

<b>LFC Requester:</b>	<b>Mark Weber</b>
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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** 2/26/2013

**Bill No:** HB 286(CS)--305

**Sponsor:** Rep. Chasey and M. Sanchez

**Reviewing** Attorney General's Office

**Short** Oil and Gas Financial

**Person Writing** Tannis Fox, AAG

**Title:** Assurance

**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)**

<b>Appropriation</b>		<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>FY13</b>	<b>FY14</b>		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

<b>Estimated Revenue</b>			<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>FY13</b>	<b>FY14</b>	<b>FY15</b>		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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 286 proposes to strengthen the financial assurance for plugging wells and strengthen enforcement actions by amending the Oil and Gas Act to:

- Authorize financial assurance for “blanket” plugging dry or abandoned wells from a maximum of \$50,000 to a minimum of \$50,000 and a maximum of \$100,000, subject to calculating a \$5,000 financial assurance amount for each well;
- Eliminates the knowing and willful requirement for civil violations of the Act;
- Adds a \$10,000 per day penalty for violations of the Act that result in unauthorized discharge of a water contaminant that pollutes or threatens to pollute above state or federal water quality standards;
- Authorizes the Oil Conservation Division to take enforcement action and assess penalties after an opportunity for a public hearing;
- Increases the maximum criminal penalty from \$5,000 to \$15,000.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

None identified.

**SIGNIFICANT LEGAL ISSUES**

The current Oil and Gas Act enforcement provisions are not consistent with other New Mexico environmental statutes’ enforcement provisions in three significant ways:

1. The Oil and Gas Act requires proof that civil violations be “knowing” and “willful.” This is the usual burden of proof required for a criminal violation, and is not generally required to prove a civil violation.
2. The Oil and Gas Act does not authorize the Oil Conservation Division to take administrative enforcement action, but requires all enforcement be in court through the Attorney General’s office. The New Mexico Environment Department, for example, has the authority under the state Water Quality Act, Air Quality Control Act and Hazardous Waste Act to take administrative enforcement action, and has brought many such actions over the years. Administrative enforcement actions generally provide a more efficient enforcement mechanism, to the benefit of the violator and the state.
3. The Oil and Gas Act penalty of \$1,000 per day per continuing violations is significantly

lower than the penalties of comparable statutes, such as the acts mentioned above, which authorize civil penalties between \$10,000 and \$25,000 per day per continuing violation, depending upon the act and particular violation. See chart comparing New Mexico environmental statutes with Oil and Gas Act and HB 286, attached.

It is not clear the extent of enforcement undertaken pursuant to the Oil and Gas Act. To the best knowledge and recollection of the current staff at the Attorney General's Office, for at least the last 14 years, the Attorney General's Office has not received referrals (that were not withdrawn) from the Oil Conservation Division to prosecute civil violations.

#### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

None identified.

#### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

The Oil Conservation Division would be required to expend increase resources to assess penalties and go to hearing.

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

None identified.

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

The difference between the blanket plugging financial assurance amount and the one well amount, and the limits on the one well amount should be clarified. The language is not clear.

#### **OTHER SUBSTANTIVE LEGAL ISSUES**

None identified.

#### **ALTERNATIVES TO ENACTING THIS BILL**

None identified.

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

The maximum financial assurance for plugging wells will continue to be \$50,000, which may not be sufficient. Only penalties of \$1,000 per violation for knowing violations will be able to be assessed. The Attorney General's Office will only be able to prosecute violations, not the Oil Conservation Division.

#### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

None identified.