

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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: Date 2-4-17
Original **Amendment** _____ **Bill No:** SB307
Correction _____ **Substitute** _____

Sponsor: Richard C. Martinez **Agency Code:** 264
Short Oil & Gas Act **Person Writing** Gail MacQuesten
Title: Powers and Penalties **Phone:** 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
unknown	unknown	unknown	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	general

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB307 amends the enforcement provisions of the Oil and Gas Act, adds definitions, and adds reporting requirements.

Section 1 amends NMSA 1978, Section 70-2-28 regarding suits that can be brought by the attorney general for penalties, injunctions and restraining orders. It expands the scope of the provision to include violations of permits issued under the Oil and Gas Act, and allows suits to be brought in the first judicial district. In addition, it states that the remedies provided by this section are cumulative.

Section 2 amends NMSA 1978, Section 70-2-31, regarding the civil penalty provisions and the criminal provisions.

Civil penalties

SB307 changes the standard for the imposition of civil penalties from “knowing and willful” violations to simply “violations.” It allows for administrative imposition of penalties by the Oil Conservation Division or the Oil Conservation Commission after notice and an opportunity for public hearing. It allows penalties to be imposed for violations of permit provisions (as well as the Oil and Gas Act and rules issued pursuant to the act). It increases the maximum penalties for violations that cause an unauthorized discharge of any contaminant that pollutes or threatens to pollute water in excess of any state or federal water quality standard. Such violations will now carry a maximum penalty of \$10,000, or \$10,000 per day in the case of continuing violations. (The maximum penalty under current statute is \$1,000, or \$1000 per day in the case of continuing violations. That maximum remains in place for violations that do not meet the standards for the \$10,000 penalty.) It directs the division or commission to consider the seriousness of the violation and any good-faith efforts to comply with the applicable requirement in assessing the penalty. It provides that penalties unpaid after 30 days shall be recoverable by a civil suit filed by the attorney general, and permits such suits to be filed in the first judicial district.

Criminal penalties

SB307 changes the knowledge requirement for criminal violations from “knowing and willful” to “knowing,” and extends the scope of the statute to include permit violations. SB307 labels criminal violations as third degree felonies. (This does not change the penalty imposed in the current statute: a third degree felony is punishable by 3 years in prison and a \$5,000 fine, which is the punishment imposed by the current statute.) SB307 amends the provisions regarding false entries, omissions and destructions of records to clarify that those provisions apply to forms and reports.

Section 3 amends the definition section of the oil and gas act, changing “oil” to “crude petroleum oil” throughout, and defining “commission” and “division.”

Section 4 adds a new section imposing a reporting requirement for the Oil Conservation Division. By October 1 of each year, the division is to report to the legislature and to the governor the number of violations investigated under the Oil and Gas Act, the total amount of penalties imposed under the act, the total amount of penalties collected, and for each penalty:

- The name and location of the person penalized;
- The actual penalty assessed, including the number of days for which the penalty was assessed and the amount of the penalty per day of the violation;
- The reasons underlying the determination of the amount of the penalty;
- Whether the violation was part of a pattern of violations by the same person;
- Whether the violation was based on negligence or knowing or willful misconduct;
- And any other rationale used in determining the amount and duration of the penalty.

The report shall be made available to the public on the division’s website.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SB307 should result in increased revenues to the state due to civil penalties assessed administratively. The amount of the increase is unknown; however the annual amount of civil penalties collected before the *Marbob Energy Corp. v. Oil Conservation Comm.*, 2009-NMSC-013 decision ran in the hundreds of thousands of dollars each year.

Costs for the Oil Conservation Division and the Oil Conservation Commission may increase, due to increased civil enforcement activity and the new record-keeping requirements. The district attorneys and the attorney general may have increased costs, if more cases are pursued by them. However, giving the division and commission tools to enforce the Oil and Gas Act administratively makes it likely that more actions will be taken by the division and commission, without resort to the other enforcement provisions in the statute.

SIGNIFICANT ISSUES

SB307 makes significant changes to the enforcement provisions of the Oil and Gas Act, including provisions addressing enforcement by the attorney general, administrative enforcement through the Oil Conservation Division and the Oil Conservation Commission, and criminal enforcement. Note that SB307 impacts only enforcement of the Oil and Gas Act. The division and commission are also responsible for enforcement of the Water Quality Act. However, the two acts do not overlap. Entities subject to the Oil and Gas Act are not subject to the Water Quality Act, which has its own enforcement provisions, including imposing penalties administratively.

Administrative enforcement.

SB307's most significant impact is in administrative enforcement. In *Marbob Energy Corp. v. Oil Conservation Comm.*, 2009-NMSC-013 the supreme court held that the Oil and Gas Act did not allow assessment of penalties administratively by the division or the commission. Therefore, to obtain a civil penalty under existing law, the division or commission must obtain permission from the attorney general to file suit in district court, in the district where the violation occurred or where the violator resides, and prove that the violation was "knowing and willful" (a standard more often imposed in criminal cases than in civil cases). In contrast, most administrative agencies can impose civil penalties administratively through the administrative hearing process, and they simply need to prove that a violation occurred. As the Supreme Court noted in *Marbob*, "The Commission's enabling statutes are undeniably dated, and perhaps inadequate to face the contemporary challenges the Commission appears to claim. However, any enhancements to the Commission's authority must come from the same legislative body that created the Commission in the first instance." *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 23. SB307 makes the changes necessary for the division and commission to enforce the Oil and Gas Act administratively. The cost in time and money to take cases to district court and meet a quasi-criminal knowledge standard was a serious deterrent to enforcement of the Oil and Gas Act. Note, that the requirement of a district court lawsuit for penalties is particularly strange given that the Oil and Gas Act sets up its own administrative hearing process so that oil and gas issues can be heard on a fast-track by hearing officers and commissioners knowledgeable in oil and gas issues, instead of in district court. These hearing examiners and commissioners routinely make decisions that have huge financial impacts on oil and gas producers, yet under existing law, they cannot make a decision to impose a \$1,000 penalty.

SB307 requires recordkeeping and reporting of the administrative enforcement program, which will help ensure that penalties are fair and appropriate for the violation. Making the reports public will also be a deterrent to violators, who will not want to see their violations and violation histories made public.

Attorney general enforcement.

SB307 allows cases brought by the attorney general to be brought in the first judicial district. Previously, the cases had to be brought in the county of the residence of the defendant or the county where the violation is alleged to have occurred. Similarly, if the attorney general needs to bring suit to collect a penalty assessed administratively, the suit may be brought in the first judicial district. Allowing suit in the first judicial district will save the attorney general time and money.

Criminal enforcement.

SB307 amends the criminal provision of the Oil and Gas Act to change the standard to "knowing" violations, applies criminal penalties to violations of permits and orders, and clarifies the provisions regarding false entries, omissions, and destruction of records.

PERFORMANCE IMPLICATIONS

After *Marbob*, administrative enforcement through penalty assessment was not an option. SB307 gives the division and the commission an important tool for administrative enforcement of the Oil and Gas Act.

The attorney general will find enforcement of the Oil and Gas Act easier, because cases may be brought in the first judicial district.

Criminal enforcement of the Oil and Gas Act will be easier because the standard is changed to “knowing” violations, crimes include violations of permits and orders, and other provisions have been clarified.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

None found.

OTHER SUBSTANTIVE ISSUES

None found.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Oil Conservation Division and Oil Conservation Commission will not be able to assess civil penalties, and the Oil and Gas Act will only provide for enforcement through civil and criminal lawsuits in district court requiring a showing that the violation was “knowing and willful.”

AMENDMENTS

None proposed.