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FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez/ Stefanics **ORIGINAL DATE** 01/27/21 **LAST UPDATED** 02/14/21 **HB** _____
SHORT TITLE Use of Water for Oil & Gas Operations **SB** 86/aSCONC
ANALYST Wan

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	See "Fiscal Implications"		Recurring	Oil Conservation Division Data Compilation Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$2,705.0	\$2,705.0	\$5,410.0	Recurring	General Fund
	\$150.0			\$150.0	Nonrecurring	General Fund
Total	\$150.0	\$2,705.0	\$2,705.0	\$5,560.0		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

Environment Department (NMED)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 86 removes "gas" from the section of the bill that prohibits and creates penalties for causing or contributing to a spill, leak, or other release into the environment. To this same section, the amendment changes "other nondomestic wastes" to "other nondomestic liquid wastes" in the list of substances that are illegal to release into

the environment.

The amendment adds “recycled produced water” to the section amending the OCD’s rulemaking authority with specific requirements for produced water and traded produced water (Section 4, Subsection C).

To the title of the bill, the amendment adds “prohibiting the discharge or disposition of untreated produced water for activities unrelated to oil or gas operations; requiring characterization and public disclosure of contaminants to use treated produced water outside the oil field.” This addition is for clarification only because it refers to existing sections of the bill and not any changes made by the amendment.

Synopsis of Bill

Senate Bill 86 would amend and create new sections of the Oil and Gas Act, Sections 70-2-12 and 70-2-33 NMSA 1978, to prohibit certain uses of fresh water in oil and gas operations, provide for penalties related to spills, and add new rulemaking authority and responsibility to the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD). The bill would also create a new fund to support the OCD.

SB86 clarifies requirements for Water Quality Control Commission (WQCC) rules on produced water used outside of oil and gas operations by amending the Water Quality Act, Section 74-6-4 NMSA 1978. Additionally, SB86 updates a provision of the Produced Water Act, Section 70-13-5 NMSA 1978, to reflect the effective date of the bill and changes made to the Oil and Gas Act.

SB86 creates a new section of the Oil and Gas Act to prohibit the use of fresh water for oil and gas well drilling and development at depths lower than protected fresh water resource zones. The new material would require operators to use produced water, recycled water, or treated water instead.

Another new section of the Oil and Gas Act would prohibit and establish civil penalties for causing or contributing to a spill, leak, or release of oil, gas, produced water, or non-domestic waste as a result of oil and gas related activities. Penalty amounts are included in this new material. Penalties are to be deposited in a new, nonreverting fund created by SB86, the oil conservation division data compilation fund. Money in the fund is subject to appropriation by the Legislature to the OCD for the purposes of: compiling, organizing, and analyzing data collected pursuant to the Oil and Gas Act; developing and modernizing the OCD’s online databases; increasing public accessibility to OCD data on the division’s website; and upgrading the OCD’s databases and website.

SB86 would amend the OCD’s rulemaking authority to require the division to adopt rules that protect public health, worker safety, and the environment, including freshwater resources, wildlife, and domestic animals using the best available science and technology. The bill mandates the OCD specifically adopt rules to:

- Identify the chemical and radionuclide composition of produced water or treated produced water that is spilled, leaked, or released into the environment and to make such information available to the public;
- Require tracking and reporting of the movement, transportation, and location of produced and treated produced water throughout its production, treatment, reuse, and disposition in oil and gas operations and to compile the reported tracking information and make it

publicly available;

- Regulate the construction and operation of oil treating plants and produced water recycling plants and require bonds for the reclamation of recycling plant sites after operations have ceased; and
- Regulate pits used to store, treat, or dispose of nondomestic wastes, including produced water, resulting from oil and gas related activities. The rules shall at minimum include requirements for liners, leak detection, leachate collection, ground water monitoring, closure, financial assurance for closure, and post-closure monitoring and maintenance of pits.

The bill’s rulemaking changes include a prohibition on constructing or operating oil treating plants or produced water recycling and treatment plants in a manner that may result in water pollution, as well as a prohibition on using pits in a manner that may result in water pollution.

Section 5 of SB86 would amend the Oil and Gas Act to alphabetize existing definitions and add definitions for “fresh water,” “recycled water,” “treated water,” and “water pollution.”

SB86 would update the provision of the Produced Water Act that specifies the date after which private contracts requiring the purchase of fresh water for oil and gas operations will be against public policy and void. The bill changes the date from July 1, 2019, to July 1, 2021.

SB86 would amend the rulemaking authority of the WQCC under the Water Quality Act to require that the commission’s rules prohibit the use of untreated produced water for activities unrelated to oil and gas operations and require a person who proposes to discharge treated produced water or to treat produced water for activities unrelated to oil and gas operations to disclose to the Environment Department (NMED) for public disclosure all water contaminants present in untreated produced water, including constituents added for oil or gas drilling or production. The bill also would add the specification that produced water rules adopted by the WQCC must be based on the best available science and technology.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

EMNRD estimates to implement the provisions of SB86, the OCD would need 22 new FTE: four attorneys, five environmental specialists, one environmental specialist supervisor, 10 compliance officers, and two support staff. This addition of FTE would cost an estimated \$2.3 million, including approximately \$200 thousand for associated vehicle, office space, and information technology (IT) equipment costs.

