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FISCAL IMPACT REPORT

SPONSOR <u>Sariñana/Ferrary</u>	LAST UPDATED _____
	ORIGINAL DATE <u>01/27/2025</u>
SHORT TITLE <u>Children's Health Protection Zones</u>	BILL _____
	NUMBER <u>House Bill 35</u>
	<u>Davidson/Chilton/</u>
	ANALYST <u>Torres</u>

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Oil and Gas Severance Tax		(\$270.0)	(\$600.0)	(\$1,690.0)	(\$2,200.0)	Recurring	Severance Tax Bonding Fund
Severance Tax Bonding Capacity	Losses greater than:	(\$270.0)	(\$600.0)	(\$1,690.0)	(\$2,200.0)	Recurring	Capital Outlay
Oil and Gas Emergency School Tax		(\$240.0)	(\$470.0)	(\$1,220.0)	(\$1,450.0)	Recurring	Early Childhood Trust Fund
Oil and Gas Emergency School Tax		\$0.0	(\$50.0)	(\$230.0)	(\$440.0)	Recurring	Severance Tax Permanent Fund
Oil and Gas Conservation Tax		\$0.0	(\$10.0)	(\$20.0)	(\$20.0)	Recurring	Oil Reclamation Fund
Oil and Gas Conservation Tax		(\$10.0)	(\$20.0)	(\$70.0)	(\$90.0)	Recurring	General Fund
Oil and Gas Ad Valorem Production Tax	Dependent on local property tax rates					Recurring	Local Governments/ General Obligation Bonds
Oil and Gas Ad Valorem Equipment Tax	Dependent on local property tax rates					Recurring	Local Governments/ General Obligation Bonds
State Land Office Rental and Bonus Income*	Negative					Recurring	General Fund
State Land Office Royalty Payments*		(\$160.0)	(\$350.0)	(\$980.0)	(\$1,280.0)	Recurring	Land Grant Permanent Fund
Federal Land Rental and Bonus Income	Negative					Recurring	General Fund
Federal Land Royalty Payments		(\$500.0)	(\$990.0)	(\$2,770.0)	(\$3,090.0)	Recurring	Early Childhood Trust Fund
Federal Land Royalty Payments			(\$100.0)	(\$320.0)	(\$930.0)	Recurring	Severance Tax Permanent Fund

Investment Income Distributions from Permanent Funds		Minimal losses				Recurring	General Fund
Gross Receipts Tax		(\$160.0)	(\$360.0)	(\$1,030.0)	(\$1,320.0)	Recurring	General Fund
Personal Income Tax	Losses greater than:	(\$350.0)	(\$350.0)	(\$360.0)	(\$360.0)	Recurring	General Fund
Gross Receipts Tax		(\$10.0)	(\$30.0)	(\$80.0)	(\$100.0)	Recurring	Local Governments

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
 (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD	No fiscal impact	Up to \$849.0	Up to \$849.0	Up to \$1,698.0	Recurring	General Fund
NMED	No fiscal impact	\$125.0	\$125.0	\$250.0	Recurring	General Fund
Total	No fiscal impact	\$974.0	\$974.0	\$1,948.0	Recurring	General Fund

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

Relates to Senate Bills 4, 33 and 34.
 Relates to House Bills 33 and 34.

Sources of Information

LFC Files

Agency Analysis Received From

- Energy, Minerals, and Natural Resources Department (ENMRD)
- New Mexico Environment Department (NMED)
- New Mexico Attorney General (NMAG)
- Public Education Department (PED)

SUMMARY

Synopsis of House Bill 35

House Bill 35 (HB35) proposes to amend the Oil and Gas Act to create children’s health protection zones, restricting oil and gas operations within one mile of the property line of schools. The bill defines schools to include public schools, private schools, daycare facilities, and any parks, playgrounds, and recreation facilities associated with a school.

Beginning August 1, 2025, HB35 would prohibit the Oil Conservation Division (OCD) of the Energy, Minerals, and Natural Resources Department (EMNRD) from approving any permit to drill a new well in a children’s health protection zone. OCD may grant a variance from this provision, allowing continued oil and gas operations in children’s health protection zones under certain conditions.

