

**Connecting the Dots:
How New Mexico Oil and Gas Industry Campaign
Contributions Affect State Policy Making**

Common Cause New Mexico
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EXECUTIVE SUMMARY	I
INTRODUCTION AND BACKGROUND	1
Economic impact	1
Relevant agencies	2
Geographic distribution and scale	2
Oil and gas and the environment	3
Overall campaign contribution statistics	4
Challenges of “connecting the dots”	6
LEGISLATIVE ACTIVITY AND OIL AND GAS CONTRIBUTIONS	8
Overall legislative campaign financing	8
2005 SB221 (Ingle) “Environmental Civil Penalties Limits”	9
2005 SM27 (Ortiz y Pino) “Oil and Gas Industry Regulations Efficiency”	10
2006 HB 23 “Compliance Order Non-Compliance Penalties” (Wirth), Senate amendment and bill votes	11
2007 HB 386 (Stewart) “Oil and Gas Operation Emissions Standards”	12
2007 HB 431 (Garcia) "GHG Emissions Reporting and Fee"	13
Legislative voting and O&G contribution summary	14
RECAPTURING THE OCD	16
Antiquated provisions, preferential treatment: 1935 in the 21 st Century	16
Budgetary battles and legal retribution	18
A collaborative effort	20
CONCLUSION	21
FIGURES	
FIGURE 1: OIL AND GAS CONTRIBUTIONS AS PORTION OF TOTAL CONTRIBUTIONS 1998 - 2008	5
FIGURE 2: OIL AND GAS CONTRIBUTIONS BY PARTY	6
FIGURE 3: 2005 SENATE BILL 221	9
FIGURE 4: 2005 SENATE MEMORIAL 27	10
FIGURE 5: 2006 HOUSE BILL 23 SENATE AMENDMENT	11
FIGURE 6: 2006 HOUSE BILL 23 SENATE BILL	12

FIGURE 7: 2007 HOUSE BILL 38613
FIGURE 8: 2007 HOUSE BILL 43113
FIGURE 9: SUMMARY OF BILLS AND RESPECTIVE AVERAGE O&G CONTRIBUTIONS14

TABLES

TABLE 1: NEW MEXICO REVENUES FROM OIL AND GAS ACTIVITIES23

Executive Summary

Today in New Mexico oil and gas (O&G) activities employ approximately 23,000 New Mexicans—making oil and gas the state’s largest private employer. There is no question that O&G activity also benefits state coffers. In the last five years, oil and gas has accounted for between 15 and 21 percent of General Fund revenues. Between 2002 and 2007, various taxes and charges directed over \$10 billion of O&G revenue to an array of state funds and institutions.

This report’s findings suggest that oil and gas political contributions often correlate to state policy making that is beneficial to the industry. In every year of the last decade, O&G has been among the largest political contributors in New Mexico. Between 1998 and 2008, O&G contributed nearly \$5,369,000. The industry’s campaign contributions do not follow strict party lines. Since 2002, Democrats and Republicans have received over \$2,220,000 and \$2,760,000, respectively—nearly equal—and traded off years as recipients of the largest O&G contributions.

In all but one legislative floor vote directly relevant to O&G since 2005, legislators who voted industry-friendly received an average of approximately two to five times more money from O&G than legislators who voted industry-unfriendly.

Contributions to legislators whose votes were friendly to industry on average totaled \$4,577; contributions to legislators whose votes weren’t friendly to industry on average totaled \$1,793. For both chambers and all bills analyzed, industry-friendly voting is associated with 2.6 times more O&G funding than industry-unfriendly voting.

The industry’s legislative efforts also appear to coincide with regulatory appeals, calculated court battles that tax government resources, and continued pressure to prevent the expansion of regulatory oversight or even the updating of laws dating back to the 1930s. The industry has actively supported legislators and legislative activity that thwarted the increase of a \$1,000 Oil and Gas Act fine that was created in 1935 (when the amount was equivalent to 2,500 barrels of oil; today it is worth about 10 to 20 barrels).

O&G has also fought to preserve another uniquely stringent 1935 provision that requires New Mexico’s main oil and gas regulatory agency, the Oil Conservation Division (the OCD), to prove an operator “knowingly and willingly” violated the Act’s provisions—effectively conferring an extraordinary degree of legal protection onto statute violators. In the one recent relevant floor vote, a 2005 memorial that failed to pass in the Senate, industry-friendly voters received 2.5 times more money from O&G than industry-unfriendly voters. The two other bills, both from the 2005 session, didn’t even make it out of committee.

In addition to encountering obstacles to updating Oil and Gas Act provisions, the OCD has been threatened with budget and staffing cuts. In recent years the OCD’s budget has remained disproportionately low compared with other state agencies, even those also in the Energy, Minerals, and Natural Resources Department. In 2008, for example, the OCD

was the only division that did not receive increased funding for fixed costs. It also nearly lost its legal team at the hands of the 2008 Senate Finance Committee.

Budget cuts and legislative losses have coincided with other efforts to modify the OCD's authority, often in manners beneficial to the industry. Bills such as former State Representative Dan Foley's 2007 HB 569, "Oil and Gas Operator Civil Penalties," have attempted to further protect the industry by mandating that the agency go to court in the operator's county of residence to *impose* as well as collect fines—adding another round of publicly-funded court proceedings.

Oil and gas is an indispensable part of New Mexico's economy—and will be for the foreseeable future. As such, legislators and regulators must continue to closely monitor the impact of regulations on the industry, and by extension, on General Fund revenues and state public schools. Yet without more vigilant oversight of campaign financing, it is possible that O&G's economic contributions will influence state policy-making processes in a manner that, while beneficial to the industry, might not be in the best interests of the state as a whole.

Introduction and Background

Oil and natural gas exploration in New Mexico is nearly as old as the state itself. New Mexico first started producing oil in 1921 and the state has been a leading domestic producer of oil and natural gas ever since. Sizeable financial rewards have come with prolific production and today funding from oil and gas filters (and sometimes floods) into state politics.

Whether campaign contributions from the oil and gas industry actually influence government policy is the focus of this report. We conclude that oil and gas political contributions do correlate to beneficial state policy-making and implementation. But at whose expense? Do the interests of oil and gas companies that lobby heavily to boost their bottom lines truly align with the interests of New Mexico as a whole, a state that consistently finds itself at the bottom of national poverty and per-capita income rankings?¹ Today, after nearly a century of oil and gas exploration within the state, whether the industry's financial influence is affecting New Mexico's democratic process – at the public's expense – is an increasingly important question.

This report begins with a snapshot of the industry's economic and environmental impacts, relevant regulatory agencies, and overall campaign contribution statistics. The second section explores the relationship between campaign contributions and legislative floor votes on recent bills relevant to the oil and gas industry (O&G). The third section follows the thread of industry financing into developments over the last four years involving industry and the NM Oil Conservation Division. The report concludes with a discussion of findings and their implications for New Mexico.

Economic impact

Today oil and gas activities employ approximately 23,000 New Mexicans—making oil and gas the state's largest private employer.² Around 700 oil and gas companies operate in New Mexico,³ paying an assortment of state taxes, rent charges, and royalties. Together these charges direct a significant portion of oil and gas revenues to the state's General and Permanent Funds.⁴ Between 2002 and 2006, New Mexico received over \$10.6 billion in revenues from taxes and royalties on industry activities, rising from approximately \$1.1 billion in 2002 to more than \$2.3 billion in 2006.⁵ The State Land

¹ In 2007 New Mexico placed 43rd in the country for per capita income (\$31,474 according to BEA data reproduced at <http://www.unm.edu/~bber/econ/us-pci.htm>). The state's three-year average poverty rate was 5th highest (worse than 45 other states) in the nation at 16.3%, according to the US Census Bureau. (<http://www.census.gov/hhes/www/poverty/poverty07/stategrid.xls>).

