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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/09/17

SPONSOR Stewart LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Bernalillo County Oil & Gas Development SM 78

ANALYST Martinez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy Minerals and Natural Resources Department (EMNRD)

Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

Senate Memorial 78 (SM 78) requests the Albuquerque City Council and the Board of County Commissioners of Bernalillo County (collectively, the “Members”) “convene a multidisciplinary task force to investigate the potential social, economic and environmental effects of oil and gas development in Bernalillo County.” The Members are requested to “develop and implement appropriate regulations to minimize adverse social, economic and environmental effects of future oil and gas development in Bernalillo County.”

### FISCAL IMPLICATIONS

The Energy Minerals and Natural Resources Department (EMNRD) states that while the Oil Conservation Division does not anticipate any oil and gas exploration activity to commence in Bernalillo County over the next several years, if the price of oil rebounds to significant levels, an operator may drill an exploratory well in the County. Division records indicate that twenty-two (22) exploratory wells have been drilled in Bernalillo County dating back to 1934, and that two such wells were drilled as recently as 2005. All of the exploratory wells drilled thus far were plugged without having produced. Thus, the Division cannot predict a potential loss of royalty money at this time due to potential restrictions on oil and gas development that may result from the process proposed by SM78.

## SIGNIFICANT ISSUES

The following significant issues were provided by the Energy Minerals and Natural Resources Department:

Bernalillo County can be minimized by proper design, installation and completion of wells. The Oil Conservation Division of EMNRD is expressly tasked with ensuring wells are properly designed, constructed, completed and operated in such a manner to protect all underground sources of drinking water pursuant to the Oil and Gas Act. See, e.g., NMSA 1978, § 70-2-12(B).

Similarly, SM78 makes a recital regarding oil and gas surface activity and includes many activities expressly regulated by both the Oil Conservation Division and the Oil Conservation Commission (e.g. disposal of produced water). However, the recital states the activities are minimally regulated by the Commission. See NMSA 1978, §§ 70-2-6, 70-2-12. In fact, the Oil Conservation Division conducts inspections, regulates and enforces comprehensive rules and regulations regarding drilling and production activities and provides public access to information regarding these activities. If local government regulation conflicts with state regulation of oil and gas activities, or effectively prohibits what the state regulates, the local government regulation will be preempted. *SWEPI, LP v. Mora County*, 81 F. Supp 3d 1075 (2015).

SM78 states a concern over “air quality”, which is likely under the jurisdiction of the New Mexico Environment Department.

SM78 correctly states that there are certain aspects of oil and gas activities that are not regulated by the Oil Conservation Division or the Oil Conservation Commission. Such activities include traffic, noise pollution and road density and disturbance.

Currently, the Oil Conservation Division is working with Sandoval County, who engaged New Mexico Institute of Mining and Technology, to consult on an ordinance regarding oil and gas development in Sandoval County. The Division, much like it has with Sandoval County, is always willing to consult with any local government, as the Division has the expertise and serves as the State’s regulator of oil and gas for the State. However, as noted in some of the recitals, the Division is concerned that some local ordinances may serve to encroach upon areas of law expressly regulated and under the jurisdiction of the Commission and Division; SM78 is silent as to what constitutes “appropriate regulations”.

SM78 does not clearly define “appropriate regulations.” It should clarify that no regulations shall conflict with any area of law regulated by EMNRD or NMED.

JM/al