LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number HB35/HENRCS **Sponsor** HENRC

Tracking Number .229872.3 **Committee Referrals** HENRC/HHHC/HJC

Short Title Children's Health Protection Zones

Analyst Bedeaux **Original Date** 2/6/2025
Last Updated

BILL SUMMARY

Synopsis of HENRC Committee Substitute

The House Energy, Environment, and Natural Resources Committee Substitute for House Bill 35 (HB35/HENRCS) would amend the Oil and Gas Act to create children's health protection zones, restricting oil and gas operations within one mile of the property line of schools. The bill defines schools to include public schools, private schools, daycare facilities, and any parks, playgrounds, and recreation facilities associated with a school.

Beginning August 1, 2025, HB35/HENRCS would prohibit the Oil Conservation Division (OCD) of the Energy, Minerals, and Natural Resources Department (EMNRD) from approving any permit to drill a new well in a children's health protection zone. OCD may grant a variance from this provision, allowing continued oil and gas operations in children's health protection zones under certain conditions.

By January 1, 2026, each oil and natural gas operator in New Mexico would be required to submit a children's health protection zone inventory and map to OCD certifying whether any of its operations exist in a children's health protection zone. Operations occurring inside children's health protection zones would be subject to a set of new air and water quality requirements, including a requirement to develop a chemical leak detection and response plan and implement the plan by July 1, 2026. For a detailed discussion of HB35/HENRCS's proposed requirements for oil and gas operations inside children's health protection zones, see **Other Significant Issues.**

If OCD or a court finds an operator liable for a violation of the Oil and Gas Act in a children's health protection zone, OCD may assess a civil penalty not to exceed $30 thousand per day of noncompliance, and not to exceed $3 million total; these limitations do not apply to penalties assessed by a court.

FISCAL IMPACT

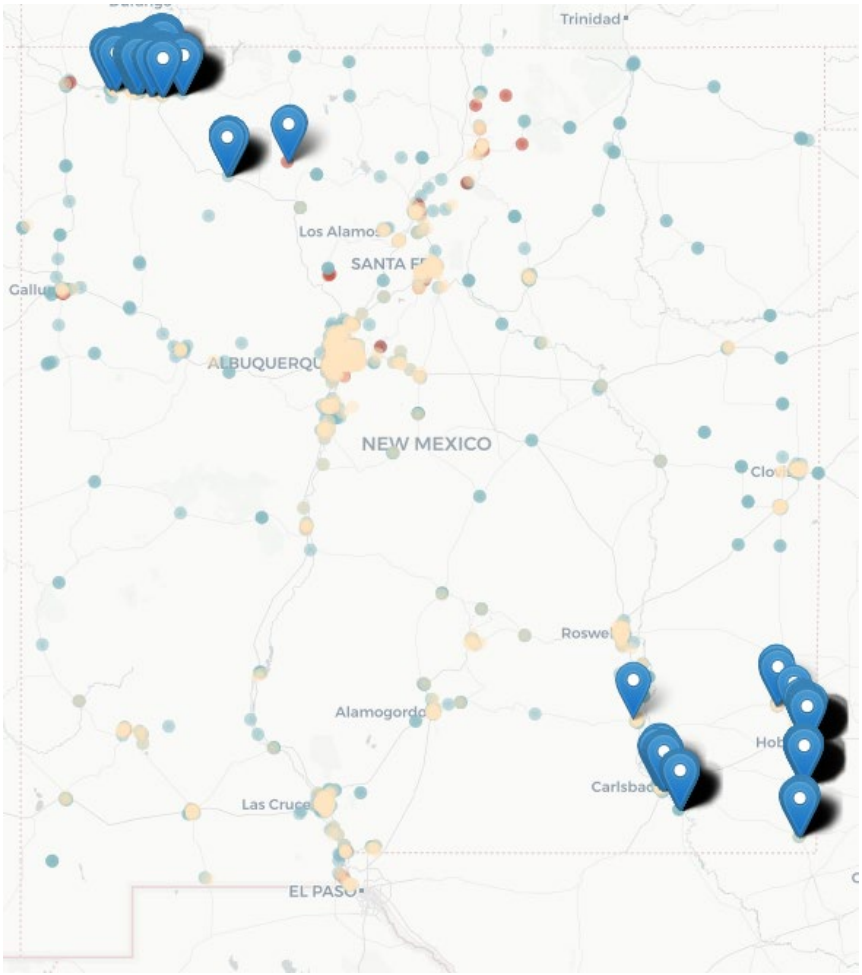
HB35/HENRCS does not contain an appropriation.