² According to the New Mexico Oil and Gas Association's (NMOGA) website. www.nmoga.org (Accessed February 3, 2009).

³ Personal communication, New Mexico Oil and Gas Association. January 16, 2009. The number may be higher. In 2005, over 750 companies were operating, according to the Energy Mineral and Natural Resources Department (EMNRD). EMNRD. 2006. *2006 Annual Report* (OCD section). Online at: <http://www.emnrd.state.nm.us/ocd/documents/OCD2006.pdf> (Accessed January 16, 2009).

⁴ More specifically, the state's Land Grant Permanent Fund and Severance Tax Permanent Fund.

⁵ EMNRD. 2007. *2007 Annual Report*. Online at: http://www.emnrd.state.nm.us/main/documents/59659EMNRDAnnualRpt07_WEB.pdf. (Accessed December 29, 2008).

Office (SLO) alone collected over \$390 million in oil and gas royalties in 2007; since 2002, royalties and taxes on O&G activities on state land have contributed over \$1.7 billion to public schools throughout the state.⁶ In the last five years, oil and gas has accounted for between 15 and 21 percent of General Fund revenues.^{7,8}

Some contend that not all the economic impacts of O&G are beneficial. The Oil Conservation Division has received comments on the adverse effect of O&G development on tourism, home prices, and local infrastructure.⁹ Additionally, the environmental impact of oil and gas exploration can also lead to economically detrimental effects on state recreational resources, ecosystem function and services, and public health.

Relevant agencies

Oil and gas is regulated primarily by the State Land Office (SLO) and its commissioner; the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) and its Oil Conservation Division (OCD); and the Federal Bureau of Land Management (BLM).¹⁰ The SLO was created by the 1910 New Mexico Enabling Act to manage the use and sale of state trust land and remit any profits to the trust's 22 beneficiaries; today the office administers just under nine million acres of surface land, nearly thirteen million acres of subsurface rights,¹¹ and oversees approximately 9,800 oil and gas leases.¹² The BLM administers 13.4 million acres of federal land and has sold 5.4 million acres for oil and gas exploration, amounting to approximately 9,000 lease tracts.¹³ The OCD holds no land, instead overseeing oil and gas operations and ensuring compliance with the Oil and Gas Act among other pertinent statutes.

Geographic distribution and scale

The San Juan Basin in Northwest New Mexico and the Permian Basin in the state's southeast corner are hubs for industry activities. In all, eight counties in these two areas constitute the majority of New Mexican oil and gas production.^{14,15} The San Juan Basin is

⁶ Public schools are one of the SLO's 22 beneficiaries, for which the office administers state land to generate profit. Of SLO revenues, public schools receive approximately 85%. More at www.nmstatelands.org.

⁷ NMOGA. 2008. <http://www.nmoga.org/industry-revenues.html>. (Accessed December 29, 2008).

⁸ Table 1 in the Appendix outlines the ways in which oil and gas contributes to state coffers.

⁹ The State of New Mexico. 2008. *Report on the Galisteo Basin*. Various state agencies. www.emnrd.state.nm.us/MAIN/documents/Galisteo.Basin.Report.pdf. (Accessed December 29, 2008).

¹⁰ The New Mexico Environment Department also regulates O&G activities by way of administering major environmental laws such as the New Mexico Air Quality Control Act. However, much of the responsibility is delegated to the OCD.

¹¹ An entity can own either the surface of an area of land (surface owners), the rights to resources beneath the surface (sub-surface owners), or both. Conflicts between surface owners and subsurface owners who want to capitalize on the value of oil, gas, or minerals beneath the surface are fairly common and inspired the drafting and eventual adoption of New Mexico's Surface Owner's Protection Act in 2007.

¹² Personal communication with NM SLO. September 18, 2008.

¹³ According to Tony Herrell of the BLM, as quoted in the *New Mexico Independent's* 7-29-2008 article "All Tapped Out" by Joel Gay. <http://newmexicoindependent.com/586/all-tapped-out>. (Accessed October 1, 2008).

¹⁴ State Review of Oil and Gas Regulations, Inc (STRONGER). 2001. *New Mexico Follow Up and Supplemental Review*.

the nation's largest field of proven natural gas reserves, while the Permian Basin holds three of the nation's 100 largest oil fields.¹⁶ Oil production peaked in 1969 at 129.2 million barrels and in 2007 totaled 59.1 million barrels—roughly 3% of domestic production.¹⁷ In 2006, New Mexico ranked fifth in domestic crude oil production and fourth in proven oil reserves. The state is one of the leading natural gas producers in the country, accounting for approximately 10% of national production. As of November 2007, there were over 23,000 crude oil wells and nearly 27,500 natural gas wells.^{18,19}

Oil and gas and the environment

The environmental impacts of oil and gas extraction range from noise pollution to greenhouse gas emissions to the production of toxic substances. As oil and gas fields are located underground (anywhere from a few hundred feet to thousands of feet), production often involves extensive drilling and the use of heavy machinery. In most operations, several types of in-ground pits are used for storage or disposal of drilling materials and wastes.

Waste byproducts include “produced water,” which in some areas of New Mexico is contaminated with large amounts of chlorides, making it a groundwater contamination threat that is also toxic to flora;²⁰ “BTEX” (Benzene, Toluene, Ethylbenzene, and Xylenes), which refers to a group of compounds that are either known carcinogens or are likely damaging to neurological systems; hydrogen sulfide gas, which is a neurotoxin; and an array of metals that are toxic to one or several systems in the human body.²¹

Oil and gas activities often occur near water resources,²² and the industry's long history in the state has resulted in numerous instances of impacted ground water. At least 744 cases of groundwater contamination have been logged by the OCD through 2005.²³ The City of Lovington, NM, for example, endured a particularly notable mishap when an oil and gas pipeline ruptured in the mid 1990s. The city's water supply had to be flushed with four million gallons of water and one of the city's water wells had to be closed.²⁴

¹⁵ Counties in the Northwest are San Juan, Rio Arriba, McKinley and Sandoval; in the Southeast they are Lea, Chaves, Roosevelt, and Eddy. New natural gas exploration is occurring in Colfax County in the Raton Basin, increasing by a factor of 25 between 2000 and 2007.

¹⁶ Energy Information Administration (EIA). 2008.

http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NM. (Accessed September 30, 2008).

¹⁷ STRONGER. 2001; OCD. 2008. “Production Summary by Year” Excel document. Available online at <http://www.emnrd.state.nm.us/ocd/Statistics.htm>. (Accessed October 2, 2008).

¹⁸ EMNRD. 2007.

¹⁹ The EIA lists New Mexico as having 41,634 natural gas wells and 20,366 oil wells.

http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NM (Accessed January 17, 2009).

²⁰ The State of New Mexico. 2008.

²¹ This is a very partial list. For more information, see the EPA's “Oil and gas production additional information” page at http://www.epa.gov/air/community/details/oil-gas_addl_info.html or the Oil and Gas Accountability Project's factsheet at <http://www.earthworksaction.org/publications.cfm?pubID=143>.

²² The City of Lovington's water supply, for example, is co-located with an oil and gas field; the water is directly below oil and gas wells.

²³ OCD. 2008. Excel spreadsheet available online, dates through 2005. The current number may actually be above 800. Online at <http://www.emnrd.state.nm.us/ocd/Statistics.htm>. (Accessed October 1, 2008).

