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## FISCAL IMPACT REPORT

SPONSOR Neville/Wirth ORIGINAL DATE 03/02/21  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Transfer Pipeline Safety from PRC to OCD SB 409  
ANALYST Wan

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	Minimal	Minimal		General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 409 transfers authority over oil and gas transportation pipelines, pipeline safety, and excavation of related underground facilities from the Public Regulation Commission (PRC) to the Oil Conservation Division of the Energy, Minerals and Natural Resources Department (EMNRD) and makes conforming and technical changes to the relevant statutes. The bill transfers all functions, personnel, appropriations, property, records and contractual obligations of the Pipeline Safety Bureau of the PRC's Transportation Division to the Oil and Conservation Division.

The effective date of this bill is January 1, 2023.

### FISCAL IMPLICATIONS

There would likely be a minimal nonrecurring cost to the general fund associated with moving the staff, office furniture, and equipment of the Pipeline Safety Bureau from the PRC to EMNRD. EMNRD would also need to determine whether sufficient office space is available in the Wendell Chino building for the Pipeline Safety Bureau staff. If additional office space is required, costs could increase or become recurring.

The Pipeline Safety Bureau is funded with federal grants and annual pipeline safety fee assessments. EMNRD would need to register with Duns and Bradstreet and the federal System for Award Management to be eligible for the U.S. Department of Transportation (USDOT) grants that currently support the Pipeline Safety Bureau.

## **SIGNIFICANT ISSUES**

In EMNRD's view, SB409 "would lead to more comprehensive, thorough, and efficient regulation of the oil and gas industry within New Mexico" by consolidating the related but currently separate implementation duties of the Pipeline Safety Act and the Oil and Gas Act.

On the other hand, the PRC notes that over 40 member states of the National Association of Pipeline Safety Representatives (NAPSR), an organization of pipeline safety regulators that inspects pipeline operators for compliance with applicable state and federal pipeline safety requirements, are organizationally situated within their respective state public service commissions. Evaluations conducted by NAPSR are done in partnership with USDOT and determine the level of federal funding that will be awarded to the state's pipeline safety program.

PRC is also part of the National Association of Regulatory Utility Commissioners (NARUC), which has a Pipeline Safety Subcommittee that frequently discusses and takes pipeline safety rules and regulation suggestions or improvements into consideration. If the Pipeline Safety Bureau were no longer part of the PRC, agency analysis says, New Mexico would lose NARUC participation and representation.

The PRC also suggests the transfer of pipeline safety responsibilities creates conflict and dual jurisdiction between EMNRD and the PRC, and may even be unconstitutional. According to the agency, "With the exception of contractors that perform excavation duties, all industry groups subject to the Pipeline Safety Bureau's jurisdiction are public utility companies and, as such, appear to be subject to commission regulation under the New Mexico Constitution," while SB409 removes the regulation of pipelines from the PRC's purview. The PRC also provided the following analysis:

"If [SB409 is] enacted, it is unclear how pipeline safety adjudicated cases will be managed within EMNRD. There is an established process at the PRC. Pipeline safety staff often participate in utility cases, such as rate cases, before the commission because they have the best knowledge and understanding of regulated public utilities' operational issues, reliability of service, etc. due to their frequent inspections and interactions with the [utilities]."

Furthermore, the PRC presents a potential issue with the bill's expansion of uses of the pipeline safety fund to include enhancing the staffing and training of EMNRD's Oil Conservation Division in general, rather than only covering costs of the Pipeline Safety Bureau. The PRC believes this is an issue because revenue to the fund comes from fees assessed on public utilities regulated by the Pipeline Safety Bureau.

One remaining question raised by both agencies relates to the jurisdiction over non-oil and gas pipelines and underground utilities. The Pipeline Safety Bureau has jurisdiction over excavation damage to pipelines and underground utilities, including underground conduits or cables, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic

communications or water, sewer and fire protection lines. SB409's changes to the Oil Conservation Division's rulemaking authority only add regulation of pipelines, pipeline safety, and transportation of crude oil, natural gas, and other products by pipeline and excavations.

CW/sb