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To: IPANM Members
 From: Karin Foster
 Re: Week Four update – half way through
 Date: Feb 10, 2013

Week Four Update at the New Mexico Legislature

Several bad bills are still alive and kickin' at the Legislature. Of particular concern are HB 335, Water Resource Testing; HB 429 Environmental Private Right of Action; and HB 458 Consolidated Environmental Review Act. It is expected that HB 136, disclosure of fracturing fluids will be heard in the House Agriculture Committee on Friday the 15th. On the positive side, the bill that IPANM and NMOGA had been working on was finally introduced in the Senate. SB 463 will limit counties from having regulations pertaining to the exploration, development and transport of Oil and Gas as defined in the Oil and Gas Act and regulated by the OCC and the OCD.

This coming Friday, the 15th we will be celebrating Oil and Gas day at the Capitol. Please come and support the industry, meet your legislators and testify in committees. We need to show the media, the legislature and the public how important our industry is to this state and your support is vital.

See you Friday!
 Karin

HOUSE BILLS

| Bill Numbers | | Bill Names | Committee Assignments | Sponsors |
|---|------------------------|---|-----------------------|----------|
| House | Senate | | | |
| HB 5 | | Dept. of Game & Fish Appropriation Act | HHGIC/HAFC | Stewart |
| | | | | |
| Provides funding to the NMGFD that is different than recommended by the Governor; sponsor amended the bill to exclude funding for species conservation and replaced that language with wildlife management. This sponsor is not a friend to industry. Staff at NMGFD have stated that they intend to use funding for LPC habitat work even this the change in wording. They also requested this bill be killed since they would prefer the level of funding proposed by the Governor. The bill is awaiting a hearing in HAFC but the bill will probably be rolled into HB 2 as an agency funding measure. | | | | |
| HB 19 | | Status of Water Rights under Lease | HAGC/HJC | Gonzales |
| | SB 188 | | SCONC/SJC | Griego |

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|---|--------|--|-----------------------|----------|
| House | Senate | | | |
| After significant discussion with several water attorneys, this bill might assist in leasing water rights for temporary oil and gas development. HB 19 passed HAGC 10-0; SB 188 has not had a hearing as of yet. | | | | |
| HB 108 | | Rules Development Requirements | HHGIC/HJC | Gentry |
| | | | | |
| A regulatory reform effort carried by the House Minority Whip; this is a good bill that will require state agencies to have more public participation in drafting of regulations; hearings and will extend the public comment period to a set 30 days after initial publication of the rule; this last provision is in support of the Governor's efforts for industry in the GHG cases when the NM Supreme Court held that there is no final public comment provision allowed after the rule is delivered to the State records center. Passed HHGIC 11-0. | | | | |
| HB 124 | | Modify Vehicle Gross Weight Limits | HTPWC/HJC | White |
| | | | | |
| This is a bill that may impact vehicle transport of oil field waste | | | | |
| HB 136 | | Disclosure of Fracturing Fluid Composition | HENRC/HAGC/HJC | Egolf |
| | | | | |
| During the hearing in HENRC an amendment to require notification of constituents used for a HF to surface owners and the public 30 days prior to completion operations was added to the bill on a 7-5 partyline vote. The bill passed the committee on a 7-5 votes as well We will next be on in House Agriculture. Adds a new section to the Oil and Gas Act to require that operators disclose the composition of HF fluids to the IOGCC or GWPC of all ingredients that go down-hole regardless if required on an MSDS sheet; require service companies to provide operator with the information; allows for land owner and adjacent landowners, any agency of the state or the federal government to overcome a trade secrets exemption | | | | |
| HB 189 | | No false statements to environment department | HENRC/HJC | Egolf |
| | | | | |
| IPANM worked with the NMED to amend this Governor's bill; The bil was substituted on 2/4 - now it applies only to liquid waste systems owned by a public entity; I will continue to watch this to ensure it does not get amended again. This bill seeks to criminalize mistatements made to the department; a fourth degree felony for a misrepresentation (18 months jail); a third degree felony if the misrepresentation caused an 'adverse impact to the environment" (three years jail) and a second degree felony if the misrepresentation caused serious bodily injury (15 years jail). While the Department claims that a 'knowing element is necessary, as drafted this is not the case HB 189. There is also a \$10,000 per day penalty from the date of the misrepresentation to the date the penalty is imposed. This bill covers any reporting required under the Environmental improvement Act, the air Quality Control Act; Ground WAtER Protection Act or the Environmental Compliance Act. | | | | |
| HB 214 | | Oversized Oilfield Vehicle Hours of operation | HTPWC/HJC | Roch |
| | | | | |
| Amends Section 66-7-413.6 to allow for 24 hour operations of oilfield equipment transport vehicles with special permits. | | | | |
| HB 259 | | Recover Damages for Natural Resource Injuries | HENRC/HJC | Kane |
| | | | | |
| On 2/6 the hearing was held on HENRC; The bill was stalled on a tie vote; voting to kill the bill were Republicans Ezzell, Strickler, Bratton and Lewis. Democrat Rep Magdalena provided the final vote to hold the bill in committee; this is a big win for industry as this bill was terrible. Note that AG King proposed this bill and sent a representative to be the expert and Commissioner Powell also sent a representative to support this bill. This bill is a power grab by the appointed Natural Resources | | | | |