By January 1, 2026, an oil and gas operator in New Mexico would be required to submit a

children’s health protection zone inventory and map to OCD certifying whether any of its operations exist in a children’s health protection zone. Operations occurring inside children’s health protection zones would be subject to a set of new air and water quality requirements, including a requirement to develop a chemical leak detection and response plan and implement the plan by July 1, 2026.

If OCD or a court finds an operator liable for a violation of the Oil and Gas Act in a children’s health protection zone, OCD may assess a civil penalty not to exceed \$30 thousand per day of noncompliance, and not to exceed \$200 thousand total; these limitations do not apply to penalties assessed by a court.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The table on page one presents an estimate of potential impacts intended to illustrate a magnitude rather than an exact amount. To gauge potential impacts on production, LFC staff conducted analysis based on OCD data and utilized data from Rystad Energy and Enverus Analytics, two energy analytics firms.

Firstly, future oil and gas production was estimated by considering completed wells, wells currently in progress, wells in the drilling phase, legacy wells, drilled but uncompleted wells, and already permitted wells. This analysis focused only on the remaining estimated future production attributed to not-yet-permitted wells. Fiscal implications for already permitted wells were not considered in this bill's analysis. Because of this, fiscal impacts are delayed until production begins for not-yet-permitted wells. If this legislation negatively impacts production from already permitted wells, the financial costs estimated on page one could increase significantly and commence earlier than indicated.

Secondly, staff refined the production impacts from not-yet-permitted wells by applying the share of oil and gas permits within the proposed setback to total permitted wells, exclusively for not-yet-producing well permits.

Finally, estimated production impacted is approximately 0.15 percent of estimated, not-yet-permitted production.

This estimate does not include potential production effects from increased reporting requirements and additional regulations. The production most likely affected by increased requirements and regulatory costs would likely be limited to smaller producers; however, costs vary greatly by producer, and small producers may still be able to produce profitably under these new requirements. If this legislation does substantially and negatively affect production from these sources, the financial costs projected on page one could increase significantly because none of those costs are estimated here.

The resulting fiscal impact analysis applied production impacts to the consensus revenue estimating group forecast for prices and taxable deductions, published in December 2024. Revenue impacts were then calculated by the affected fund. Similarly, for gross receipts tax impacts, a regression on Eddy County and Lea County matched taxable gross receipts and oil

production was used to convert the possible impact to those collections. The lowest possible tax rate was used to determine losses. If losses occur in higher tax districts, oil prices rise, or deductions fall, costs represented on page one could increase significantly. Similarly, if oil prices fall or deductions rise, costs represented on page one could decrease significantly.

Civil penalties assessed by OCD are reverted to the general fund. Raising penalties, therefore, may increase general fund revenue, but by an indeterminate or negligible amount due to the unknown effect increased penalties will have on deterrence. Additionally, many notices of violation are resolved in settlement, so the impact of penalty limits on the eventual amount assessed on an operator is minimal, according to the agency. In FY23, violations of the Oil and Gas Act resulted in \$2.15 million in civil penalties reverted to the general fund.

HB35 proposes to expand OCD's role in the regulation of oil and gas operations, tasking the division with adopting new rules and regulations, a task currently divided between the Environmental Improvement Board, the Oil Conservation Commission, and the Air Quality Bureau (AQB). If the bill were to pass, it would require OCD to create a new division, staff it, and amend its current relationship with the AQB, the current regulator of emissions from oil and gas.

Analysis from EMNRD noted the creation of this new division could cost up to \$603 thousand in recurring funding, in addition to adding a water quality review team, which could cost up to \$246 thousand in recurring funding. Agency analysis also noted the expanded reporting and regulatory requirements created by HB35 could increase the division's exposure to litigation.

Analysis from the Environment Department (NMED) noted the reporting requirements on water quality the bill requires would require an additional position at the department for the increased workload, at an estimated annual cost of \$125 thousand.

Analysis from the Public Education Department (PED) noted HB35 could have potentially significant impacts to affected oil and gas operators, due to the bills stipulating suspension of operations for noncompliance with the provisions of the bill.

