

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/21/2025

Check all that apply:

Bill Number: HB 581

Original Correction
Amendment Substitute

Sponsor: Rep. Patricia Roybal
Caballero

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: NMED Inspections Before
New Permits

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: House Bill 581 (“HB581”) would amend the Air Quality Control Act (the “AQCA”), NMSA 1978, Sections 73-2-1 to -17, to add more stringent permitting requirements that relate to the flaring and venting of natural gas by oil and gas facilities. HB581 would also repeal and replace Section 74-2-13 with more stringent inspection requirements.

Section 1: would amend Section 74-2-7, which governs permit applications to the Environment Improvement Board (the “EIB”) or to a local board (such as a municipal, county or joint air quality control board created by a local authority), and permit appeals.

- Subsection (B)(1) would require the EIB to adopt regulations for information and reporting requirements to ensure compliance with “the Oil and Gas Act specifically relating to the venting and flaring of natural gas by oil and gas facilities,” in addition to such requirements under the AQCA.
- Subsection (B)(1)(a) would specify that the EIB adopt regulations to require an applicant prove its compliance with “all state and federal emissions standards during the current inspection period” and receive proof of compliance from the New Mexico Environment Department (the “NMED”) before applying for construction and operating permits.
- Subsection (B)(1)(b) would require that, if such proof is not forthcoming, NMED “shall inspect all of the applicant’s facilities within six months of the submission of the application.”
- Subsection (B)(1)(c) would require notification to the applicant of the result of any inspections, and that if the applicant’s facilities are not in compliance with the “applicable state and federal laws and standards,” the permit application be denied.
- Subsections (B)(2)(a) and (b) would allow the EIB to adopt regulations that extend the deadline for a decision on a permit application for an additional six months if the applicant has not produced proof of compliance.
- Subsection (B)(4) would require EIB regulations requiring proof of compliance as among the “elements required” before NMED or a local agency deems an application administratively complete.
- Subsection (B)(6)(b) would require EIB to adopt regulations providing for a schedule of construction permit fees that covers “the costs of the periodic inspection program” proposed in the new Section 74-2-13, below.

- Subsection (B)(8) would allow a permit applicant to request accelerated permit processing only if the applicant has first submitted proof of compliance and NMED has accepted it.
- Subsection (B)(9) would allow for additional permit fees to cover accelerated permit processing only if the applicant has first submitted proof of compliance and NMED has accepted it.
- Subsection (C) extends the reasons that the NMED may deny a construction or operating permit application to situations where the construction, operation, or modification will not comply with Oil and Gas Act regulations regarding venting and flaring of oil and gas facilities or will violate other such provisions.
- Subsection (D) extends permit conditions to construction and operating permits so that they comply with the rules and requirements of the Oil and Gas Act relating to the venting and flaring of oil and gas facilities, including by NMED imposing conditions such as specific technological controls, individual emission limits, other reasonable restrictions, and any combination that “results in the most stringent level of performance that is most protective of health and safety.”
- Subsection (F) adds “applicable portions of the Oil and Gas Act” to the current savings provision.
- Subsection (G) adds the word “final” before “action” so that decisions about permitting be referred to as “final action[s]” not just “action[s].”
- Subsection (H) provides that a person adversely affected by a permitting action may file a petition for hearing before the EIB or local board only after receipt of the “final action.”

Section 2: would repeal and replace Section 74-2-13 as follows:

- Subsection (A) would allow NMED and the Energy, Minerals and Natural Resources Department and local agencies to establish a “periodic inspection program” through regulations effective November 2025, and that requires inspections to:
 - (1) Occur without prior notice every two years;
 - (2) Determine compliance with AQCA and Oil and Gas Act for venting and flaring;
 - (3) Use the best technology and be completed onsite;
 - (4) be funded by permitting fees.
- Subsection (B) provides for notification to the owners and operators of an inspected source within thirty days, and that such notification would include proof of compliance, a remediation plan, a plan for follow-up inspections, and/or an assessment of any resulting penalties.
- Subsection (C) directs NMED to report to the state legislature in 2026 and 2027 “regarding the status of the periodic inspection program,” including information such as the number of sources inspected, how many are in noncompliance with the Oil and Gas Act and Section 136 of the federal Clean Air Act, and what the remediation plans were imposed.
- Subsection (D) gives NMED’s Secretary or a local agency director the right to enter any premises “on which an emission source is located” or where records are required to be kept. It also gives those persons access to the premises to copy those records, to inspect all monitoring equipment, and to sample any regulated emissions.

FISCAL IMPLICATIONS

The New Mexico Department of Justice (the “NMDOJ”) could require additional resources,

staff, and costs associated with the additional legal advice rendered to the EIB and NMED and any challenges associated with the proposed language in HB581 that may statutorily require the NMDOJ to prosecute or defend.

SIGNIFICANT ISSUES

Since HB581 requires NMED to enforce provisions and regulations of the Oil and Gas Act, it may conflict with the Oil and Gas Act's grant of "jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste . . . as a result of oil or gas operations in this state" to the Oil Conservation Division. NMSA Section 70-2-6. This may lead to conflicting enforcement actions and duties between NMED and the Oil Conservation Division.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

HB581 as proposed could require additional rulemaking for EIB. The New Mexico Department of Justice (the "NMDOJ") provides legal advice to many boards and commissions on the rulemaking process and defends rulemaking decisions by public bodies with authority to develop rules. The proposed language here would likely require additional rulemaking from EIB and could take up significant more time and resources from the NMDOJ to prepare for and assist with the rulemaking process and the defense if the rules are challenged.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship:

House Bill 34 ("HB34"): Amending the Oil and Gas Act to require the Oil Conservation Division to prevent waste and also "protect public health and the environment" when implementing the Oil and Gas Act.

House Bill 33 ("HB33"): Prohibiting the construction of new sources of oil and gas production in counties where ozone concentrations are out of attainment.

House Bill 35 ("HB35"): Creating Children's Health Protection Zones extending one mile from the property lines of schools and restricts and monitors oil and gas production within those zones. The new changes would be adopted and enforced by the Oil Conservation Division in consultation with the EIB.

TECHNICAL ISSUES

Section 1(B)(1): this sentence is confusing to read.

- Suggest moving "the federal act" to before "the Oil and Gas Act."
- Suggest moving "through minimum mandatory documentation and procedures" closer to or after "submission of relevant information". As written, it suggests that the Clean Air Act could be violated "through minimum mandatory documentation and procedures."
- Should "method" in Section 2(D)(2) be "methods"?

Section 1(B)(1)(b): “these state and federal laws” seems vague. Suggest specifying the laws, as is done in other places in the Act.

Section 2

- Suggest amending definitions section of ACQA to add a definition of “EXOatmospheric measurements” and “methaneSAT,” or perhaps be less specific in Section 2(A)(3).
- Is it contradictory to specify that an onsite inspection uses satellite imagery? Perhaps it could be reworded to something like, “be completed onsite with use of the best available technology and combined with atmospheric data from external sources such as EXOatmospheric measurements generated by methaneSAT.”

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A