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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/12

SPONSOR Egolf LAST UPDATED _____ HB 187

SHORT TITLE Disclose Fracturing Fluid Composition SB _____

ANALYST vanMoorsel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Environment (NMED)

Energy, Minerals and Natural Resources Department (EMNRD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 187 creates a new section of the Oil and Gas Act that provides for the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing (fracking) treatments.

Specifically, the bill requires that the Oil Conservation Commission (OCC) adopt rules, effective January 13, that:

- Require oil or gas well operators to complete a hydraulic fracturing chemical registry form with the total volume of water and each chemical ingredient used in a hydraulic fracturing treatment, and file the form with the OCC and post the form on the websites of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.
- Require well service companies performing hydraulic fracturing, or the supplier of any additive used, to provide the well operator with the relevant information about the chemicals.

- Establish a process whereby the identity and amount of a chemical ingredient used in hydraulic fracturing may be designated as a trade secret for purposes of 40 C.F.R. Part 350, Subpart A (federal EPA rules).
- Require any person or state agency wishing to challenge a claim of entitlement of a trade secret for fracking chemicals to make the challenge within two years of the date the well completion report is filed with the OCC.
- Limit potential challengers to owners of land on which the relevant well is located, owners of adjacent land, or a state agency.
- Establish an efficient process for delivering the trade secret information (per federal OSHA rules) to health professionals or emergency responders needing the information.

SIGNIFICANT ISSUES

The EMNRD promulgated rules for disclosure of fracturing fluids that will take effect on February 15, 2012. These rules require submittal to EMNRD of chemical data within 45 days of completion of the treatment. EMNRD states that the bill would require the rewriting the rule on the disclosure of fracking chemicals, because it also conflicts with the rule as follows:

- Rule 19.15.16.19 NMAC will require oil or gas well operators to complete and file with the Oil Conservation Division (OCD) a form, developed by the OCD, detailing the well location, and the hydraulic fluid composition and concentration, listing each ingredient and for each ingredient the trade name, supplier, purpose, chemical abstract service number, maximum ingredient concentration in additive as percentage by mass, maximum ingredient concentration in the hydraulic fluid as percentage by mass and other items.

The EMNRD states that HB 187 would require the use of a form on a national website, and that a copy of the form would be submitted to the OCC. According to the department, filing disclosure forms developed by the OCD rather than by a national website ensures state control over form elements, availability for the public, and compliance with state requirements.

- The current OCC rule does not require disclosure of proprietary, trade secret or confidential business information beyond the material safety data sheet data as described in the federal OSHA rule 29 CFR 1910.1200, which aims to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

The bill would require such disclosure “regardless of whether the ingredient is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2),” which governs material safety data sheets for each hazardous chemical.

The EMNRD also notes that the bill limits those who can challenge trade secret claims to the landowner where the well is located, an adjacent landowner and a state agency. However, most

hydraulic fracturing now occurs in horizontal drilling where the drilling may extend under a number of different landowners who would have no recourse.

ADMINISTRATIVE IMPLICATIONS

The EMNRD reports that, while it cannot quantify the exact dollar impact of the requirement to establish a large confidential records protection system, it anticipates needing increased and trained staff to develop and maintain an efficient process for the protection of trade secret or confidential business information and the evaluation of challenges to trade secret claims.

OTHER SUBSTANTIVE ISSUES

According to the AGO, there is no comprehensive federal regulatory scheme for the regulation of hydraulic fracturing, and presently much of the regulation is being conducted at the state level. As a result of public concern, many states in which hydraulic fracturing is taking place, including Colorado, Texas, Wyoming, and New Mexico, have passed laws or regulations governing fracking treatment, including laws and regulations requiring public disclosure of the chemical additives in the fracking fluids.

The Colorado, Texas and, Wyoming regulations all provide for disclosure of all chemical additives in the fracking fluids, protection of chemical additives or concentrations considered to be “trade secret” by oil and gas operators, and an opportunity for challenge to a claim of trade secret.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The disclosure of the composition of fracturing fluids will still be required through rules recently promulgated by the EMNRD, which the AGO states do not require disclosure of all chemical additives, do not define “trade secret,” do not allow for disclosure of trade secret information for public health purposes, and do not allow for any challenge to a claim of trade secret by potentially affected land owners.

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