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| Trustee to significantly expand her authority; HB 259 expands the definition of 'facility' beyond the scope of CERCLA (42 USC §§9601 et seq) to protect any resource impacted by 'injurious' substances. The bill defines an injurious substance as any hydrocarbon or anything that poses a 'potential hazard to human health or the environment when improperly treated, transported or disposed of; it expands the list of natural resources to protect to include minerals, soils, sediments geologic resources, ground water and all surface water; the bill requires damages paid for any intentional or unintentional release of an injurious substance imposing joint and several liability on the current owner, any past owners, anyone who arranged for release, disposal or treatment of the substance at the facility and anyone who transported to a disposal or treatment facility. The damages assessed include cost of restoration or replacement; value of the resource lost to the public and the full cost of investigating, assessing and collecting damages and enforcing the state's rights. | | | | |
| HB 285 | | Pipeline Safety Act Violation Penalties | HBIC/HJC | McCamley |
| HB 285 will be heard in HBIC on Tuesday. This bill changes the penalty provisions for violations of the Act from \$25,000 per violation per day with a max of \$500,000 to apply federal law 49 CFR 190.223(a) - \$100,000 per day per violation with a max of \$1,000,000 for any related series of violations. Attaching NM Statutes to Federal law is not good for business certainty as the federal rules could change with no NM input. | | | | |
| HB 286 | | Oil and Gas Financial Assurance | HENRC/HJC | Chasey |
| | | | | M. Sanchez |
| HB 286 was heard in HENRC on Friday 2/8; Several D's including Chair Egolf had concerns about targeting mineral owners and the overall cost of bonding as proposed. The sponsor offered to amend the bill to a \$100,000 max bond and take out the potential liability for mineral owners. She will come back to the committee with a substitute later this week. Even with these changes IPANM will strongly oppose this bill. Again, AG King proposed this bill and sent a representative to provide expert testimony in support of this bill. This bill makes changes to the Oil and Gas Act; increases financial assurance from \$50,000 blanket to \$100,000 minimum. At a financial assurance level of \$5000 per well, after the first 20 wells, the bond increases by \$5000 per well; requires the OCC to change rules to require assurance for each well that has been inactive for more than 2 years; allows the division through the AG to bring suit against the operator, the most recent owner of the minerals or the most recent lessee in Santa Fe district Court; provides for cumulative remedies and no bar to further suits for the same violation of the Oil and Gas Act. Increases penalties to \$10,000 per day per violation; if the penalty is not paid within 30 days it becomes final; if a knowing and willful violation of OG Act the penalty is \$15,000 per day per violation; knowing and willful violation is expanded to include procurement, counsel, aiding or abetting in the commission of any violation of a rule, order or provision of the OG Act. Note that the definition of 'inactive' for well plugging is a well that is not being used for 'beneficial purpose'. | | | | |
| HB 293 | | Tax Net Operating Loss Carryover | HTRC/HAFC | Dodge |
| extends net operating loss carry over that occur after July 1, 2014 to 14 years. Any NOL's incurred prior to July 1, 2014 will still have the current 5 year limitation. | | | | |
| HB 335 | | Water Resource Testing & Damage Remedies | HENRC/HJC | Egolf |
| | | | | M. Sanchez |
| HB 335 will be heard in HENRC on Wednesday 2/13. Adds a new section to the Oil and Gas Act for hydraulic fracturing; prior to conducting an HF operation, the owner (defined as the person who has the right to drill into and produce from a pool and appropriate production) must conduct a geologic and hydrologic assessment for each proposed well for all surface and ground water within 2000 meters of the well to a depth of 1000 feet below the well's target depth; he must conduct water | | | | |

