

<b>LFC Requester:</b>	<b>Jon Clark</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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:*

<b>Original</b>	<input checked="" type="checkbox"/>	<b>Amendment</b>	<input type="checkbox"/>	<b>Date</b>	<u>1/16/15</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>HB 33</u>

<b>Sponsor:</b>	<u>Rep. Bill McCamley</u>	<b>Agency Code:</b>	<u>305</u>
<b>Short Title:</b>	<u>Pipeline Safety Act Civil Penalties</u>	<b>Person Writing</b>	<u>P. Cholla Khoury/Tannis L. Fox</u>
		<b>Phone:</b>	<u>827-7484</u>
		<b>Email</b>	<u>ckhoury@nmag.gov</u>

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

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

**BILL SUMMARY**

Synopsis: HB 33 proposes to amend the maximum penalty amount for violation of the Pipeline Safety Act and regulations promulgated thereunder from \$25,000 per day per violation with a maximum penalty of \$500,000 for a series of related violations to “the amount established in applicable federal law or regulation, as determined by the [Public Regulation Commission] . . . .”

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

1. HB 33 proposes to set a maximum penalty for violations of the Pipeline Safety Act and regulations by incorporating by reference the maximum penalty established by “applicable federal law or regulation.” As such, the maximum penalty for violations of the Pipeline Safety Act and regulations cannot be determined by looking only to the Pipeline Safety Act, but can only be determined by referring to a different law (federal statute or regulations). Legislation incorporating other law by reference is sometimes referred to as “blind legislation” because the substance of the legislation cannot be understood by reading the legislation itself. HB 33, as written, could violate Article IV, Section 18 of the New Mexico constitution, which states that, "No law shall be revised or amended, or the provision thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full."

2. HB 33’s incorporation by reference to “applicable federal law or regulation” is overly vague because it does not refer to a specific federal statute or regulation. (HB 33 likely is intended to refer to the federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, which sets a maximum penalty of \$200,000 per violation per day with a maximum of \$2,000,000 for a series of related violations. 49 USC § 60122(a). The implementing regulations establish the same maximum for violations of the federal act, regulations or an order issued thereunder, 49 CFR § 190.223(a), but also establish different penalties for related violations, *see* 49 CFR § 190.233(b)-(e), which underscores that the language is not sufficiently clear.)

**PERFORMANCE IMPLICATIONS** None

**ADMINISTRATIVE IMPLICATIONS** None

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP** None

**TECHNICAL ISSUES** None

**OTHER SUBSTANTIVE ISSUES** The language “the amount established in applicable federal law or regulation, as determined by the commission” is ambiguous because it is not clear whether the Public Regulation Commission determines the “applicable federal law or regulation” or the “amount” of penalty.

**ALTERNATIVES** *See* Amendments below.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** The penalties for violation of the Pipeline Safety Act will remain the same.

**AMENDMENTS** HB 33 should be amended to set forth the specific maximum amount for a daily penalty for violation of the Pipeline Safety Act and regulations and the specific maximum amount for a series of related violations under the Pipeline Safety Act.