²⁴ Groundwater contamination in particular has been the subject of fierce debate. The oil and gas industry, largely represented by president of NMOGA Bob Gallagher (98% of oil companies in the state are

The environmental issues associated with oil and gas contamination are known by the industry, and many companies make every effort to ensure clean and safe well operation. No matter how vigilant a company may be, however, oil and gas production still has pronounced environmental effects. And as one BLM geologist explains, “It’s an old industry with a lot of old pipes and valves...and generally, they don’t replace things until they break. When they break, there is always the chance for contamination.”²⁵

Overall campaign contribution statistics^{26,27}

In 2008, the oil and gas industry made political contributions of more than \$1,014,000—constituting nearly 15.6% of total contributions in New Mexico that year, the most from any industry. 2008 Republican Party committees received \$359,488 from oil and gas, while Democratic Party committees received \$28,000. The single largest contributor from any industry was Lago, LLC., an Albuquerque based oil and gas investment company, with \$250,000 in contributions to two candidates. Devon Energy Corp. of Oklahoma City, OK, was the third largest contributor with \$140,000. Five of the top ten largest single contributors were oil and gas companies or personnel.

Between 1998 and 2006, oil and gas contributed more than \$4,354,700 to New Mexico campaigns. Contributions in 2008 bring the total to more than \$5,368,800. Figure 1 illustrates O&G contributions over the last ten years in absolute and percentage terms.

members of NMOGA), maintains that "Not a drop of water that's been delivered to a consumer [in New Mexico] has ever been contaminated by oil and gas activities." This statement seems dubious at best given reports of Lovington tap water smelling like the byproducts of O&G production following the 1995 pipeline rupture (See *Albuquerque Journal* article “Oil-Field Pipe Break Pollutes Water Well” [September 14, 1995]). See the *Santa Fe New Mexican* article “Drilling’s hidden costs” [March 2, 2008] for more on the debate.

²⁵ Personal communication. October 1, 2008.

²⁶ All campaign contribution data is sourced from the National Institute on Money in State Politics, a Combined Federal Campaign independent agency (www.followthemoney.org), and the New Mexico Secretary of State’s website (<http://www.sos.state.nm.us/>). It’s important to note that 2008 data are incomplete; many reports haven’t been filed, and of the ones that have been filed, not all have been entered into www.followthemoney.org’s database. Other years’ reports (e.g. 2006) are 98-99% accounted for in www.followthemoney.org’s database.

²⁷ Throughout the report contribution figures include some contributions classified as “uncoded” in www.followthemoney.org’s database but listed as relating to oil and gas in New Mexico Secretary of State online reports or the Public Regulatory Commission’s website. Not all “uncoded” oil and gas contributions are accounted for, however, and thus this report’s figures are likely lower than in reality. What is more, much support does not have to be reported: see “Challenges of connecting the dots” section for more.

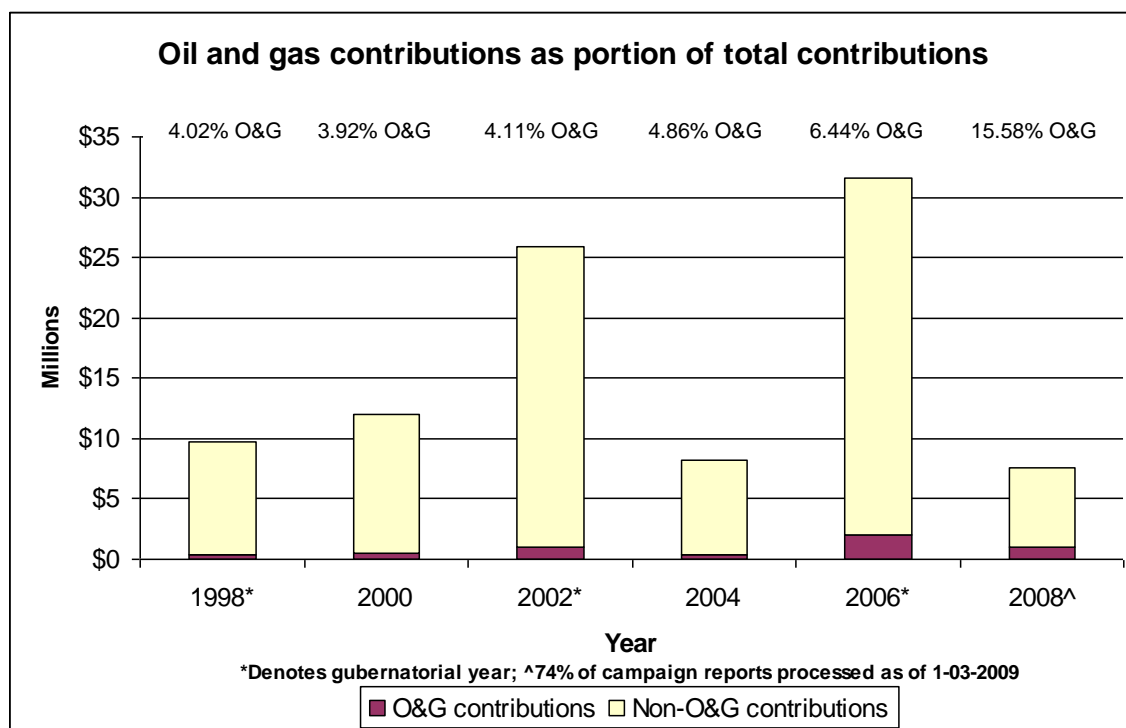


Figure 1: Oil and gas contributions as portion of total contributions 1998 - 2008

From Figure 1 it's clear that even on the books oil and gas alone contributes a significant amount to New Mexican campaigns, but also that the industry doesn't singlehandedly dominate campaign finances. Still, in every year depicted, oil and gas has been one of the top five contributing "industries," at different points behind party committees, candidate committees, self-financed campaigns, and lawyers and lobbyists. In four of six years, O&G was one of the top three contributing industries.²⁸ In the last eight years, oil and gas' share of total contributions has risen from 3.96% in 2000 to more than 15% in 2008. Contributions have grown in absolute terms as well, with 2008 O&G contributions more than doubling those of the next closest non-gubernatorial year, and nearly equaling industry contributions during the 2002 gubernatorial year campaigns.

It's important to note that oil and gas campaign contributions do not always follow party lines. In 2006,²⁹ for example, Governor Richardson received nearly \$500,000, Lt. Governor Diane Denish received \$95,950, and Attorney General Gary King received \$138,799—all Democratic candidates. Conversely, in 2006, the NM Democratic Party received \$79,800 from O&G (their 8th largest contributor), while the NM Republican Party received \$369,800 (their largest contributor). Total O&G contributions in 2006

²⁸ Again, "industry" is used somewhat unconventionally here and is based on www.followthemoney.org's classifications. In 2002, for example, "industries" consisted of "Party Committees", "Candidate Committees", and "Candidate Self-finance", as well as more conventional Lawyers and Lobbyists, Oil and Gas, Real Estate, and Healthcare, among others.

²⁹ With 98% of campaign reports filed.

were over \$2 million. Figure 2 illustrates O&G contributions to all candidates and committees from each party since 2002.