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| House | Senate | | | |
| <p>testing from the surface to 1000 feet below the well's target depth; establishes a list of constituents required for water testing; water testing to be completed 1) before drilling; 2) during drilling; 3) one week after HF operations; 4) six month post well completion. All results of water sampling made available to the public and all samples kept at OCD for three years; any 'statistically significant increase' in any component is a presumed to have been caused by HF but that presumption may be rebutted by clear and convincing evidence in court; must make damages claim within 3 years of publication of last water test sample results; owners include owner, agent, employee, subcontractors, assigned, parents and joint ventures - all of whom are joint and severally liable.</p> | | | | |
| HB 410 | | Motor tax for highway projects & project fund | HTPWC/HTRC/HAFC | Lundstrom |
| <p>HB 410 temporarily increases the motor vehicle excise tax to 4 percent of the price paid or reasonable value of the vehicle (up from 3%) until 7/1/28. allowances granted for trade-ins may be deducted from the price paid or reasonable value. Until 7/1/28, 25% of the funds received from this increase shall be deposited in a new Major Investment Highway Fund; the state may bond against the fund.</p> | | | | |
| HB 429 | | Environmental private right of action | HENRC/HJC | Louis |
| <p>HB 429 amends the Oil and Gas Act (70-2-29 NMSA); and adds new sections to the Environmental Improvement Act(74-1 to 13 NMSA) and the Water Quality Act(74-6 NMSA) to allow a private person who is injured in fact, economically or otherwise, or who is imminently threatened with injury economically or otherwise, to commence a civil action against an other person, including the State of New Mexico or other political subdivision charging a violation of the Oil and Gas Act, rule, permit or order issued pursuant to the Act; or against the OCD or OCC alleging a failure to perform any substantive duty required by a provision of the Oil and Gas Act or rule promulgated pursuant to the Act; the allegation of violation of failure to perform must relate to statutes, rules, permits or orders include but are not limited to pits, closed-loop systems, below-grade tanks and sumps; plugging of wells; remediation, produced water, waste disposal or surface waste management facilities; must give 60 notice to OCC, OCD, AG and violator unless 'immediate threat to health or safety or immediate and irreversible impairment of a legal interest could occur; the court has the discretion of order that civil penalties assessed, not to exceed \$25,000, be used in beneficial mitigation projects.</p> | | | | |
| HB 458 | | Consolidated Environmental Review Act | HENRC/HJC/HAFC | Chasey |
| <p>HB 458 creates a new act and claims to seek "consolidation of regulatory processes and environmental reviews to mitigate burdens on project proponents". But HB 458 also states that all agencies shall require an applicant as part of a permitting process to prepare an environmental assessment; if the agency determines the project to have a 'significant effect on the environment' it shall require the applicant to prepare an environmental impact statement; the EIS shall include a determination of cumulative impacts (defined as: incremental impacts combined with impacts caused by past projects, other current projects and impacts caused by reasonably foreseeable future projects), impacts on cultural properties and on communities already 'burdened by previous environmental impacts of industries that require water or air quality permits and federal permits and licenses"; consultant to assist with preparation with EIS must not have been previously employed or contracted with the applicant for 7 years prior. HB 458 would also require state agencies to review a federal agencies final action under NEPA and may require additional information and evaluation prior to approval of any permits.</p> | | | | |
| HM 21 | | Preserve Prairie Chicken to oppose listing | HAGC/HENRC | Ezell |