LESC staff estimate HB35/HENRCS would not create a significant fiscal impact for public schools.

Individual oil and gas operators may incur a fiscal impact to comply with new requirements proposed by HB35/HENRCS. LESC staff compared publicly available geolocation data from OCD listing current and active wells across New Mexico with data from the State Land Office (SLO) on facilities that meet the proposed definition of schools in HB35/HENRCS. LESC staff identified a total of 864 operations owned by 52 unique oil and gas operators that fall within a proposed children's health protection zone. The 864 facilities represent about 1.3 percent of the state's total number of active wells, though for some individual oil and gas companies, a significant portion of their operations exist within one mile of a school. A full list of oil and gas companies potentially impacted by HB35/HENRCS—as well as the potential magnitude of the impact for each individual company—can be found on **Attachment 1: Oil and Gas Operations within One Mile of Schools**.

Analysis from OCD estimates seven new full-time equivalent (FTE) positions would be required to implement the provisions of HB35/HENRCS, such as monitoring air and water quality, evaluating leak detection and response plans, and adjudicating violations of the Oil and Gas Act. OCD estimates the new positions would have a total annual fiscal impact of approximately $850 thousand.

Figure 1: Concentration of Oil and Gas Operations within One Mile of Public Schools



Source: LESC analysis of OCD and SLO Data

SUBSTANTIVE ISSUES

Children's Health Protection Zones. LESC staff constructed a map of New Mexico oil and gas operations currently active within one mile of New Mexico schools. As displayed in **Figure 1: Concentration of Oil and Gas Operations within One Mile of Public Schools**, nine school districts have schools with several active oil and gas operations within one mile, including Farmington, Bloomfield, Jemez Mountain, Lovington, Loving, Carlsbad, Hobbs, Eunice, and Jal. Readily available geospatial data include only a singular central point for schools, but HB35/HENRCS extends children's health protection zones for one mile from school property lines, making the exact impact of the bill difficult to estimate. In addition, LESC staff do not have access to the locations of school-owned playgrounds, parks, and recreation facilities. The actual impact of HB35/HENRCS will vary slightly from this analysis based on OCD verification of maps submitted by New Mexico oil and gas operators.

Student Health Outcomes. HB35/HENRCS would contribute to positive health outcomes for New Mexico students. Peer reviewed research has linked emissions from oil and gas operations to negative health impacts for children, with particular emphasis on neurological development and respiratory health. A 2017 report published in Reviews on Environmental Health explains that chemicals commonly used in unconventional oil and natural gas operations, including hydraulic fracturing (fracking), have been linked to neurodevelopmental health problems in infants, children, and young adults. A 2020 study published in the International Journal of Epidemiology linked natural gas production and flaring operations in Texas to higher rates of youth asthma hospitalizations. Analysis from the Public Education Department (PED) cites a 2022 report showing that oil and gas activities produced high concentrations of air pollutants within two to four kilometers (1.2 to 2.5 miles) of wells.

Data from the Department of Health (NMDOH) shows that some counties with a greater prevalence of oil and gas operations have higher-than-average rates of youth asthma hospitalizations. As shown in **Table 1**: **Youth Asthma Hospitalizations by County** per-capita youth asthma hospitalizations are higher than the state average in Chaves, Lea, and Rio Arriba counties. However, Eddy and San Juan counties have lower-than-average rates of youth asthma hospitalizations.

Table 1: Youth Asthma Hospitalizations by County
2017-2021

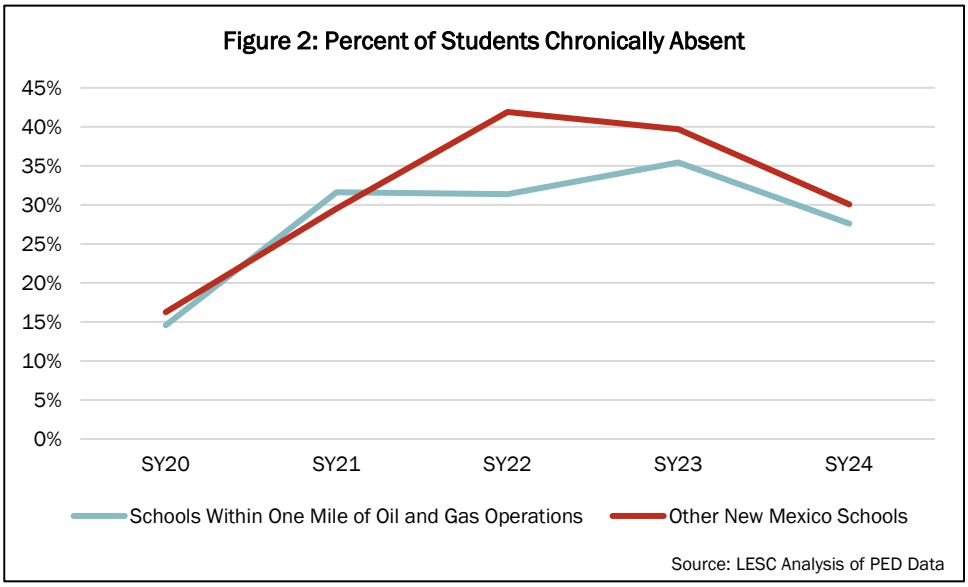
County	State Average	Chaves	Lea	Rio Arriba	San Juan	Eddy
Asthma hospital discharges per 10,000 population, children age 0-17	9.0	26.0	12.2	10.3	7.9	4.3