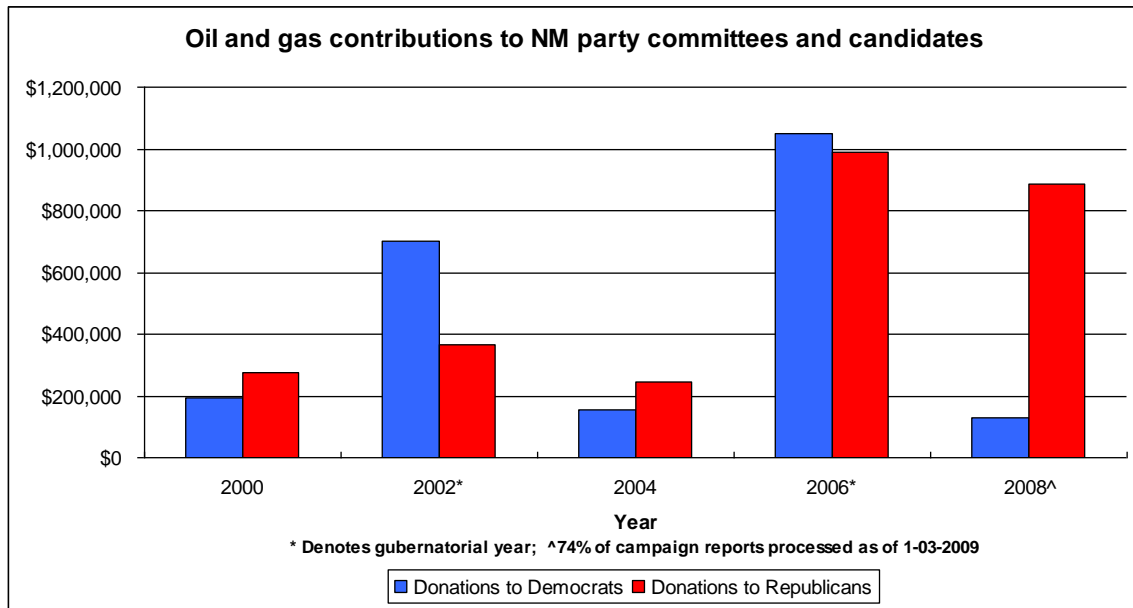


Figure 2: Oil and gas contributions by party

Since 2002, Democrats and Republicans have received over \$2,220,000 and \$2,760,000, respectively—nearly equal—and traded off years as recipients of larger O&G contributions. The largest disparity between parties is found in 2008, with Republicans receiving over 87% of O&G contributions; the next most disparate year is 2002, when Democrats received 66% of O&G contributions.

How contributions align with party lines in the next several years will be revealing, though. Harvey Yates, Jr., an Albuquerque based oilman and member of the Yates family, is now the chair of the New Mexico Republican Party. In 2004, the *New York Times* reported that the Yates family was New Mexico’s largest state and federal campaign contributor,³⁰ and Yates Petroleum Corporation is one of the largest public land leaseholders. Yates Petroleum held leases on nearly four million acres of federal land in 2004—more than any other company, including Exxon, ConocoPhillips, and Burlington Resources.³¹

Challenges of “connecting the dots”

“It can be hard to connect campaign contributions to a legislator’s behavior,” explains Senator Peter Wirth from Santa Fe County³² —something that is likely true for other

³⁰ See Romero, Simon. 2004. “Family Gas Empire vs. Governor on Mesa Out West.” *The New York Times*. [April 16, 2004]. <http://query.nytimes.com/gst/fullpage.html?res=9404EFDF123BF935A25757C0A9629C8B63&sec=&spn=&pagewanted=all>

³¹ Environment Working Group. 2004. See: http://www.ewg.org/oil_and_gas/search.php (Accessed January 21, 2009). More recent information organized by family and company is not readily available.

³² Personal communication. September 5, 2008. At the time he was a state representative.

elected officials. Because the industry is so large and lucrative, it can afford to distribute money widely, and even candidates who are in no way “friendly” to the O&G industry occasionally receive O&G contributions. Further complicating matters is the fact that tracking O&G contributions requires more than simply knowing the O&G company names. In former land commissioner Jim Baca’s opinion, “It’s not just oil companies, it is supply companies . . . it’s the employees of the oil and gas and supply companies, it’s secretaries that all of a sudden can afford to give \$1,000 . . . it’s much wider than it appears.”³³ Add to this the long-term political calculating and posturing of legislators and government officials, and efforts to directly correlate financial contributions with policy making and legislative decisions become even more difficult.

Beyond this, New Mexico’s financial disclosure requirements, despite having strong online reporting guidelines, are in many ways inadequate for fully grasping the extent to which O&G contributes directly and indirectly to candidate campaigns. A report on state financial disclosure laws released in early 2008 even went so far as to give New Mexico the grade of an overall “F.”³⁴ Why did the state receive an “F”? Disclosure of company names isn’t required, the occupation of any contributor giving \$250 or less does not have to be listed, and mandatory filings occur only once in non-campaign years despite ongoing fundraising.³⁵ What is more, New Mexico is one of only seven states that do not require disclosure of independent expenditures—such as advertisements or mailers on behalf of a candidate but paid for by groups unaffiliated with the candidate’s campaign.³⁶ A barbeque thrown by Conoco-Phillips at a Representative’s home, for example, is not required to be reported unless it was expressly for “campaign or fundraising purposes,” but according to a personal communication with the New Mexico Secretary of State’s office, the line between backyard gathering or a friendly gesture and a political event is “a gray area.”³⁷

Still, despite the roadblocks and gray areas, clear connections can be found between financial contributions and voting, bill sponsorship, and regulatory activities.

³³ Personal communication. September 18, 2008.

³⁴ Several organizations participated in the study, including the California Voter Foundation, the University of California Los Angeles School of Law, and the Center for Governmental Studies. See: Campaign Disclosure Project. 2008. *Grading State Disclosure 2008*.

<http://www.campaigndisclosure.org/gradingstate/GSD08.pdf> (Accessed January 19, 2009).

³⁵ See “State Failing on Campaign Finance Disclosure” by Steve Terrell in the *Santa Fe New Mexican* (January 23, 2008).

http://www.santafenewmexican.com/Local%20News/2008_Legislature_State_failing_on_campaign_finance_disclosure. (Accessed December 30, 2008).

³⁶ According to Kim Alexander of the California Voter Foundation, quoted in “State Failing on Campaign Finance Disclosure” by Steve Terrell in the *Santa Fe New Mexican* (January 23, 2008).

http://www.santafenewmexican.com/Local%20News/2008_Legislature_State_failing_on_campaign_finance_disclosure. (Accessed December 30, 2008).

³⁷ Anecdotally, according to several meeting attendees, such a barbeque apparently was held at Representative Paul Bandy’s home after the Artesia meeting of the Water and Natural Resources Committee on July 14th and 15th, 2008. It’s unlikely an event of this type would be noted in campaign reports, and no record is available on the Secretary of State’s website to check. Representative Bandy’s 10-13-2008 and 10-30-2008 reports are currently not posted, though his 12-3-2008 report is posted.

Legislative Activity and Oil and Gas Contributions

This section explores the correlations between O&G contributions and legislator voting on bills and memorials that faced a floor vote. Bills and votes are categorized as friendly or unfriendly to the oil and gas industry based on industry commentary, legislator commentary, media coverage, official documents, and on whether a bill was likely increase or decrease regulatory oversight and/or industry operating costs. A look at overall legislative O&G contributions follows, after which each bill is discussed in more detail.

Overall legislative campaign financing

In 2008,³⁸ O&G was the largest contributor in the House, giving over \$284,000 and the third largest Senate contributor, giving over \$95,000.³⁹ Of any candidate, Rep. Dennis Kintigh received most from O&G, over \$255,000 in his campaign.⁴⁰

In 2006, the New Mexico House received nearly \$3.9 million in contributions from all industries. Of this, oil and gas contributed at least \$378,000—the largest contributor behind “party committees.” Representative William Gray (House District 54) alone received \$48,500 from O&G in 2006. The single largest O&G recipient was Mike Kakusa of House District 59, who received \$49,500 but lost in the primary. Though the Senate had no active candidates, O&G still contributed \$77,700 (the most of any industry).

In 2004, the NM House received \$2.8 million, with oil and gas contributing over \$106,000.⁴¹ In the Senate, O&G contributed \$165,675 and was the second largest contributor behind “lawyers and lobbyists.”

³⁸ With approximately 75% of reports filed on www.followthemoney.org.

³⁹ Including some contributions listed as “uncoded” in www.followthemoney.org’s database but in the New Mexico’s Public Regulation Commission’s database, listed as engaging in O&G related activities.