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|--|--------|------------|-----------------------|----------|
| House | Senate | | | |
| | | | | |
| <p>HM 21 passed HAGC on a 10-0 vote: This bill calls upon the Governor, NMGFD, BLM and the congressional delegation to support continuing state, local and private efforts to preserve and protect the lesser prairie chicken and oppose the USFWS listing the species as 'threatened'. Note that industry has registered over 2 million acres for conservation efforts thru candidate conservation agreements and candidate conservation agreements with assurances and the NMGFD is working with 4 other states in the species range to enlist companies in conservation agreements. County Governments are also engaging the federal government in 'coordination efforts' under 43 CFR 1712.</p> | | | | |

SENATE BILLS

| Bill Numbers | | Bill Names | Committee Assignments | Sponsors |
|--|------------------------|---|-----------------------|----------|
| House | Senate | | | |
| | | Tax Expenditure & Revenue Budget & Reporting | | Varela |
| | SB 7 | | SPAC/ SFC | Keller |
| <p>The tax expenditures budget that SB 7 will require the TRD to prepare annually will be fraught with mistakes since the TRD staff does not understand the nature of the Exemptions, Credits and Deductions the Oil and Gas industry receives. Two years ago, the TRD prepared a report claiming that if all 'loopholes' were closed against industry, the State would have hundreds of millions in additional yearly revenue. These falsehoods are the basis for this bill. However, the concept is supported by LFC leadership. The bill has previously been vetoed by both Richardson and Martinez.</p> | | | | |
| | | Corporate Rates and Combined Reporting | | |
| | SB 13 | | SCORC/SFC | Wirth |
| <p>SB 13, SB 59 and SB 277 are going to be rolled into one bill in SFC; Industry should prefer SB 277 of all the bills proposed; A repeat from the last session; including elimination of discretionary opt out with approval from TRD; the bill last year passed the Senate (28-13) and the House (36-33) but was vetoed; This bill amends corporate income tax rates down and requires unitary corporations to file a combined return with their other unitary corporations as though the entire net income were that of one corporation in NM and then pays based on an apportionment formula; effective date 1/14; similar to SB 59</p> | | | | |
| | | Corp. Tax, Reporting, Single Sales & Repeals | | |
| | SB 59 | | SCORC/SFC | Cisneros |
| <p>This bill is identical to Wirth's SB 13 except that it adds provisions changing the formula for apportionment of business income from manufacturing; processing natural resources including hydrocarbons is specifically exempt from the manufacturing definition; repeals several tax credits including the rural jobs tax credit and the high wage jobs tax credit.</p> | | | | |
| | | Energy Bonds | | |
| | SB 101 | | SCONC/SFC | Wirth |
| <p>The American Recovery and Reinvestment Act of 2009 granted the State of NM \$20.6 million in bonding activity to finance clean energy projects, efficiency programs, renewable energy and public outreach. Senate Bill 101 requires the State Board of Finance (BOF) to determine the amount under the federal act to be allocated to each large local government. The bill passed Senate Conservation on a 10-0 vote this week.</p> | | | | |
| | | Real Property Sale Affidavits | | |
| | SB 117 | | SCORC/SJC | Munoz |

