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FISCAL IMPACT REPORT

SPONSOR Romero, A /Chandler **LAST UPDATED** **ORIGINAL DATE** 02/06/2023

SHORT TITLE Oil & Gas Permit Applications **BILL NUMBER** House Bill 276

ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	$600.0	$500.0	$1,100.0	Recurring	Oil Conservation Division Operating Budget
Total	No fiscal impact	$600.0	$500.0	$1,100.0	Recurring	

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
State Land Office (SLO)
Attorney General's Office (NMAG)

SUMMARY

Synopsis of House Bill 276

House Bill 276 amends the Oil and Gas Act (Section 72-2 NMSA 1978). It requires the Energy, Minerals and Natural Resources Department's Oil Conservation Division (Division) to obtain "proof of environmental insurance coverage" and "demonstration of fiscal solvency" from entities registering and applying for permits under the Oil and Gas Act.

Proof of environmental insurance coverage must be provided through a valid policy issued by a third-party insurance provider approved by the Division. Fiscal solvency must be determined by a solvency review conducted by the Division and funded by the applicant or operator.

House Bill 276 adds a new section to Section 72-2 NMSA 1978, requiring entities to file a disclosure statement with the Division and authorizing the Division to deny the permit application if it finds the applicant has committed any of a list of enumerated acts within the last 10 years. The Division may also request existing permit holders submit a disclosure statement and may revoke or suspend the permits based on its findings.

In making its determination, the Division is directed to consider aggravating or mitigating factors, including:

- The compliance history of a person "substantially affiliated" with the applicant or permittee;
- Ongoing consideration of the revocation or suspension of another permit held by the applicant or permittee;
- Applicant or permittees' prior history of unpermitted operations; and
- Applicant or permittees' prior noncompliance with a permit or order.

House Bill 276 establishes a process for the Division to allow continued operations during the time period where a permit is being considered for denial, revocation, or suspension if the Division has approved a corrective action plan submitted by the applicant or permittee.

House Bill 276 further requires that all decisions regarding permit issuance, suspension, or revocation must be preceded by an opportunity for a public hearing, except when the Division issues a temporary cessation order. Temporary cessation orders may be issued if the Division determines that a violation is causing or will cause imminent danger to public health or safety, or poses significant imminent environmental harm.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The Energy, Minerals and Natural Resources Department stated there would be two major fiscal impacts on the agency. First, in FY24, the Oil Conservation Commission would have to undertake major rulemaking to clarify the new requirements and integrate them into the approval process. Second, beginning in FY25, the Oil Conservation Division would have to implement the new rules.

The agency's analysis stated:

> The permanent staff necessary to implement HB276 would be at least 5 FTE with four technical staff and one attorney. The employees would be tasked with conducting the new compliance and financial reviews and performing the permitting actions, including the hearings for permit denials and revocations.

Given the concerns expressed in the analysis of each responding agency (see Significant Issues), it is unclear how much time the new compliance and financial reviews proposed in House Bill 276 would add to the current process for approving permits under the Oil and Gas Act. EMNRD estimates that over 4,000 applications per year would be impacted, and without additional staff, the impact on permitting times would be substantial.

SIGNIFICANT ISSUES

Analysis from the Energy, Minerals and Natural Resources Department and the State Land Office expressed concerns regarding language included in the bill, specifically the definitions of "fiscal solvency" and "sufficient environmental insurance coverage." EMNRD states that the Oil Conservation Commission would have to undertake rulemaking to define these terms further and

would require additional staff to do so. EMNRD also expressed concerns about the requirements for verifying that an applicant or permittee possessed "sufficient environmental insurance coverage" and whether operators "…would be able to obtain environmental insurance for a singular oil well, given that the most common way to deal with those facilities is through bonding…"

The State Land Office also expressed concerns regarding which entity or person must ultimately have sufficient environmental insurance coverage, stating:

> The term "person" in 70-2-12(9) and (10) could include third-party companies who submit applications on behalf of the entities for whom the application is sought, thereby likely not addressing the intent of the actual operator or "person" seeking the permit or change of operatorship. A change of ownership can be submitted by either the person assigning or accepting the wells; it is unclear what happens (or perhaps the change of ownership must be rejected) if the assigning party does not have environmental insurance or isn't financially solvent. See 70-2-12(9) and (10).

The Attorney General's Office echoed EMNRD's concerns, stating:

> With respect to the environmental insurance and fiscal solvency requirements proposed for addition to the enumeration of OCD powers at 70-2-12 NMAC, although the Division is authorized to require applicants to provide certain information and demonstrations, the Division is not expressly authorized to deny a permit or take any other actions in response, nor is the Division given rulemaking authority with respect to such requirements under Subsection B of 70-2-12 NMAC. This may create uncertainty as to whether the fiscal solvency requirements are intended to be for informational purposes only, or whether they may form a basis for permitting decisions by the Division.

TECHNICAL ISSUES

Analysis from the Attorney General's Office states:

> Proposed Subsection A in Section 2 of the Bill requires an applicant to provide a statement with "information listed in Subsection B of this section (p. 7, line 11), but Subsection B lists legal conclusions rather than the information necessary to reach those conclusions. For example, paragraph B.(1) asks whether the applicant "has knowingly misrepresented a material fact." Although a minor point, it may be more precise to amend Section A to read, for example: *"An applicant for a permit pursuant to the Oil and Gas Act shall file a disclosure statement with the division with the information pertinent to the findings listed in Subsection B of this section on a form developed by the division."*

Analysis from the Attorney General's Office also expressed concerns regarding the bill's use of the term "substantially affiliated" in the proposed new Subsection D, and suggested:

> Although the words could be given their common meaning by the Division, a legislative definition could be helpful in any potential litigation over the Division's implementation of the provision.

SS/rl/ne/mg