⁴⁰ Rory McMinn, a primary opponent who lost to incumbent Senator Rod Adair, also received upwards of an estimated \$195,000 from O&G, much of it from Mark Murphy and his associated companies, family, and PACs.

⁴¹ Fifth behind party committees (\$227,632), lawyers and lobbyists (\$223,929), candidate self-finance (\$151,976), and leadership PAC (\$110,993).

2005 SB221 (Ingle) “Environmental Civil Penalties Limits”

Stuart Ingle’s 2005 “Environmental Civil Penalties Limits” bill would have created a \$250,000 limit on fines agencies could impose for an entity’s violation of provisions of the Environmental Improvement Act, Water Quality Act, the Air Quality Control Act, the Hazardous Waste Act, the Radiation Protection Act or Solid Waste Act. It also would have prevented agencies from imposing fines for any events occurring more than 24 months before administrative action. Oil and gas activities are regulated by several of these acts, and as such, this bill would have benefited O&G.

Agencies like the OCD and EMNRD already appear to be overstretched. The OCD’s approximately 70 employees, for example, oversee every one of the state’s 50,500 oil and gas wells as well as carbon dioxide and geothermal activities. As OCD director Mark Fesmire has said, “There is no way, given our budget, that we can look over [the oil and gas industry’s] shoulder the whole time.”⁴² Consequently, infractions can remain undiscovered for years. This bill would have saved environmentally intensive industries such as O&G money by reducing their liability for environmental damage resulting from their operations. Figure 3 shows the distribution of legislative votes.

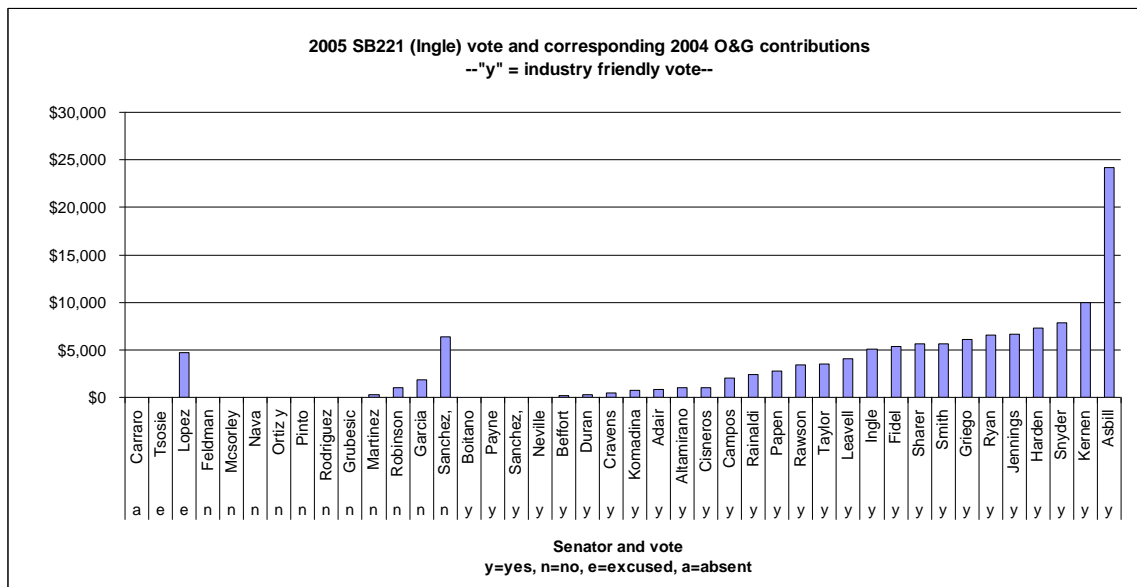


Figure 3: 2005 Senate Bill 221

Among the senators voting for the industry bill, the average O&G contribution in 2004 was \$4,036; for senators voting against the industry-friendly bill, the average O&G contribution in 2004 was \$859. Voters who voted for the industry-friendly bill received an average of more than four times the O&G contributions than voters who voted against the bill. 2006 O&G contributions echo the 2004 contribution pattern, though less extreme: the average contribution associated with an industry-friendly vote was \$2,246, and the average contribution associated with an industry-unfriendly vote was \$1,064. When omitting the largest contributions (to partially account for a single extremely large

⁴² As quoted in: Haywood, Phaedra. 2008. “Drilling’s Hidden Costs.” *The Santa Fe New Mexican*. [March 2, 2008].

contribution skewing the average), industry-friendly votes received an average of just under \$3,300 in 2004 while industry-unfriendly votes received an average of \$310. Again the 2006 contributions echo 2004's pattern: industry-friendly votes received an average of \$1,989 while industry-unfriendly votes received an average of \$590.

2005 SM27 (Ortiz y Pino) "Oil and Gas Industry Regulations Efficiency"

In contrast to SB221 (Ingle), SM27 sponsored by Gerald Ortiz y Pino is considered an industry-unfriendly motion. The general correlation between industry-friendly voting and O&G contributions remains unchanged, however.

SM27 highlighted the outdated nature of Oil and Gas Act provisions and would have required the OCD to assess statutory mandates and report back with Oil and Gas Act amendments and OCD staffing and funding suggestions to improve "regulatory effectiveness." It coincided with another Ortiz y Pino bill (SB777) that attempted to update sections of the Oil and Gas Act relevant to OCD enforcement and would have, among other things, increased the amount that OCD could fine oil companies. It also would have removed the requirement that OCD demonstrate oil producers "knowingly and willingly" violated a regulation. SB777 never made it out of committee; it was "attacked by industry," according to Ortiz y Pino, and SM27 was the "second best effort." Figure 4 illustrates the Senate Memorial's floor vote.

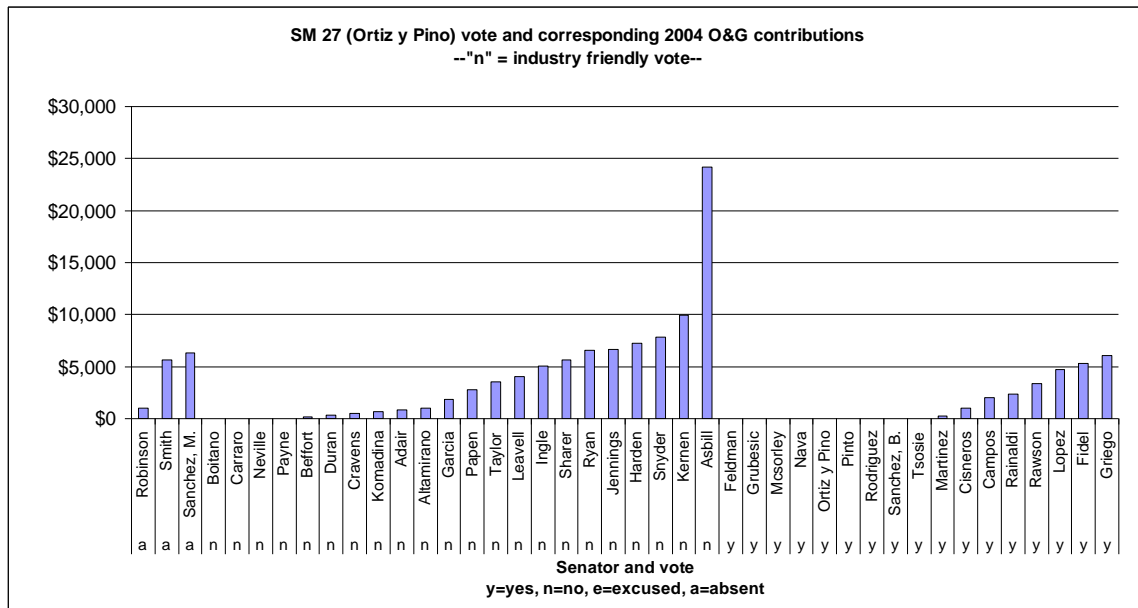


Figure 4: 2005 Senate Memorial 27

In the case of SM 27, 2004 O&G contributions associated with industry-friendly votes averaged \$4,041 (\$3,081 with largest omitted) and contributions associated with industry-unfriendly votes averaged \$1,488 (\$1,200 with largest omitted). Again, 2006 O&G contribution patterns echoed those of 2004. Industry-friendly votes are associated with an average of \$2,168 (\$1,905 largest) and industry-unfriendly votes are associated with an average of \$971 (\$668 largest).

