provide support in the EMNRD’s application process for the state to obtain “primary enforcement authority” over Class VI wells.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the fund. Although this bill does not specify future appropriations, multiyear appropriations, particularly if used to fund services, create an expectation the program will continue in future fiscal years; therefore, this cost could become recurring after the funding period.

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Both the State Treasurer’s Office and the Department of Finance and Administration expressed in their analysis that the impact on their operations would be negligible. However, the Energy, Minerals and Natural Resources Department (EMNRD) said the impact on its Oil Conservation Division would be substantial and could potentially increase the need for recurring appropriations by up to \$1.8 million annually if the agency is successful in its application process.

The House Appropriations and Finance Committee Substitute for House Bill 2 includes \$1.16 million for the Oil Conservation Division and authorizes 10 new full-time positions (10 FTE) for compliance officers, petroleum and environmental specialists, and legal and information technology staff. These new positions will help support any new duties assigned to the agency that might result from the passage of House Bill 174 and will help the division improve its ability to meet its performance targets.

SIGNIFICANT ISSUES

According to the US Environmental Protection Agency (EPA):

Class VI wells are used to inject carbon dioxide (CO₂) into deep rock formations. This long-term underground storage is called geologic sequestration. Geologic sequestration refers to technologies to reduce CO₂ emissions to the atmosphere and mitigate climate change.

Regulated under the federal Safe Drinking Water Act, Class VI wells are meant to be permitted by either the EPA, or, if a state applies for and obtains “primacy enforcement authority,” permits may be issued by the corresponding state regulatory agency instead. The goal of the regulatory process for geologic sequestration is to ensure that it is performed in a manner that is protective of underground sources of drinking water. Currently, New Mexico has primacy for Class I, II, III and V wells.

Because of the role geologic sequestration could potentially play in the many carbon capture, utilization, and storage projects being considered by the Legislature in this, and previous sessions, EMNRD has begun the process of applying for primacy enforcement authority. According to the agency’s analysis:

The development of an underground injection control (UIC) Class VI program and the process of obtaining approval from the U.S. Environmental Protection Agency (EPA) is a significant undertaking. In addition, while federal grants have been obtained for the existing UIC program, these grants have not proved sufficient to handle the large increase in UIC applications in recent years. As a result, OCD has a backlog of applications, inspections and enforcement, and the EPA has raised questions about OCD’s ability to administer the UIC programs it has already been delegated.

EMNRD is focused on moving through the EPA process for obtaining Class VI primacy but is wary of the feedback it is already receiving from the federal government. Not only does New Mexico have to demonstrate its ability to meet the regulatory requirements under the federal Safe Drinking Water Act, but it must also demonstrate the ability to continually support such a program in future years. According to EMNRD:

The \$1 million dollars (10 FTEs) provided by HB174 for FTEs represents the necessary initial investment in capacity that must precede our Class VI application submission. Once primacy is obtained additional staff will be needed to run the delegated Class VI program.

Additional recurring appropriations for EMNRD’s Oil Conservation Division will be necessary if the application process is successful and EPA grants New Mexico primacy enforcement authority over Class VI wells.

SS/ne/al/rl