SIGNIFICANT ISSUES

Health. Exposure to oil and gas extraction has been associated with an increased risk of health problems like asthma, but also childhood lymphoma, respiratory distress, low birth weight and birth defects. While there is currently no universal consensus on recommending a specific setback distance to protect citizens, proximity has been associated with health risks.¹ Oil and gas production has been found to produce varying levels of methane, particulate matter, nitrogen oxide, and other chemicals compounds to be released into the air.² These chemicals from fossil fuel production have been linked to increased risk of asthma, lung diseases, and mortality, with the risk of these diseases generally found to be increasing with closer proximity to production centers that produce air pollutants.³ Setbacks, distances set by law between production facilities

¹ Yu-Fei Xing, Impact of PM2.5 on human respiratory system, NCBI, NLM.gov, Jill Johnston, Impact of upstream oil extraction and environmental public health: a review of evidence, NCBI, NLM.gov

² U.S. Energy Information Administration, Oil and Petroleum Production Yearly Statistics, EIA.gov

³ 2 Jonathan Buonocore, Air Pollution and health impacts of oil & gas production in United States, Environmental

and protected areas, are meant to alleviate the risks of disease for people who live in these areas. LFC analysis have previously cited national studies which between identified \$626.4 million and \$1.5 billion in annual health quality costs in New Mexico due to all oil and gas production, even outside of producing regions.⁴ These costs are economic and not direct fiscal impacts to the state and are not, therefore, included in table one. More analysis is needed to quantify direct state costs and those potentially abated by proposed setbacks.

According to the American Academy of Pediatrics in a 2025 policy statement:

Disease, disability, and death caused by toxic environmental exposures result in large economic and social costs in all countries, and especially in heavily polluted LMICs [Low and Middle Income Countries]. These include healthcare costs as well as increased costs for special education, accommodation for disabilities, and other developmental services. (Table 1) In addition, environmentally related disease and disability have negative economic impacts on children’s futures because they diminish children’s educational attainment, their lifelong learning potential, and their ability to contribute to society by reducing cognitive function, decreasing IQ, and impairing physical function. The economic losses caused by disease of environmental origin are so massive in heavily polluted LMICs that they can undercut these countries’ ability to develop and to invest in children’s health, education, and social welfare,^{33,34} thus perpetuating the cycle of poverty.

Analysis from PED notes that exposure to air pollutants created by nearby oil and gas wells to children at schools near the production zones can present serious health issues. PED analysis pointed to a [2021](#)⁵ study from researchers from Stanford, Berkley, and Johns Hopkins University which studied the effects of upstream oil and gas production on ambient air pollutants, in particular studying areas within two to four kilometers from wells with high levels of pollutants. The study found, “Residing in proximity to oil and gas wells is associated with adverse cardiovascular, psychological, perinatal, and other health outcomes.” PED analysis further discusses reports from the [Environmental Defense Fund](#)⁶ in concert with the Clean Air Task Force, which found ozone smog produced from the oil and gas industry resulted in 500 thousand missed days of school each year.

Setbacks/Health Zones/Buffers. While the state has an emergency declaration by the State Land Office regarding setbacks, the state has no statutory laws regarding oil and gas setbacks. However, some counties and municipalities have imposed their own. Eddy County has oil and gas ordinances requiring 300 feet distance between wells and residences, mercantile establishments, schools, and churches. The Eddy County setbacks also allow for exceptions to the setbacks if written consent is provided from the owner of protected areas to allow production within the setback zone. The City of Carlsbad also has setbacks in place. Drilling of wells must be approved first by the City council and the company must show it will not contaminate the city’s water supply. Additionally, the city requires wells, storage tanks, and compressors to be 500 feet away from commercial and residential buildings, and pipelines to be 40 feet away from commercial, industrial, or residential buildings.

Research: IOP Science

⁴ Ibid.

