

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://www.legis.state.nm.us/AgencyAnalysis) and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 2/11/2026*Check all that apply:***Bill Number:** HM 56Original ☒ Correction ☐Amendment ☐ Substitute ☐**Sponsor:** Raymundo Lara**Short** Study Transferring Ownership**Title:** of Orphaned Wells**Agency Name****and Code**State Ethics Commission 410**Number:****Person Writing** Amelia Bierle**Phone:** 505-554-7706 **Email** Amelia.Bierle@sec.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

House Memorial 56 requests that the Oil Conservation Division of the Energy, Minerals and Natural Resources Department conduct a study, in consultation with interested third-party companies, to evaluate options for transferring ownership of orphaned oil and gas wells for potential energy storage and hydrocarbon recovery projects.

The memorial directs that the study include:

- analysis of opportunities for third-party adoption of orphaned wells and associated investment models;
- estimates of required initial investments, potential future profits, and comparison with projected costs state the state may incur for plugging operations;
- identification of statutory and regulatory barriers to ownership transfer, including permitting and financial assurance considerations; and
- presentation of findings and recommendations to relevant interim legislative committees on or before November 1, 2026.

The memorial further requests that copies of House Memorial 56 be transmitted to the Secretary of Energy, Minerals and Natural Resources and the State Petroleum Engineer.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

House Memorial 56 does not appropriate funds, authorize expenditures, or create a financial incentive or subsidy program. Instead, the memorial requests that the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department conduct a study evaluating potential options for transferring ownership of orphaned wells to third parties for possible energy storage and hydrocarbon recovery projects.

Because the memorial is advisory in nature and does not itself authorize the transfer of public funds or assets, it does not directly implicate Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause).

However, the subject matter of the requested study—specifically, the potential transfer of ownership interests in orphaned wells to private entities—touches on issues that could raise Anti-Donation Clause considerations if implemented through subsequent legislation or agency action. The Anti-Donation Clause restricts the State from making donations to private entities unless a recognized exception applies. Courts have emphasized that the constitutional inquiry focuses on whether a transaction constitutes a “donation,” rather than whether the transaction serves a public purpose. *State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 22.

If future proposals involve the transfer of state-held property interests, assumption of liabilities, forgiveness of obligations, or provision of financial incentives associated with orphaned wells,

relevant considerations may include:

- whether the transfer involves public money or a thing of value
- whether the State receives adequate consideration
- the specificity and enforceability of obligations imposed on the recipient
- whether the arrangement resembles a bargained-for exchange rather than a subsidy

If the State receives something of value in exchange for its provision of public property or funds—which, in the language of contract law, is called “consideration”—then there is no donation and, thus, no application of the Anti-Donation Clause.¹ The conditions identified by the study may be relevant to an Anti-Donation Clause analysis insofar as they link payment to measurable outcomes and ongoing compliance. As one possible mechanism, the Commission has previously concluded:

Government grant agreements often include the essential elements of a contract (including consideration) and establish what is ordinarily regarded as a contractual relationship between the government and a grantee. In exchange for grant funds, grantees ordinarily agree to: (i) performance of a specific project that the government desires; (ii) prudent management of grant funds; and (iii) satisfaction of conditions required by the grant award instrument, including reports to the government on the use of grant funds. That set of promises by the grantee is value that government receives in exchange for the grant funds, and the formation of a contract between the government and grantee allows the government, if necessary, to sue to enforce the conditions of a grant agreement. Where the contemplated agreements meet the requirements of a contract, [a state agency] would receive something of value in exchange for the funds, and therefore the exchange would not be a “donation” violative of the Anti-Donation Clause.²

However, the ultimate constitutional analysis would depend on how any program arising out of the study is implemented in rule and contract, including the specificity and enforceability of recipient obligations and the degree to which payments are contingent on verified performance rather than projected or estimated benefits. If, ultimately, the study results in a recommended program where the State would receive nothing in return for the transfer of wells (and if the wells are indeed something of value), the transfer would be considered a donation and would need to fall under one of the exceptions provided for in the Anti-Donation Clause. Those enumerated exceptions provide the categories of those subsidies which the people of New Mexico have deemed as sufficiently in the public’s interest to remove them from the Clause’s anti-subsidy scope.

¹ See *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for a real product.”); *State ex rel. Office of State Engineer v. Lewis*, 2007-NMCA-008, ¶¶ 50-52, 141 N.M. 1 (concluding an appropriation to purchase and retire water rights not a violation of the Anti-Donation Clause because the state received water rights in return for payment).

² State Ethics Comm’n Adv. Op. 2024-06 (Dec. 13, 2024) (available at <https://nmonesource.com/nmos/secap/en/item/19122/index.do>) (footnotes omitted) (citing *Henke v. U.S. Dept. of Commerce*, 83 F. 3d 1445, 1450 (D.C. Cir. 1996); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 609 (5th Cir. 1980)).

Because House Memorial 56 contemplates only a study and does not prescribe a specific transfer mechanism, the constitutional implications will depend on the structure of any future legislative or regulatory actions arising from the study's findings.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS