

Synopsis of Original Bill

Senate Bill 8 creates the Carlsbad Brine Well Remediation Authority comprised of the mayor of Carlsbad, the chair of the Eddy County Board of Commissioners, the secretary of EMNRD, the secretary of DOT, and the manager of the Carlsbad Irrigation District, or their designees. The Authority is charged with regulating and administering remediation of the Carlsbad brine well, including authority to acquire, maintain, or condemn property. SB8 also creates the Carlsbad Brine Well Remediation Fund and a \$150 thousand appropriation for expenditure in FY17 and subsequent years to support the Authority’s activities. The “Carlsbad brine well” refers to an underground cavern that was created by the historic operation of a brine well and is located in the southern portion of the City of Carlsbad.

FISCAL IMPLICATIONS

The appropriation of \$150 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY17 shall not revert to the general fund. Current monitoring efforts cost approximately \$350 thousand annually.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

A “brine well” is a solution mining operation where fresh water is injected through a well casing and salt water or brine is extracted. Beginning in 1982, EMNRD’s Oil Conservation Division (OCD) permitted 32 brine well operations associated with oil and gas development, all in Eddy and Lea counties. Nine of these facilities remain active.

Brine wells result in underground caverns as salt is extracted, with the stability of the resultant caverns depending on their depth, width, and the strength of the materials above the void. New Mexico saw two sudden and catastrophic brine cavern collapses within a four month period in 2008, prompting OCD to form a working group to examine the causes and provide a report, including recommendations for a safe path forward.

After the 2008 collapses, OCD identified the Carlsbad well as having similar features placing it at risk, including depth to the salt formation and the amount of salt extracted. The cavern at this site is approximately 350 feet wide by 700 feet long. The top of the cavern is, on average, about 450 feet below the ground surface and its bottom extends to a depth of about 600 feet. Analysis of the cavern shows the area impacted by a collapse would be much larger, one-thousand feet wide by 1.7 thousand feet long, and would affect a mobile home park, a place of worship, a feed store, two highways (US 285 and US 180/62), a BNSF Railways facility, and Carlsbad Irrigation District’s Southern Main canal. Both potentially impacted highways are designated Waste Isolation Pilot Plant (WIPP) transportation routes. A collapse could also adversely impact groundwater and surface habitat.

When the business operation that was responsible for the cavern entered bankruptcy, EMNRD's Oil Conservation Division (OCD) and Carlsbad designed and implemented a monitoring system and completed a feasibility study of potential remedies. The automated monitoring system is operational and integrated into the local emergency response infrastructure.

According to the authors of the 2014 feasibility study, statistical evaluations of probability of failure and cavern lifespan indicate a high probability of catastrophic failure within 10 to 25 years. However, EMNRD's bill analysis states that more recent information is causing that estimate to be accelerated.

A limited number of options were determined to be potentially feasible including continued monitoring with institutional controls, controlled collapse, and in-place (or "in situ") backfilling of the underground cavern. Carlsbad and other stakeholders have tentatively agreed the backfilling option is most desirable along with being the least expensive option to deliver a permanent remedy. Still, the estimated cost for such an operation could approach \$25 million and the source of this funding is unclear although some have suggested the Authority should have the power to issue and sell bonds backed by Oil Reclamation Fund or severance tax revenues. The Oil Reclamation Fund is dedicated to OCD's ongoing efforts to reclaim abandoned oil and gas wells and severance tax bonding supports capital outlay.

The City of Carlsbad was fully reimbursed for all costs associated with the brine well through the operator's bankruptcy proceedings. However, OCD received just \$1.2 million to partially reimburse the oil reclamation fund after expending more than \$5 million to assess and monitor the cavern.

With the boom in New Mexico's Permian Basin oil production in recent years, local governments saw large increases in a variety of revenue streams. For example, Eddy County's FY14 revenues outpaced expenditures by \$23.4 million, or 53 percent. Eddy County's unassigned general fund balance was \$25.7 million at the end of FY14. Even in FY15 when both state and local government budgets felt the pinch of declining oil prices, the City of Carlsbad received \$8 million more in revenues than it expended. At the end of June 2015, the city's unrestricted general fund balance was \$14.6 million, representing 37.5 percent of FY15 general fund expenditures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 112 duplicates SB 8.

OTHER SUBSTANTIVE ISSUES

The bill grants the authority the power of eminent domain. The owner of the brine well facility filed bankruptcy and the bankruptcy trustee has abandoned the property, so it is unclear who would receive just compensation if the authority exercised this power on that property.

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