

LFC Requester:	Mary McCoy
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 2/4/2013
Bill No: HB 136—305 (A)

Sponsor: Rep. Brian Egolf **Reviewing** Attorney General's Office
Short Disclosure of Fracturing Fluid **Person Writing** Tannis L. Fox, AAG
Title: Composition **Phone:** 827-6695 **Email** tfox@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 136 proposes to amend the Oil and Gas Act to require the Oil Conservation Commission (OCC) to promulgate rules: (1) requiring public disclosure of each chemical ingredient used in hydraulic fracturing treatment, (2) allowing a service company, supplier, or an oil or gas operator to claim the identity or amount of a chemical ingredient as “trade secret,” (3) allowing landowners on whose property a well is located or adjacent landowners to challenge a claim of trade secret, and (4) requiring disclosure of trade secret information to health professionals or emergency responders under certain circumstances.

The amendment to HB 136 proposes to require disclosure at least 30 days prior to hydraulic fracturing. The amendment requires the disclosure form be provided to the landowner and adjacent landowners on which the well is located, the disclosure form to be provided to the nearest Oil Conservation Division (OCD) Office, and the availability of the disclosure form be published in a newspaper of general circulation in the relevant county.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None identified.

SIGNIFICANT LEGAL ISSUES

Industry representatives are concerned that they cannot meet the requirements of the amendment because the determination as to which chemicals to use in the fracking fluid mix is sometimes made based on site-specific circumstances just prior to drilling (*i.e.*, less than 30 days prior to drilling).

Other states that have enacted *pre*-drilling disclosure requirements, also require *post*-drilling disclosure. These states include Arkansas, Idaho, Indiana, West Virginia and Wyoming. *See* Vinson & Elkins LLP, “Hydraulic Fracturing Fluid Disclosure Requirements,” (Oct. 26, 2012) [<http://www.velaw.com/uploadedFiles/VEsite/Resources/HydraulicFracturingFluidDisclosureRequirements.pdf>].

To address this issue, HB 136 could be amended to require that a corrected form be filed if it turns out that the mix is changed just prior to drilling based on site-specific circumstances.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None identified.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

OCD offices would need to maintain a file for disclosure forms.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None identified.

TECHNICAL ISSUES OR DRAFTING ERROR

None identified.

OTHER SUBSTANTIVE LEGAL ISSUES

None identified.

ALTERNATIVES TO ENACTING THIS BILL

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current OCC regulations will remain in effect, which do not require prior disclosure of fracking chemical additives to landowners, placement of the disclosure forms with an OCD office, or publication in a newspaper.

Further, the current OCC regulations will remain in effect which do not require disclosure of all chemical additives, do not define “trade secret,” do not allow for disclosure of trade secret information for public health purposes, and do not allow for any challenge to a claim of trade secret by potentially affected land owners.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

See “Significant Legal Issues” section above.