Although SB86 would impose penalties for violations of the bill’s provisions and allocate those funds to the OCD for its new data collection and analysis responsibilities, the OCD does not expect that revenue source to cover the cost of the administrative changes and requirements in the bill. Furthermore, SB86 does not allow for expenditures from that revenue source for personnel costs. EMNRD did not provide estimates of annual revenue resulting from the bill’s civil penalties or number of violations expected per year.

NMED expects developing and implementing the regulations called for in SB86 would require an addition of 3 FTE at an annual cost of \$405 thousand. NMED also estimates a one-time cost of \$150 thousand to develop a database and data portal to meet the bill’s data collection and public disclosure requirements.

Because the effective date of this bill is July 1, 2021, the operating budget impact of any personnel additions is expected to begin in FY22. For further detail on the agencies' reported needs for additional resources, see "Administrative Implications."

SIGNIFICANT ISSUES

Under current law, oil and gas operators must report and remedy spills, but oil and gas related spills, leaks, and releases of oil, gas, produced water, or non-domestic waste are not illegal in and of themselves. SB86 would make causing or contributing to these occurrences a violation of the Oil and Gas Act and establish civil penalties based on the size of the release.

EMNRD raised concerns about the bill's addition of OCD regulatory duties to protect worker safety, wildlife, and domestic animals. According to the agency, "OCD never been charged with these duties and does not have the expertise to regulate worker safety and animal protection. OCD may also be forced to evaluate and re-write several existing rules that do not currently have these requirements." The agency expressed further concerns about the requirement to base rules on "the best available science and technology," arguing the language is ambiguous and could be challenged in court.

The bill's prohibition of certain activities, such as construction or operation of oil and gas facilities, that "may result" in pollution of ground water is potentially problematic, according to EMNRD, because it creates an uncertain regulatory standard. Beyond defining "water pollution," SB86 does not identify a method of evaluating whether an activity may result in pollution or establish a standard that must be met in order for the specified activities to be allowable. Furthermore, EMNRD argues that oil and gas activities have an inherent potential to pollute ground water.

The Office of the State Engineer (OSE) noted that while SB86 bans the use of fresh water in drilling activities at depths lower than "protected fresh water resource zones," the bill does not define that term, establish a process for defining the term, or assign the responsibility of defining the term to any agency.

OSE added that SB86 would raise questions on how the agency should administer water rights with a permitted purpose of use of oil and gas activities and on how to "evaluate and act upon applications for new appropriations of water for oil and gas purposes, including commercial sales for oil and gas development."

ADMINISTRATIVE IMPLICATIONS

EMNRD states the requirement of SB86 that the OCD determine whether an operator violated the prohibition against the use of fresh water would significantly increase the amount of document review and, potentially, enforcement actions conducted by the division. Additionally, EMNRD reports the prohibition of and mandated civil penalties for any oil and gas related spill, leak, or release of oil, gas, produced water, or non-domestic waste would place a substantial administrative burden on the OCD, since spills are common in the oil and gas industry and current policy allows operators to report and clean up a spill without a necessary enforcement action from the OCD. This policy change would reportedly require additional technical and legal staff in the OCD to manage an increase in enforcement actions.

EMNRD asserts the bill's addition of regulatory duties for OCD to protect worker safety, wildlife, and domestic animals, as well as the requirement to use "the best available science and technology" in rulemaking, would increase workload enough to require the division to create new positions in information technology, human resources, financial management, and legal support. The agency similarly states it has inadequate resources to gather, maintain, and update the chemical composition information of spilled produced water and the produced water transportation and location data that the bill requires to be available to the public.

NMED is already working to advance scientific and technological knowledge to inform produced water regulations through its partnership with New Mexico State University on the New Mexico Produced Water Research Consortium. Still, the agency reports it will need to devote significant resources and staff time that are currently unavailable to incorporating the scientific findings of the consortium into the rulemaking process.

NMED also noted that the bill's requirement for the collection and public disclosure of produced water data will necessitate the creation of a database and public-facing data portal.

OSE reported that if the agency is expected to have a role in defining and identifying "protected fresh water resource zones," significant staff time and resources would be required of its Hydrology Bureau "to identify the geographic range and depth of freshwater aquifers."

TECHNICAL ISSUES

NMED noted that the addition of "produced water and" on line 24, page 25 of the bill may unintentionally create ambiguity and overlap of jurisdiction between NMED and EMNRD regarding the distinction between produced and treated produced water. Under current law, EMNRD has regulatory jurisdiction over produced water until it reaches a facility that will treat it for activities unrelated to the oil and gas industry, while NMED's jurisdiction begins with the treatment of produced water. NMED indicated that adding untreated produced water to WQCC's jurisdiction would be a significant change that would likely result in duplicative efforts.

CW/sb/al