Source: NMDOH

Chronic Absenteeism and Academic Outcomes. Chronic health conditions like asthma may contribute to higher rates of student absenteeism and lower rates of student achievement. In 2024, LESC staff presented a report on chronic absenteeism showing about 1 in 3 students in New Mexico (29.8 percent) were considered "chronically absent" in the 2023-2024 school year (SY24), having missed 10 percent of school days for any reason, excused or unexcused. LESC analysis demonstrates that chronic absenteeism has a significant impact on student achievement, regardless of family income levels. Missing instructional time reduces reading proficiency rates from 61 percent to 46 percent among high-income students, and from 29 percent to 25 percent among low-

income students. In math, absenteeism reduces proficiency rates from 47 percent to 29 percent among high-income students, and from 21 percent to 15 percent among low-income students.

However, while illness is one potential root cause of chronic absence, LESC analysis has also shown that chronic absenteeism is a deep, systemic issue inextricably linked to other societal factors. As shown in **Figure 2: Percent of Students Chronically Absent**, chronic absence rates in schools within one mile of active oil and gas operations tend to be lower than other New Mexico schools, particularly in recent years. Schools with nearby oil and gas activity peaked at 35 percent of students chronically absent in SY23, compared with a rate of 40 percent in other New Mexico schools in the same year. Unfortunately, PED data on chronic absenteeism does not include the root cause of student absences; it is possible that schools near oil and gas operations have higher rates of chronic absence due to illness than other schools, but current data do not allow a more granular analysis.



These findings illustrate the complexity of chronic absenteeism as an issue; LESC's work during the 2024 interim points out that the rise in chronic absenteeism has occurred alongside a growing prevalence of feelings of disconnection, mental health challenges, and a general decline in the perceived value of education. As a result, HB35/HENRCS addresses one root cause of chronic absence but is unlikely to significantly affect chronic absenteeism at the statewide level.

ADMINISTRATIVE IMPLICATIONS

HB35/HENRCS would create a significant amount of new administrative work for OCD and the New Mexico Environment Department (NMED). Analysis from the New Mexico Department of Justice points out that the regulatory powers HB35/HENRCS would create for OCD and the Oil Control Commission exceed both entities' current statutory scope. A companion bill (HB34, Oil Conservation Protect Health & Environment) would expand the duties of OCD to include the protection of public health and the environment. However, HB34 was tabled in HENRC.

Analysis from OCD indicates the division would likely create a new bureau within OCD responsible for overseeing children's health protection zones. The new bureau would be tasked with the following administrative procedures:

- Adopting any other rules necessary to enforce children's health protection zones;
- Adjudicating and assessing penalties for violations of the Oil and Gas Act pertaining to activities in children's health protection zones;
- Reviewing the accuracy of oil and gas operators' inventories and maps;
- Determining whether requests to drill fall within a children's health protection zone;
- Determining whether denial of a permit would result in the loss of all economic value of a property or deprive the applicant of objectively reasonable investment-backed expectations;
- Verifying whether operators have posted contact information and other required information on their property lines;
- Publicly posting and maintaining children's health protection zone inventories and maps, as well as records of emissions and water testing on the division's website;
- Holding one public technical workshop at least once every two years to inform operators of best practices for leak detection and response plans;
- Suspending operations of production facilities in children's health protection zones when they are in violation of the Oil and Gas Act; and
- Compiling an annual report to the Legislature on oil and gas operations in children's health protection zones.

The Environmental Improvement Board would be required to

- Adopt rules codifying the implementation and performance standards for emissions detections systems in children's health protection zones;
- Adopt rules defining required components of an oil and gas operator's leak detection and response plan;
- Adopt any other rules necessary to implement the air quality control act concerning children's health protection zones.