2006 HB 23 “Compliance Order Non-Compliance Penalties” (Wirth), Senate amendment and bill votes

2006 HB 23, sponsored by Peter Wirth, increased the financial penalties assessable by agencies responsible for ensuring compliance with sections of the Air Quality Control Act.⁴³ In the House, the bill passed 57-1. In the Senate, Rod Adair introduced an industry-friendly amendment that inserted a phrase requiring an agency to obtain a court order to assess a fine for non-compliance with an administrative order. This amendment created one extra step for an agency to go through⁴⁴ and, according to Adair, “supported due process” and helped prevent “unaccountable bureaucrats from imposing their own goals and desires onto New Mexican constituents.”⁴⁵ The amendment also functioned as an additional layer of protection for industry and passed 16 “for” to 15 “against.” Figure 5 shows the amendment’s vote distribution.

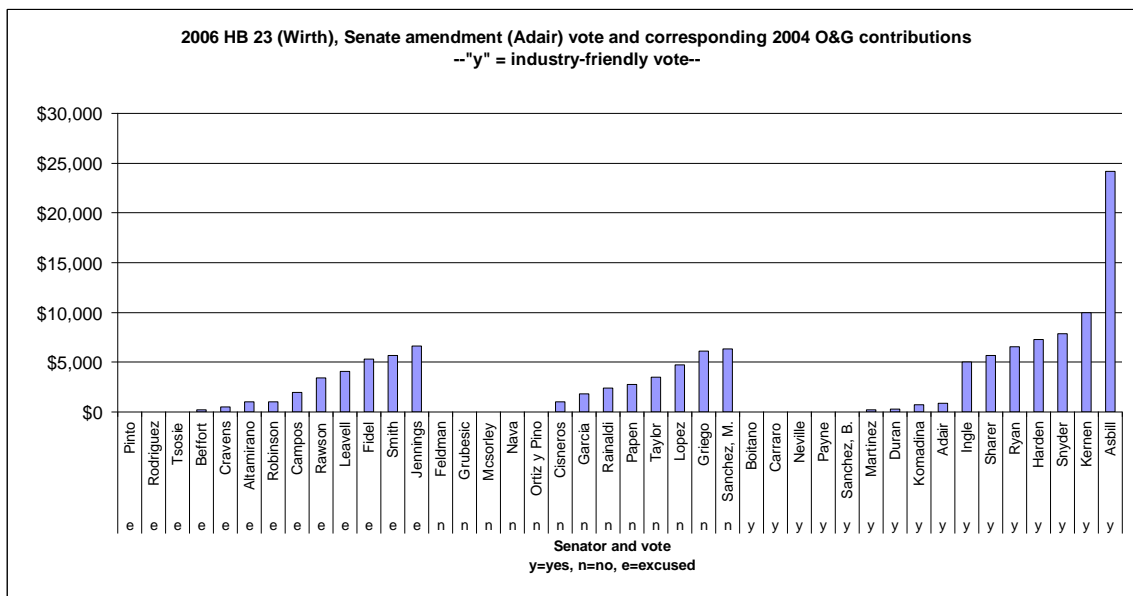


Figure 5: 2006 House Bill 23 Senate Amendment

Seven of the sixteen industry-friendly amendment votes received more than \$5,000 from oil and gas while two of the fifteen industry-unfriendly votes received more than \$5,000 from oil and gas. A vote for the industry-friendly amendment received an average 2004 O&G contribution of \$4,287 (\$2,960 largest omitted), while votes against the amendment received \$2,215 (\$1,870 largest omitted)—approximately half that of an industry-friendly vote.⁴⁶

⁴³ Enforcement of this act falls under the EMNRD’s purview, though some responsibility is delegated to the OCD.

⁴⁴ Personal communication with NM Environmental Department. October 14, 2008.

⁴⁵ Personal communication. January 16, 2009.

⁴⁶ Adair received less than \$1,000 from O&G in 2004. In 2008, he received over \$16,000 from O&G (much of which was donated during the primaries) and over \$78,000 total. It’s worth noting that Adair’s opponent in the 2008 District 33 primary election, Rory McMinn, received upwards of \$195,000 from O&G (*Albuquerque Journal* May 31, 2008 and NM Secretary of State website). This figure may be closer to

For the bill itself (seen as unfriendly to industry), shown in Figure 6, voting pattern remains the same while actual votes “for” and “against” are nearly exactly opposite; the only difference in voting pattern is Senator Komadina’s vote—he voted for the industry-friendly amendment and for the industry-unfriendly bill. The bill passed 16 “for” to 15 “against,” with Lieutenant Governor Diane Denish voting for the amended bill.

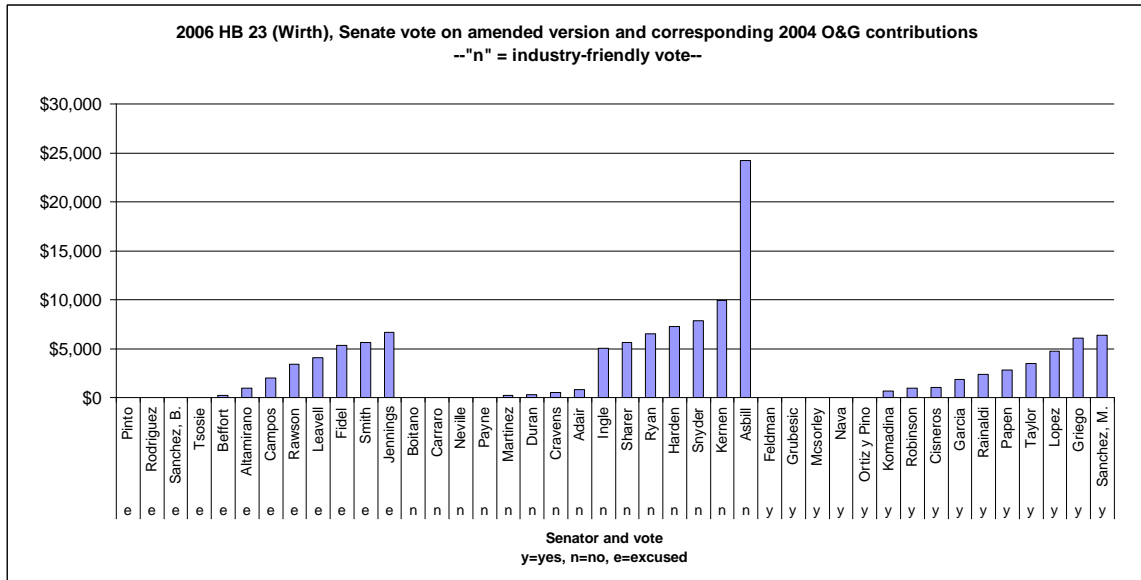


Figure 6: 2006 House Bill 23 Senate Bill

Due to changes in excused Senators, the gap between O&G contributions grew for the bill vote: industry-friendly votes received an average of \$4,560 (\$3,157 largest omitted) while industry-unfriendly votes received an average of \$2,033 (\$1,725 largest omitted).

