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FISCAL IMPACT REPORT

SPONSOR Nunez **DATE TYPED** 3/1/05 **HB** 1015

SHORT TITLE Surface Owners' Protection Act **SB** _____

ANALYST Aguilar

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		Indeterminate	Recurring	Varies

(Parenthesis () Indicate Revenue Decreases)

Relates to HM 34

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

Responses Not Received From

New Mexico Department of Transportation (NMDOT)

Commissioner of Public Lands (SLO)

SUMMARY

Synopsis of Bill

House Bill 1015 creates the "Surface Owners Protection Act", which establishes the requirements to which oil and gas producers and surface land owners must adhere to negotiate surface access agreements and determine compensation for property damages from oil and gas operations.

Significant Issues

There has been an ongoing controversy between oil and gas producers and landowners over ac-

cess to private lands for the development and production of oil and natural gas. Often the surface landowner does not own the minerals underlying the surface estate. The mineral estate allows the mineral owner the right to access the surface estate to conduct activities reasonably necessary to produce the minerals. In some cases, producers may not feel the need to conduct good faith negotiations since the mineral estate is superior to the surface estate causing conflict between oil and gas producers and landowners. New Mexico law does not presently require prior notice of operations to the surface owner, or require any security from the operator for damages that may accrue to the surface owner.

As a general practice, oil and gas producers construct single lined drilling pits for containing drilling fluids utilized and produced by the drilling process. These pits may contain drilling additives, hydrocarbons, and high levels of salts. If not disposed of properly these wastes have the potential to contaminate ground water, surface water, and cause a negative impact to the land surface. The typical oilfield practice for disposal of these drilling wastes is to bury the drilling wastes onsite. Landowners maintain that oil and gas producers have no right to intentionally dispose of wastes on lands that the producers do not own, and that these waste disposal practices are not reasonably necessary to produce the minerals. Landowners also maintain that they are left with an environmentally damaged property that affects land value.

HB1015 would set out a regulatory process under state law requiring:

- Producers to notify landowners in advance of contemplated oil and gas operations, provide specific information on the proposed operations, and make an offer of settlement for compensation for damages.
- A specified process for negotiation of settlements for compensation of damages.
- Specific issues that must be addressed during negotiations.
- A binding arbitration process upon written notice by either party of failure to reach an agreement after good faith negotiations.
- Compensation for damages to the surface and the types of damages allowed.
- A method for civil actions by the landowner against the producer for willfully and knowingly beginning an oil and gas operation before a settlement agreement is reached or an arbitration award is made.

Under common law, an owner or lessee of minerals (including oil and gas) has a right to use so much of the surface of the land overlying its minerals as may be necessary to explore for and produce the minerals. The surface owner, absent a contrary agreement, is not entitled to any compensation for loss of use of the portion of the surface reasonably necessary for mineral operations, nor for any diminution in the value of the surface due to such operations.

FISCAL IMPLICATIONS

The Oil and Gas Conservation Division notes some delays in production may be caused by this bill, thereby reducing revenues somewhat.

TECHNICAL ISSUES

The Oil and Gas Conservation Division (OCD) notes the bill applies to existing as well as future operations. The definition of "oil and gas operations" includes production as well as drilling or re-entry. If the bill were literally interpreted, oil and gas producers would have to shut in existing wells to comply with the bill and might even be precluded from entry on the surface to main-

tain these wells until surface damages were determined.

OCD notes the bill contains no transition provisions to alleviate the hardship it may impose upon producers who, at the time of its passage, would not have sufficient time left on their leases to comply with its provisions in time to prevent termination of those leases.

OCD further notes the bill defines "surface owner" as "the person who holds *equitable* title to the surface of the property." Under this definition, if the surface estate were held in trust, the oil and gas producer would have to give notice to, and obtain an agreement with, the beneficiaries of the trust rather than the trustee, this may be difficult to comply with since beneficiaries might be numerous, would frequently be minors, and could include classes of persons whose specific identity could not be easily determined.

PA/yr