



## **Duplicates/Conflicts with/Companion to/Relates to:**

## **Duplicates/Relates to Appropriation in the General Appropriation Act:**

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

HB222 bans the use of Per- and Polyfluoroalkyl substances (PFAS) usage in oil and gas fracturing or drilling fluids. The bill also prohibits the use of undisclosed chemicals in downhole operations. Finally, HB222 proposes a new section adding civil penalties for related violations at amounts greater than civil penalties currently established in the Oil and Gas Act. HB222 also requires disclosures of chemicals used in fracturing and downhole oil and gas operations.

#### **FISCAL IMPLICATIONS**

The Oil Conservation Division (OCD) needs two new Petroleum Specialists and one new Attorney position at an estimated cost of \$400,000 per year to oversee the implementation and enforcement of the act. HB222 could also cause an undetermined impact to state revenue, as the expansive ban of all undisclosed chemicals will prohibit the use of chemicals currently held as protected by the Uniform Trade Secret Act and in some cases considered necessary for production operations. Affected chemicals are not controlled or identified as trade secrets by oil and gas operators but by the chemical suppliers. Operators cannot control which are held confidential and may have to utilize less effective alternatives. This could result in subpar completion or treatment chemicals being used, resulting in less efficient completions and resource recovery. Prohibiting use of undisclosed chemicals or removing trade secret protections may disincentivize use of the most effective additives and create a chilling effect for development in the state.

OCD would need to hire:

- 2 Petroleum Specialists III
  - Pay band 80: cost at mid-range including benefits = \$125,000 each
  - Total = \$\$250,000
- 1 Attorney
  - Pay band LH: cost at mid-range including benefits = \$150,000

#### **SIGNIFICANT ISSUES**

HB222 could potentially have the following significant issues:

- HB222 would have direct implications for current rule making before the Oil Conservation Commission (OCC) under Case Number 23580, dealing with PFAS in oil and gas operations. This case has been heard by the OCC and is awaiting final written closing arguments from the parties. Portions of HB222 were proposed as a rule and were not supported by OCD for several reasons.
- Section 3.D of HB222 potentially conflicts with the legislative intent of the Uniform Trade Secrets Act, 1978 NMSA 57-3A-2.D. That act provides protections and cause of action for trade secret information. HB222 either prohibits use of trade secret materials in oil and gas or compels their disclosure without addressing the Uniform Trade Secrets Act. HB222 should be amended to directly address the intent of the legislature and provide an exception

to Chapter 57 for PFAS compounds or all materials used in oil and gas development.

- The following additional definitions are commonly known and by providing a narrower definition of the terms in HB222, the bill could have adverse implications by excluding items or actions that the common definition would encompass. Those definitions are “Additive,” “Downhole Operation,” and “Intentionally Added.”
- The definition for “Operator” conflicts with the definition used by the Oil Conservation. The proposed definition is
  - *“Operator” means a person authorized by the division to operate a unit for an oil or gas well or other oil or gas facility”*
  - The Division definition is *“Operator” means a person who, duly authorized, manages a lease’s development or a producing property’s operation, or who manages a facility’s operation.*
  - HB222 narrows the definition of Operator. The narrower definition will adversely affect OCD’s implementation of other sections of the Oil and Gas Act.
- Subsection D states: *“A manufacturer, direct vendor or service company shall share information with the operator necessary to comply with this section at the request of the operator.”* This section of HB222 significantly expands OCD authority to regulate certain activities of chemical manufacturers and distributors. This authority will overlap with other agencies and require OCD to recruit and retain staff with highly technical knowledge of chemistry and/or chemical manufacturing.
- Oil and gas operators are not responsible for the assertion of trade secret protections for specific information and could be liable to third parties for disclosure under the Uniform Trade Secrets Act. A potential result of HB222 is that manufacturers and operators will choose not to utilize trade secret materials in New Mexico, which may result in less effective operations and hydrocarbon recovery.
- HB222 proposes to ban the use of all trade secret protected materials in oil and gas development. Myriad trade secret materials are expected to be inert, and there is no known information to suggest that their use in oil and gas production is harmful to human health. The prohibition on trade secret materials in HB222 may be too broad, not connected to science-based human health or environmental concerns and negatively affect oil and gas recovery.
- The reporting requirements of HB222 in Section 3.C, Hydraulic Fracturing Chemicals, in the registry is already under the authority of the OCD. Inclusion of this requirement in HB222 is duplicative and will likely cause confusion and require future amendments to clarify.
- OCD currently has the authority in NMSA 70-2-12(A) (1) and (2) to solicit or compel production of the information contemplated in HB222 from operators as needed. HB222 substantially duplicates this authority.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

- HB222 conflicts with [unnumbered civil penalty/fees bill]. HB222 proposes to increase civil penalties specific to PFAS, use of trade secret materials, and disclosures from current

70-2-31 D NMSA 1978. This structure would create two separate tiers of civil penalties under the Act, which may be read in conflict. HB222 proposes this change as new material. Further, changes to the civil penalty limits in HB222 are less than the generally applicable increase in civil penalties in [unnumbered civil penalty/fees bill]. A generally applicable change to civil penalties in the Act will avoid confusion, litigation, and inefficiency.

- HB222 potentially conflicts with 57-3A-2.D NMSA 1978 as HB222 would compel disclosure of information currently protected under the Uniform Trade Secrets Act. As written, HB222 may require clarification as to specific exceptions to the Uniform Trade Secrets Act.
- Definitions proposed in HB222 conflict with current OCD definitions and practices.

## **TECHNICAL ISSUES**

This bill did not evaluate if undisclosed chemicals were as efficient in resource recovery. As such removing the ability to use potentially more affective products may result in less resource recovery.

## **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The OCC will continue with a rulemaking addressing these issues in part.

If HB222 does not pass, detailed disclosures of trade secret additives will likely not be available to the public and there will likely not be a ban on the use of undisclosed chemicals. However, the Division currently receives non-trade secret information through Frac Focus disclosures and the Division has authority to require disclosure of trade secret information when necessary under 1978 NMSA 70-2-12.A 1-3. If HB222 is not enacted, OCD may still access CAS information, but that information could not be made available for public inspection.

## **AMENDMENTS**

- 1) **Change:** On page 4, lines 11, 19, and 24 – strike definitions of “additive”, “downhole operation” and “intentionally added”
- 2) **Change:** On Page 5, line 5 – strike existing definition of “operator” and replace as follows:
  - T. “Operator” means a person who, duly authorized, manages a lease’s development or a producing property’s operation, or who manages a facility’s operation.
- 3) **Change:** On Page 6, line 6 – strike subsection D in its entirety.
- 4) **Change:** On Page 6, line 17 – strike “The division shall not issue a permit to drill an oil and gas well to an operator or authorize” and insert in lieu “An operator shall not commence”
- 5) **Change:** On Page 6, line 23 – strike “on or before August 2025” and insert in lieu “in a form or manner prescribed by the division.”
- 6) **Change:** On Page 8, line 4 – strike subsection F in its entirety

**7) Change:** Amend NMSA 57-3A-2(D) to add a new subsection (3) as follows:

D. "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, and

(3) does not include hydraulic fracturing fluid used in downhole operations as defined in NMSA 70-2-33.