

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 2/26/15 HB 549
LAST UPDATED _____ SB _____
SHORT TITLE Limit Eminent Domain for Pipelines SB _____
ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 549.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Economic Development Department (EDD)

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

State Land Office (SLO)

SUMMARY

Synopsis of Bill

House Bill 549 amends Section 70-3-5 to limit the right of eminent domain to obtain rights of way for pipelines or other facilities for conveyance of petroleum, natural gas, and carbon dioxide (CO2) products. The bill provides that this authority is only available if 75 percent of the product carried by the proposed pipeline originates, is processed, or is used in New Mexico.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

Existing statute allows the exercise of the power of eminent domain for rights of way necessary for the construction, maintenance, and operation of pipelines carrying petroleum, natural gas, and CO2 gas products provided the right of way is located "to do the least damage to private or public property consistent with proper use and economical construction." This authority does not

apply to gathering lines other than those owned or operated by public utilities, interstate pipelines, or operators of pipelines whose rates are prescribed or whose operations are licensed by the PRC.

HB 549 prohibits pipeline companies from exercising the right of eminent domain if more than 25 percent of oil or gas to be transported by the pipeline is not originating, being processed in, or being used in New Mexico. However, EMNRD and AGO analysis noted administering this provision will be difficult because the statute being amended is not a regulatory law assigned to any agency and would likely only come into question if there was a legal challenge to a condemnation action. Since the determination would be made before a pipeline is built and no mechanism for measuring the products to be carried is provided in the bill or existing statute, the percentages of product originating, processed, or used in New Mexico would be speculative. Finally, the bill does not set forth the consequences or sanctions if an entity's volumes exceed the 75 percent threshold.

CO₂ is produced within New Mexico and nearby states and must cross New Mexico in pipelines for its use. EMNRD analysis states that although there are many existing pipelines others are probably needed if CO₂ is captured with the natural gas produced from coalbeds in San Juan and Rio Arriba Counties and if it is captured prior to emission from coal fired power plants.

CO₂ is produced in New Mexico from the Bravo Dome located in Union and Harding Counties. The CO₂ is compressed and transported by existing pipelines to Oklahoma and the Permian Basin in Southeast New Mexico and West Texas. CO₂ is used primarily for injection into primary depleted oil and gas reservoirs to recover additional remaining reserves that cannot be recovered by any other means. Injection of CO₂ into these reservoirs has resulted in the recovery of millions of barrels of oil that would otherwise not have been produced.

There is also a CO₂ source in Catron County, which also extends into Western Arizona. This source is currently being developed and in order to transport this gas to markets in Oklahoma and Southeast New Mexico/West Texas, pipelines that cross the central portion of New Mexico will probably need to be constructed.

Outside of New Mexico, the McElmo Dome in Southwestern Colorado is also a major source of CO₂. CO₂ from McElmo Dome is transported via existing pipelines that extend diagonally across New Mexico from San Juan County to Lea County. Also outside of New Mexico is the Sheep Mountain CO₂ source west of Trinidad, Colorado. This CO₂ is compressed and transported south across the state line to near the Bravo Dome, where it is then transported to Southeast New Mexico and West Texas.

EDD noted that the bill could have positive and negative effects. While limiting the use of eminent domain provides certainty and predictability to landowners that will encourage business development, it may also limit the extractive industries' ability to construct infrastructure necessary to move products to market.

RELATIONSHIP

House Bill 548 also amends Section 70-3-5, removing eminent domain authority for construction of CO₂ pipelines.