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| <p>Bill tabled in SCORC after strong opposition by IPANM and the commercial real estate developers; the expert on this bill was the San Juan County Assessor who is facing significant drop in revenue with loss of coal properties; Several Senators and the bill proponent of the bill indicated this bill was supported by the Governor; This bill changes the reporting provisions in the property tax code to require reporting of all property transfers of real property by deed or real estate contract. This would give Assessors additional information that would most likely result in increases in property valuations and taxes; Currently, only residential transfers are necessary. But there are still problems with the residential valuations resulting in a robust practice of property valuation contests.</p> | | | | |
| | SB 153 | Clarify Fraud against Tax Payers Act | SPAC/SJC | Cervantes |
| <p>This another qui tam bill (allows a private person, usually a whistleblower with knowledge of a fraudulent claim made against the government to assert a lawsuit and recover damages); the bill limits the government's authority to seek extensions when investigating without consent of the qui tam plaintiff; strengthens the plaintiffs damages rewards and fees recovered by contingency lawyers hired by the Attorney General's Office. I suspect this bill was brought by the NMTLA.</p> | | | | |
| - | SB 270 | Unfair Trade Practices Attorney Fees | SPAC/SJC | Cervantes |
| <p>Scheduled for Tuesday 2/12; This bill is probably brought by the NM Trial Lawyers in an attempt to increase their recovery fees under claims brought under the Unfair trade Practices Act. The Attorney General claims he does not have the resources to prosecute all cases and is unable to attract law firms to do his work without this change. Unfair Trade Practices is a claim that has been raised in several of the deduction of transportation costs Oil and gas cases brought by the State Land Commissioner in an attempt for private counsel to recover additional fees.</p> | | | | |
| - | SB 273 | Transportation Public-Private Partnerships | SCORC/SJC/SFC | Cook Keller |
| <p>This bill creates a new Act in the Procurement code that will allow municipalities and counties to set up public-private partnerships to pay for any transportation facility within the local government's jurisdiction. The private partner would be allowed to recoup costs thru tolls and use fees; This bill will also allow for distributions of the funds obtained from the private entities to be outside the RFP process which would potentially invite subjective review and eliminate transparency and accountability of the current procurement process. However, all Public-Private Partnership projects are to be approved by the AG and the State Board of Finance. There is strong opposition to this bill by the NMDOT, Unions. Note that IPANM strongly opposed the public-private partnership between Eddy County and member companies on the grounds that the partnership was not voluntary, the state provides funding for county roads already and the funding and pay-out process of the Eddy County PPP would not have been transparent or place accountability on the County for any misuse of funds.</p> | | | | |
| - | SB 277 | Single Sales & Reduce Corporate Sales Tax | SCORC/SFC | Munoz |
| <p>Reduces the Corporate income tax, changes the factors used for apportionment that would help companies that would be forced into unitary reporting in NM.</p> | | | | |
| - | SB 368 | Reform Tax Code | SCONC/SCORC/SPAC/SFC | Sharrer |
| <p>SB 368 does a complete overhaul of the tax code, including deletion of exemptions to payment of gross receipts tax including the following under 7-9-13 thru 7-9-42. This list includes the exemptions to GRT for payment of OG mineral interests; for products subject to OG emergency School tax; to persons subject to natural resource processors tax. The number of referrals on this bill ensures it will not make it out of the Senate this session.</p> | | | | |

| Bill Numbers | | Bill Names | Committee Assignments | Sponsors |
|--|------------------------|--|-----------------------|----------|
| House | Senate | | | |
| - | SB 463 | State Preemption of Local Oil and Gas Laws | | |
| | - | | SCONC/SJC | Cisneros |
| Amends the Municipal Code to expressly preempt the authority of a county or municipality in the fields of regulating the exploration, development, production and transportation of oil and gas as delineated in the Oil and Gas Act; reserves the exclusive authority to the oil conservation commission and the oil conservation division. | | | | |

Committee Abbreviations:

| House | | Senate | |
|--------------|---------------------------------------|--------------|---------------------|
| HAFC | Appropriations | SCONC | Conservation |
| HAGC | Agriculture & Water | SCORC | Corporations |
| HBIC | Business & Industry | SEC | Education |
| HCPAC | Consumer & Public Affairs | SIAC | Indian Affairs |
| HEC | Education | SFC | Finance |
| HENRC | Energy & natural resources | SJC | Judiciary |
| HHGIC | Government & Indian Affairs | SPAC | Public Affairs |
| HJC | Judiciary | SRC | Rules |
| HLC | Labor | | |
| HTPWC | Transportation | | |
| HVEC | Voter & Elections | | |