OTHER SIGNIFICANT ISSUES

While HB35/HENRCS would prohibit OCD from approving any permit to drill a new well in a children's health protection zone, OCD may grant a variance from this prohibition if the variance is necessary to plug or abandon a well, or if OCD determines at an administrative hearing the denial of a permit would result in the "loss of all economic value" of a property or result in "a severe adverse economic impact and deprive the applicant of objectively reasonable investment-backed expectations." A variance shall not be granted if a preponderance of evidence demonstrates that granting the variance would harm public health.

By January 1, 2026, each oil and gas operator in New Mexico would be required to submit a protection zone inventory and map to OCD. The inventory would be required to include a statement of whether each wellhead or production facility is located in a children's health protection zone, the longitude and latitude of each wellhead or production facility, and a map showing wells and production facilities within one mile of schools. HB35/HENRCS would require that each operator's inventory and map be updated in December of each year unless there are no changes. OCD would be required to review each operator's inventory and map; if OCD notes any deficiencies with a map, the operator would be given 30 days to correct the deficiencies. OCD would also be required to post each operator's inventory and map on the agency's website.

Each oil and gas operator with a well or production facility located in a children's health protection zone would be required to meet the following new requirements on or before January 1, 2026:

- Post contact information for complaints about noise, odor, or other concerns on the perimeter of the operator's property, including the contact information for responsible persons and the contact information of enforcement officials in the city and county where the operation is located.
- Employ operational measures to prevent dust and particulates from migrating beyond the operator's property boundaries by limiting vehicle speeds on unpaved roads to 15 MPH and containing or covering sands, muds, and soil.
- Provide OCD with a chemical analysis for produced water transported away from the operator's facility within three months of the transportation and whenever the source of produced water changes.

HB35/HENRCS would require each oil and gas operator with a production facility in a children's health protection zone to develop a leak detection and response plan by January 1, 2026 and fully implement the plan by July 1, 2026. The New Mexico Environment Department (NMED) would be required to review leak detection and response plans at least once every five years. Operators would be required to maintain records of emissions and meteorological data for 10 years. Leak detection and response plans would be required to accomplish the following:

- Identify the chemicals and toxic substances of highest concern in the region as identified by the environmental improvement board or the city or county where the operator is located.
- Include a continuously operating "emissions detection system" designed to provide for rapid detection of chemical constituents and identify leaks.
- Provide the locations where emissions will be sampled consistent with local meteorology and best practices.
- Include an alarm system that effectively, immediately, and reliably alerts operators of a leak of a chemical constituent.
- Identify a meteorological system appropriately sited on the operator's property with the ability to continuously record weather data.
- Include an alarm response protocol that accomplishes the following:
    - Provides for immediate action to fix a leak that has been continuous for more than 48 hours;
    - Notifies local emergency responders, public health officials, OCD, and communities;
    - Complies with local, state and federal requirements regarding leaks of hazardous materials;
    - Is created in consultation with local emergency responders; and
    - Provides for the determination of the chemical composition of a hazardous leak.

Beginning August 1, 2025, an operator that receives a variance and is granted a permit to drill in a children's health protection zone would be required to provide notice of the operator's intent to drill to all property owners and tenants within one mile of the property line of the operator's property line. Operators would be required to provide OCD with documentation of the notification, and the notification would be required to include an offer to sample and test water wells and surface water on owners' properties at least 30 days before commencing a drilling operation. If a property owner or tenant requests water sampling and testing and makes necessary accommodations to allow an operator to collect a water sample, the operator is required to provide baseline testing, as well as follow-up testing within 30 days and again within 60 days after drilling is complete. Results must be shared with OCD and interested tenants and property owners within 120 days of the

completion of drilling. The costs associated with sampling and testing would be the sole responsibility of the operator.

Operators would be required to conduct water sampling and testing under a set of requirements:

- Sampling and testing must be done by an appropriately qualified person in a manner consistent with standard industry practice;
- Documentation of the sampling and testing must accurately describe the location of the sample;
- A state-accredited laboratory must perform tests necessary to complete the analysis, except for field tests; and
- Water quality testing shall include testing for total dissolved solids, total petroleum hydrocarbon as crude oil, major cations, major anions, water contaminants identified as toxic pollutants by the water quality control commission, indicator chemicals for drilling mud and fluids and for well cleanout, total alkalinity and hydroxide, electrical conductance, pH, and temperature.