2007 HB 386 (Stewart) “Oil and Gas Operation Emissions Standards”

2007 HB 386, sponsored by Representative Mimi Stewart, would have provided for regulations on oil and gas industry emissions that were at least as stringent as federal standards. As such it is considered industry-unfriendly. As Figure 7 shows, voting on this bill continues to demonstrate a correlation between O&G funding and friendly voting.

\$300,000 when one accounts for independent expenditures on the candidates behalf, according to Adair (personal communication January 16, 2009).

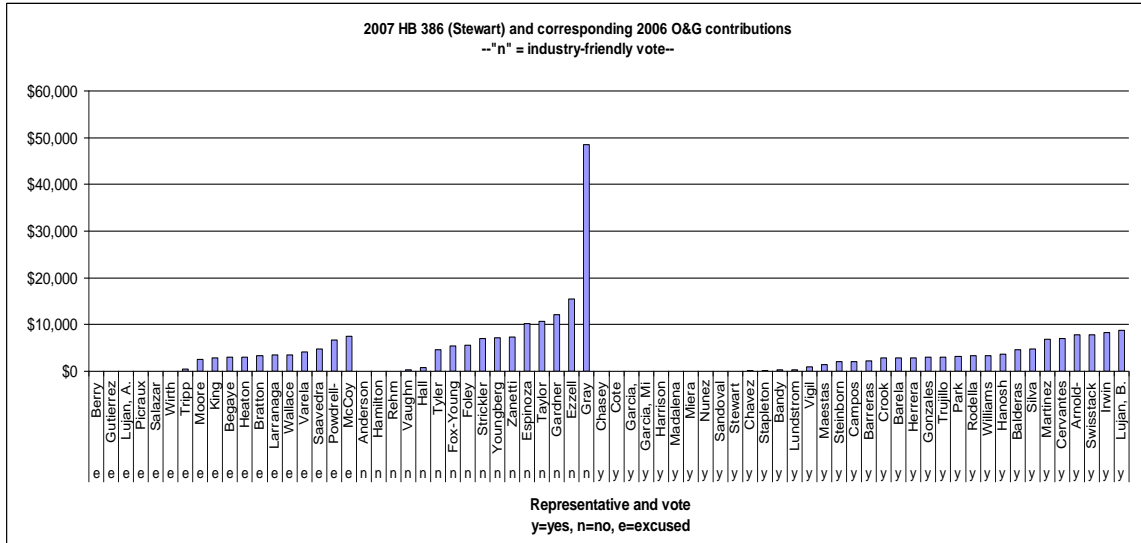


Figure 7: 2007 House Bill 386

For Stewart’s bill, industry-friendly votes (“n”) correspond to an average O&G contribution of \$8,444 in 2006 (\$5,774 with the largest contribution dropped), while industry-unfriendly votes received an average of \$2,616 (\$2,440 with the largest contribution dropped).

2007 HB 431 (Garcia) "GHG Emissions Reporting and Fee"

2007 HB 431, sponsored by Representative Thomas Garcia, would have revised the Air Quality Control Act to include a section empowering the Environment Improvement Board or local boards to develop a fee schedule to fund the annual monitoring and verification of industrial greenhouse gas emissions and reductions, including those from oil and gas. This would have added additional regulations to industry operations, as well as “reasonable” fees (according to bill language), and is therefore considered an industry-unfriendly bill. Figure 8 shows the distribution of House votes on Garcia’s bill.

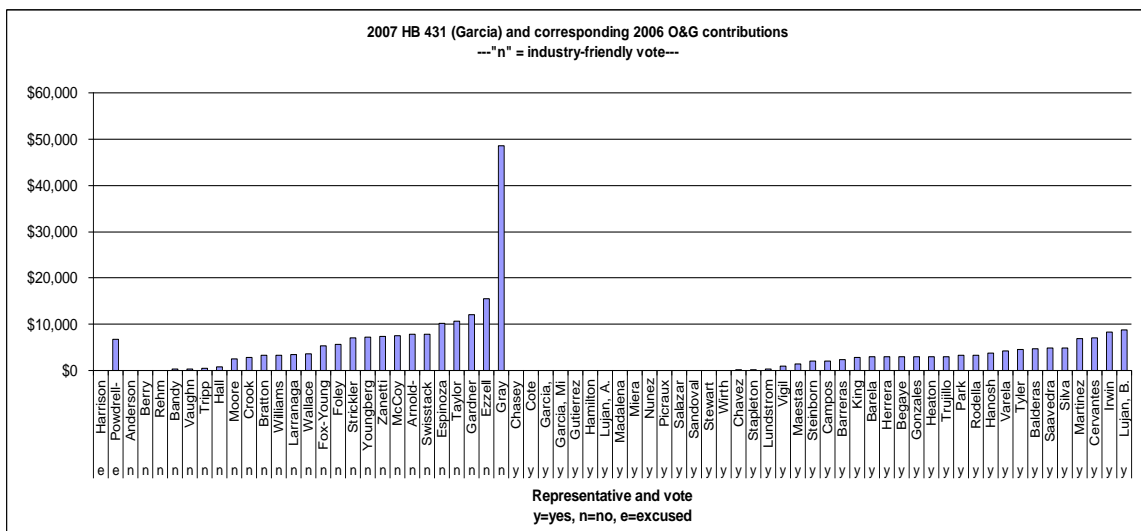


Figure 8: 2007 House Bill 431

Legislators who voted industry-friendly (“n”) received an average of \$6,673 from O&G in 2006 (just under \$5,000 with the largest contribution omitted), while legislators who voted industry-unfriendly received an average of \$2,253 (\$2,093 with the largest contribution omitted).

Legislative voting and O&G contribution summary

In the seven floor votes analyzed over the last three years, the average industry contribution associated with industry-friendly voting was consistently higher than with industry-unfriendly voting. Figure 9 shows that in all but one instance (the House vote on HB 23) there was a clear discrepancy in contribution amounts between industry-friendly and industry-unfriendly votes.