⁵ [Upstream oil and gas production and ambient air pollution in California - ScienceDirect](#)

⁶ [Appendix G, Roy, Thompson, Health Impacts of Oil and Natural Gas Operations.pdf](#)

Other states have passed varying levels of health buffer zones, or setbacks. California recently passed legislation creating buffer zones around schools and neighborhoods with a 3,200 foot radius instead of the 5,280 foot radius proposed in this bill

Implementation. Agency analysis from the New Mexico Attorney General (NMAG) notes House Bill 35’s enhancement of OCD’s regulatory powers, which currently is limited to preventing waste and protecting correlative rights, would expand the division’s duties beyond its current regulatory scope. Expansion, or duplication, of regulation could bring legal exposure to the division. Currently, AQB regulates the emissions related to oil and gas production, while OCD regulates the prevention of waste, correlative rights, and collects and processes data. Analysis from EMNRD notes the bill has the potential to create jurisdictional ambiguity and possibly duplication of authorities between OCD and AQB.

Analysis from the Environment Department (NMED), where AQB and the Environmental Improvement Board reside, echoes concerns regarding duplication of.

Analysis from NMED notes House Bill 35’s new provision to regulate fugitive dust and vehicle speed on unpaved roads and requiring OCD to regulate it. Due to OCD not having the capacity to regulate to such a level, NMED analysis suggested the duty fall to the Department of Transportation.

AMENDMENTS

The NMED recommends the following changes:

- **Rulemaking should be handled jointly by OCC and EIB**

Changes to text:

P10, lines 16 and 17: “The commission and environmental improvement board shall jointly adopt.”

NB also on P20, line 23: addressed by revisions above, but if we decided to discard those, revise to ‘jointly adopt.’

- **Remove duplicative notice requirements**

Changes to text:

Remove Section 4(G), P17, lines 6-10

- **Clarify water testing requirements:**

Changes to text:

P20, line 4: “...property. An operator shall conduct water sampling and testing in accordance with the requirements stipulated in NMSA 70-2-XX (Section 9 of this bill), Subsection B and shall file...”

- **NMED/EIB should handle emissions detection**

Rationale: OCD handling these would require new bureau and create start-up and recurring costs; NMED has existing expertise and would require less additional cost

Changes to text:

P20, lines 22-24: strike “the division” and replace with “the environment department”...T

P20 line 23: strike “division” and replace with “the environment department” and strike language about “in consultation with and with concurrent of environmental improvement board...”

P22, line 4: add “environment department and...” after the word division

P22, line 20: strike “division” and replace with “environment department”

P23, lines 2 and 7: strike “division” and replace with “environment department”

P26, lines 15: add environment department after the word division.

P26, line 17: after testing, add “including documentation of the water quality sampling and testing procedures.”

P26, Line 19: add and environment department after division.

P26, Line 25 thru Page 27, Line3: Delete this section.

P27, lines 19 and 20: add “and the environment department” after the word “division”

P27, Line 5: add wells after the word water.

P27, Line 10 and 11: delete “and the water does not have a beneficial use.” And replace with “or ground water that has a total dissolved solids concentration of 10,001 mg/l or more.”

P28, line 12: Add “and the Environment Department” after the word “division.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB35 relates to:

- House Bill 33, which would ban the construction of new sources of emissions relating to oil and gas in counties where the ozone concentration exceeds the primary National Ambient Air Quality Standards;
- House Bill 34, which proposes to direct OCC and OCD to protect public health when implementing the Oil and Gas Act;
- Senate Bill 4, which proposes to amend the Environmental Improvement Act to establish statewide greenhouse gas limits and require reporting, and amend the Air Quality Control Act to require the Environmental Improvement Board to regulate greenhouse gas emissions accordingly;
- Senate Bill 33, which would regulate oil and gas production in counties where high ozone levels are found to exist;
- Senate Bill 34, which would require the Oil Conservation Commission to consider environmental and health impacts in its work.

TECHNICAL ISSUES

EMNRD identifies the following issue: “The reference to the well location restrictions should be defined as “Surface Facility Locations” to avoid takings claims for stranded minerals. The restrictions placed in most of the bill are aimed at surface impacts.”

PED analysis suggests the bill’s current efforts to distinguish between “public school, state-chartered or locally chartered charter schools” be amended due to state and local charter schools being public schools. PED suggested amending the definition of “school” in the bill to remove unnecessary and redundant references to locally and state-chartered charter schools.

AD/LC/IT/sgs/hg