Oil and gas operators would be required to suspend the operation of wells and productions facilities in children's health protection zones if a leak is detected and continuous for more than 48 hours, if it fails to implement a leak detection and response plan by July 1, 2026, or if a production facility in a children's health protection zone is not in compliance with the Air Quality Control Act or a city or county ordinance adopted pursuant to that act.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)
- New Mexico Department of Justice (NMDOJ)
- New Mexico Environment Department (NMED)
- Energy, Minerals and Natural Resources Department (EMNRD)

TB/de/mca/jkh

Oil and Gas Operations within One Mile of Schools

ATTACHMENT 1

	Oil or Gas Company	Total Active Operations	Operations within One Mile of a School	Percent of Operations within One Mile of a School	
1	ADVANCED WIRELESS COMMUNICATIONS, LLC	231	10	4%	1
2	ALPHA ENERGY PARTNERS, LLC	4	3	75%	2
3	AMERICAN ENERGY RESOURCES, LLC	9	3	33%	3
4	APACHE CORPORATION	2,322	1	0.04%	4
5	ARMSTRONG ENERGY CORP	68	1	1%	5
6	BTA OIL PRODUCERS, LLC	452	7	1.5%	6
7	BXP OPERATING, LLC	417	3	1%	7
8	CCI SAN JUAN, LLC	1	1	100%	8
9	CHI OPERATING INC	47	1	2.1%	9
10	COG PRODUCTION, LLC	188	1	0.5%	10
11	CONTANGO RESOURCES, LLC	227	1	0.4%	11
12	CROSS TIMBERS ENERGY, LLC	543	2	0%	12
13	DUGAN PRODUCTION CORP	985	12	1.2%	13
14	EARTHSTONE OPERATING, LLC	434	2	0.5%	14
15	EMPIRE NEW MEXICO, LLC	574	1	0%	15
16	ENDURING RESOURCES, LLC	954	18	2%	16
17	EPIC ENERGY, LLC	460	11	2.4%	17
18	EXTEX OPERATING COMPANY	324	1	0%	18
19	FAE II OPERATING, LLC	712	10	1%	19
20	FULFER OIL & CATTLE, LLC	88	3	3%	20
21	HILCORP ENERGY COMPANY	11,710	267	2%	21
22	HOLCOMB OIL & GAS INC	32	7	22%	22
23	I & W INC	1	1	100%	23
24	KAISER-FRANCIS OIL CO	262	4	1.5%	24
25	LOGOS OPERATING, LLC	1,247	1	0%	25
26	M & G DRLG CO INC	77	1	1%	26
27	MANANA GAS INC	28	17	60.7%	27
28	MARATHON OIL PERMIAN, LLC	487	4	0.8%	28
29	MATADOR PRODUCTION COMPANY	1,655	1	0%	29
30	MCCAW ENTERPRISE, LLC	5	1	20%	30
31	MERRION OIL & GAS CORP	63	18	29%	31
32	MEWBOURNE OIL CO	2,542	39	2%	32
33	MORNINGSTAR OPERATING, LLC	1,422	24	2%	33
34	OCCIDENTAL PERMIAN LTD	539	170	31.5%	34
35	OXY USA WTP LIMITED PARTNERSHIP	172	1	1%	35
36	PERMIAN RESOURCES OPERATING, LLC	812	39	5%	36
37	PETRO MEX, LLC	5	5	100%	37
38	PETROLEUM EXPLORATION COMPANY LTD.	104	6	6%	38
39	PRE-ONGARD WELL OPERATOR	15	1	7%	39
40	RELIABLE PRODUCTION, LLC	47	4	9%	40
41	RIM OPERATING, INC.	112	2	2%	41
42	ROBERT L BAYLESS PRODUCER, LLC	62	4	6%	42
43	ROUGHHOUSE OPERATING, LLC	85	2	2%	43
44	RUBICON OIL & GAS, LLC	37	3	8%	44
45	SAN JUAN RESOURCES, INC.	42	1	2%	45
46	SIMCOE, LLC	2,316	56	2%	46
47	SLUDGE TREATING, LLC	3	1	33%	47
48	SOUTHWEST ROYALTIES INC	1,084	54	5%	48
49	STEPHENS & JOHNSON OP CO	229	31	14%	49
50	TEXLAND PETROLEUM-HOBBS, LLC	33	5	15%	50
51	WESTERN REFINING SOUTHWEST, LLC	1	1	100%	51
52	XTO ENERGY, INC	547	1	0.2%	52
	All other Oil and Gas Companies	**34,792**	**-**	**0%**	
	STATEWIDE TOTAL	**67,730**	**864**	**1.3%**	