

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Jan 31, 2025

Check all that apply:

Bill Number: HB222

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Romero, Rep. Jeff Steinborn, & Rep. G. Andrés Romero

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Fracturing Fluid Disclosure & Use

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill amends the Oil and Gas Act to prohibit the use of PFAs as a component of hydraulic fracturing (fracking) fluid and requires drillers to disclose the constituent chemicals and concentration of those chemicals in fracking fluid and other fluids used in underground operations in oil and gas production prior to commencing operations.

Section 1 amends the Oil and Gas Act, NMSA 1978, § 70-2-33, to add additional definitions relevant to the bill's provisions. These definitions principally define the components of fracking fluid.

Section 2 adds an additional section to the Oil and Gas Act banning the use of PFAs in fracking fluid, enabling the Oil Conservation Commission (Commission) to adopt rules related to this prohibition, expressly excepting products for which federal law governs PFAs in a manner that preempts state authority, and providing for civil penalties for \$5,000 for a first violation and \$10,000 for a subsequent violation, which penalties shall be deposited in the current school fund.

Section 3 adds an additional section to the Oil and Gas Act prohibiting the Oil Conservation Division (OCD) from issuing a permit to drill or authorize any underground operations until the operator has filed a downhole chemical disclosure with OCD. The Section also requires an operator that has been issued a permit to drill to make the required disclosure within a set time frame. This disclosure shall include a description of the well, total volume of water or base fluids to be used, each additive used or to be used (including trade name, supplier, and intended use), each chemical ingredient used or to be used, actual or maximum concentrations of each of such chemical ingredients, and the chemical abstracts service (CAS) number of each listed chemical. Disclosures shall be updated when changes occur. The section requires manufacturers, direct vendors, and service companies to share information with the operator necessary to comply with the disclosure requirement. The section likewise prohibits an operator from using a chemical that has not been disclosed and requires the operator to file a certification with OCD that states as much.

Section 3 also empowers OCD to adopt rules for making chemical disclosures for non-fracking operations, and rules necessary to carry of the provisions of this section. The section also provides that chemical disclosures (both fracking and non-fracking) shall be made accessible to the public.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

This bill may run into issues with the Uniform Trade Secrets Act, NMSA 1978, §§57-3A-1-7. The component chemicals and percentage mixture of those chemicals in fluids used for downhole operations are potentially trade secrets under the Act. *Id.* § 57-3A-2. As such, public dissemination of this information may violate the Act.

Relatedly, this bill likely does not conflict with trade secrets under the Inspection of Public Records Act (IPRA) because trade secrets are exempt from inspection under IPRA, NMSA 1978, § 14-2-1. Therefore, notwithstanding the public disclosure requirements currently in the bill, OCD would be able to collect this information from operators and then retain it and maintain confidentially as a trade secret under IPRA.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

N/A.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A.

TECHNICAL ISSUES

N/A.

OTHER SUBSTANTIVE ISSUES

Although this bill goes further in its requirements than existing regulations, 19.15.16.19(B) NMAC already requires drillers to submit hydraulic fracturing disclosures after completing downhole operations. These disclosures use the same National Hydraulic Fracturing Chemical Registry (FracFocus) as contemplated in the act, with specific carve-outs to protect trade secrets.

The bill does not define any enforcement mechanism for failure to comply with the disclosure requirements, although this may be covered by the rules established by OCD.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.