FISCAL IMPACT REPORT

SPONSOR	House Energy, Environment and Natural Resources Committee	**LAST UPDATED**	
		ORIGINAL DATE	
SHORT TITLE	Oil & Gas Fund Distribution Changes	**BILL NUMBER**	CS/House Bill 403/HENRCS
		ANALYST	Torres, Davidson

APPROPRIATION*
(dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	$40,000	Recurring	Oil and Gas Reclamation Fund

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

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Oil and Gas Conservation Tax (EMNRD)		$43,600	$76,300	$119,000	$121,000	Recurring	Oil and Gas Reclamation Fund
Oil and Gas Conservation Tax (TRD)		($43,600)	($76,300)	($119,000)	($121,000)	Recurring	General Fund

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	$150.0	$150.0	$300.0	Recurring	Other state funds
TRD	$3.8	$34.5	No fiscal impact	$38.3	Nonrecurring	General Fund
Total	$3.8	$184.5	$150	$338.3	Recurring and Nonrecurring	General Fund and Other State Funds

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

Sources of Information

LFC Files

<u>Agency Analysis Received From</u>
Energy, Minerals and Natural Resources Department (EMNRD)
Tax and Revenue Department (TRD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HENRC Substitute for House Bill 403

The House Energy, Environment and Natural Resources Committee substitute for House Bill 403 (HB403) modifies the distribution and use of revenues from the oil and gas conservation tax by increasing the percentage of tax revenue directed to the oil and gas reclamation fund and limits the fund's allowable uses by eliminating up to $150 thousand of allowable use for education. The bill gradually raises the portion of conservation tax revenue allocated to the fund, beginning at 50 percent in FY26, increasing to 75 percent in FY27, and reaching 100 percent in FY28 and beyond.

The bill provides continuing appropriations to the Oil Conservation Division (OCD) to use fund revenues to plug abandoned wells.

The bill takes effect July 1, 2025.

FISCAL IMPLICATIONS

The bill adjusts the distribution of the oil and gas conservation tax revenue to the oil and gas reclamation fund. Under current law, the fund receives 10.53 percent of revenue when the average oil price in the previous quarter is below $70 per barrel and 19.7 percent when prices exceed $70 per barrel. The estimated fiscal impact reflects projected tax collections based on the December 2024 Consensus Revenue Estimating Group forecast for oil and gas conservation tax revenue. The proposed changes would redirect funds that currently contribute to the general fund toward the reclamation fund.

This bill expands an earmark to a fund that provides for continuing appropriations. The bill diverts or "earmarks" revenue, representing a recurring loss from the general fund. LFC has concerns with including continuing distribution language in the statutory provisions for funds because earmarking reduces the ability of the Legislature to establish spending priorities; these concerns are further exacerbated by the continuing appropriations provided by the existing fund.

However, the allowable use of the balance of the fund, employing personnel for the surveying of, preparing plans for, and plugging and remediation of abandoned production sites, is capped at $40 million or 5 percent of the fund. The fund is unlikely to grow sufficiently to exceed the $40 million distribution, therefore the department will have an additional $40 million a year for implementation from the fund.

Agency analysis from the Energy, Minerals and Natural Resources Department (EMNRD) notes the bill will increase the oil and gas conservation tax distribution to the oil and gas reclamation fund substantially. Due to the increased level of funding, EMNRD estimates it will need one additional FTE at $150 thousand to support the expanded Oil Conservation Division (OCD).

Analysis from TRD notes implementation of House Bill 403 could increase the agency's workload by a total of 210 hours between two of its divisions between FY25 and FY26. TRD estimates this increased workload could be accommodated by a $38.3 thousand nonrecurring appropriation to the agency.

SIGNIFICANT ISSUES

HB403 would shift the distribution of the conservation tax. Currently, more than 80 percent of conservation tax revenues flow to the general fund. The bill would redirect all revenues to the oil and gas reclamation fund over the course of a three-year phase-in. The current percentage of the conservation tax flowing to the reclamation fund, 19.7 percent, is the highest it has ever been.

Conservation Tax History

- Created in 1959 at a rate of 0.14 percent on oil and gas products severed and sold, all tax revenues originally went to the conservation fund, to be used by the Oil Conservation Commission to enforce the Oil and Gas Act.
- In 1977, the Legislature amended the statute to divert a very small portion of conservation tax revenues (0.01 percent) into the newly created oil and gas reclamation fund; that fund was created specifically for the purpose of plugging "abandoned" oil and gas wells (abandoned is not defined in statute or rule) and the amendments tied the conservation tax rate to the balance of the fund.
- In 1989, the Legislature increased the percentage of the tax going to the reclamation fund to 5.3 percent, with the remainder split between the conservation fund (87.7 percent) and the general fund (7 percent).
- In 1991, the Legislature repealed the conservation fund, sending all revenues not destined for the reclamation fund (5.3 percent) to the general fund (94.7 percent).
- In 2010, the Legislature amended statute to untether the tax rate from the fund balance, to increase the overall tax rate, and to specify that 10.5 percent of the conservation tax would go to the reclamation fund when West Texas Intermediate price of oil is less than $70 per barrel and 19.7 percent when the price is above $70 per barrel. This current percentage of the conservation tax going to reclamation fund is the highest it has ever been.

EMNRD expresses concern regarding the bill's language changes to the use of the oil and gas reclamation fund to survey, plug, and remediate abandoned production cites, specifically the changing of "may" to "shall". EMNRD notes this change may be interpreted to mean OCD is required to plug or remediate certain wells, an obligation which rests with the private operators. EMNRD analysis points to a recent legal case, *Armstrong Energy Corporation v St Paul Property & Casualty Insurance Company*, et. Al, D-504-CV-2021-00555, regarding this exact question, and recommends the bill be amended to maintain the current language of "may."

EMNRD analysis notes if the current statute is amended to "shall," and the bill is passed, it could create a possibility:

> To turn this [funding] increase into a net funding negative for the fund. The division utilizes the discretion that the statute gives to prioritize the plugging of those wells which represent the greatest present threats to human and environmental health and safety. The changes on lines 16-19 would open the possibility that work on these dangerous or leaking wells would take a back seat to remediate the sites of any operator that is able to secure the type of court order sought in the Armstrong case.

IT/AD/hj/hg