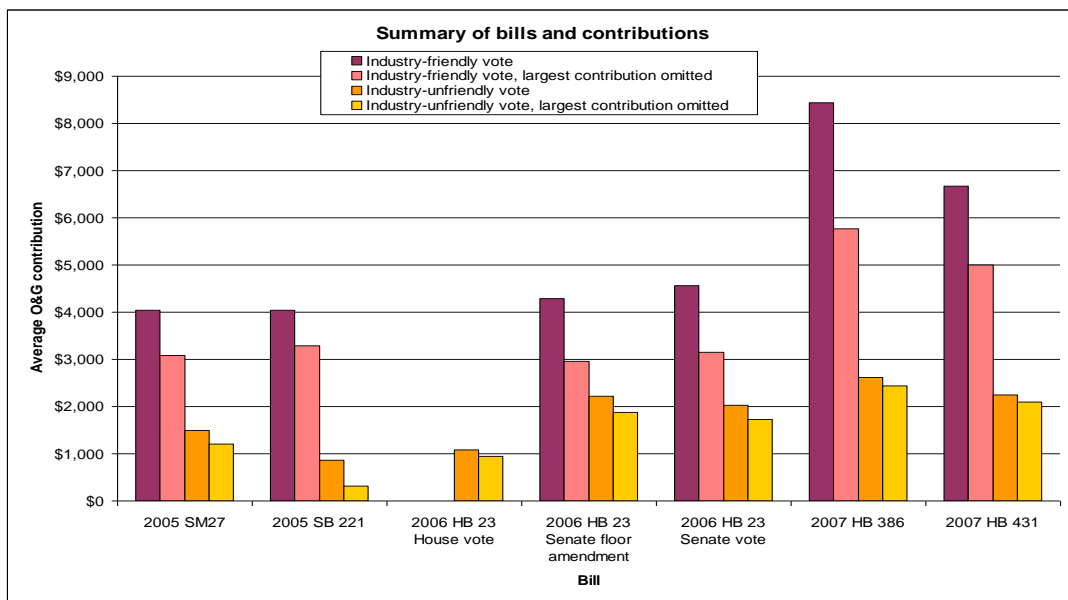


Figure 9: Summary of bills and respective average O&G contributions

Legislators whose votes were industry-friendly received an average of 1.9 to 4.7 times more money from O&G than legislators whose votes were industry-unfriendly. Omitting the largest individual O&G recipients to account for one individual skewing a broader trend (e.g. Vernon Asbill’s \$24,600 in 2004, William Gray’s \$48,500 in 2006, and Ben Lujan’s \$8,800 in 2006) leads to a range of 1.6 times more money associated with O&G-friendly votes (on 2006 HB 23’s Senate amendment) to 10 times more money associated with industry-friendly votes (on 2005 SB 221). The only departure from this trend is 2006 HB23’s House vote, with a nearly unanimous vote unfriendly to industry.⁴⁷ On average across all seven examples, contributions associated with industry-friendly votes totaled \$4,577 (\$3,323 omitting the largest contribution), and \$1,793 (\$1,512 with the largest contribution omitted) for unfriendly votes. For both chambers and all bills analyzed, industry-friendly voting is associated with 2.6 times more O&G funding than

⁴⁷ The only industry-friendly vote received \$0 from industry. The bill’s sponsor, Peter Wirth, suggested that some understanding must have been reached in the House between all parties for such a vote to occur. The trend did not follow through into the Senate, where the bill didn’t see a floor vote.

industry-unfriendly voting (2.2 times more when omitting the largest O&G contributions).⁴⁸

Through legislative campaign financing, oil and gas seems to have increased its access to the lawmaking process that so intimately affects O&G operations. But O&G influence and effort stretches beyond supporting legislators friendly to industry. Though industry officials may contest it, the industry's legislative efforts apparently coincide with regulatory appeals, calculated court battles that tax government resources, and continued pressure to prevent the expansion of regulatory oversight or even the updating of laws dating back to the 1930s. Over the last several years, the Oil Conservation Division has been the center of much activity and serves to illustrate ways that oil and gas financing can coordinate with legislative efforts to protect the industry—oftentimes at the expense of an agency's ability to administer statutes under its legal mandate.

⁴⁸ Other bills that didn't reach a floor vote include industry-unfriendly bills such as 2005 HB 821 (J. Trujillo) and 2008 HB 248 (Wirth) and industry-friendly bills such as 2007 HB 569 (Foley).

Recapturing the OCD

The Oil Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) collects oil and gas well production data; issues permits for new oil, gas and injection wells; and, ensures that abandoned wells are properly plugged and that the land is responsibly restored. The division is empowered to prevent waste of oil and gas resources, to protect correlative rights, and to protect public health and the environment. In particular, the OCD has statutory authority under the Oil and Gas Act and the Water Quality Act to protect water resources and statutory authority under the Oil and Gas Act to regulate disposal of waste from O&G activities.⁴⁹ In all, the OCD has approximately 70 employees who oversee over 23,000 crude oil wells, nearly 27,500 natural gas wells, and oil and gas' approximately 23,000 employees.⁵⁰

As the main oil and gas regulatory agency in New Mexico, the OCD has attracted heightened industry attention over the last five years. In the words of one OCD employee, the division has gone from being a "captured agency," to one that has, as former land commissioner Jim Baca explains, "been standing up to industry" and "doing a much better job."⁵¹ These changes in agency culture correspond to legislative, legal, and budgetary battles, some of which are highlighted below.

Antiquated provisions, preferential treatment: 1935 in the 21st Century

In 2005, the OCD attempted to address penalty and enforcement provisions of the Oil and Gas Act that date back to the 1930s. OCD director Mark Fesmire's contention is that "[Oil and gas companies] monitor ... and report to [the OCD] ... If they don't tell us the truth, we need to come down on them pretty hard. It's a self-monitoring program. That's all the state can afford."⁵² The EMNRD takes this a step further, saying with respect to penalties, "It is meaningless to talk about the requirements the OCD/OCC could impose on oil and gas operations if the OCD/OCC does not have an efficient and practical way of enforcing those requirements."⁵³

Yet as Fesmire explained at a Santa Fe County public meeting on oil and gas development, "The enforcement rules OCD uses right now were originally passed in 1935. In 1935 we could fine them \$1,000 a day for a violation or \$1,000 a day for an ongoing violation or \$1,000 for the violation itself. In 2007 if we have a violation, we can fine the operator \$1,000 a day for an ongoing violation or \$1,000 for the violation."^{54,55}

⁴⁹ The State of New Mexico. 2008.

⁵⁰ In addition to 426 CO₂ production wells, around 4500 CO₂ injection wells, and any geothermal activity (right now there is one project in development).

⁵¹ Personal Communication. September 15, 2008.

⁵² As quoted in: Haywood, Phaedra. 2008. "Drilling's hidden costs." *Santa Fe New Mexican*. [March 2, 2008].

⁵³ The State of New Mexico. 2008.

⁵⁴ *Santa Fe County Public Forum: Proposed Oil & Gas Drilling*. December 6, 2007. Online at: <http://www.santafecounty.org/oilandgas/transcript120607mtg.pdf>.

⁵⁵ There has been some consternation about this claim. Bob Gallagher, president of the New Mexico Oil and Gas Association, says Fesmire's statement is a lie; Gallagher is quoted saying "That's a lie, that it hasn't changed since 1935...Go ask Fesmire how much money they have collected in fines or settlements ... in the

In 1935, the \$1,000 fine was equivalent to 2,500 barrels of oil. Today, according to the EIA, \$1,000 is roughly equivalent to 10 – 20 barrels.⁵⁶ The fine provision remains unchanged despite agency efforts. Meanwhile, comparable New Mexico agencies and similar agencies in other states can assess significantly larger penalties, ranging from \$5,000/day to \$25,000/day.⁵⁷

Also surviving today is a 1935 provision stating that a company cannot be fined unless the OCD proves a violation was committed “knowingly and willingly”.⁵⁸ To require that oil and gas companies must be found to have “knowingly and willingly” committed a violation, is, as one OCD employee explains, akin to allowing the Department of Health to assess a penalty only after it proves a restaurant with rats in its kitchen knowingly and willingly allowed rats into the establishment.⁵⁹ The Oil and Gas Act is unique in requiring such proof. As 2005 SB777’s fiscal impact report explains, “other New Mexico environmental statutes uniformly provide for strict liability for civil penalties. That is, a violator is subject to penalty for any violation regardless of knowledge or intent.”⁶⁰

In light of the aged and inconsistent nature of these Oil and Gas Act provisions, the OCD worked with Senator Gerald Ortiz y Pino to introduce SM 27 and SB 777 and Representative Jim Trujillo to introduce HB 871—all three highlighted the 1935 statutory throwbacks and attempted to update them to improve enforcement and compliance.⁶¹ The bills were viewed as detrimental to the industry and encountered strong resistance. SM 27—the only floor vote—was defeated in Senate by a vote of 18 for and 22 against. Senators who voted against SM 27 received from O&G an average of \$4,041 in 2004, whereas senators voting for SM 27 received from O&G an average of \$1,488.⁶² HB 871 and SB 777 did not even make it out of committee.⁶³

last 12 months” (*Santa Fe New Mexican* March 2, 2008). Indeed, the OCD collected a fine worth \$250,000 from Mack Energy in 2007 for false reporting dating back to 1987, a particularly egregious violation. But our research indicates Bob Gallagher is mistaken and that the 1935 provision *has not* changed; it still is \$1000 per violation with each day of illegal operation potentially constituting an independent violation, as was the case in 1935.

⁵⁶ According to the EIA’s average oil price for 2008 and projected average oil price for 2009. More at <http://www.eia.doe.gov/steo> (Accessed January 3, 2009).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Personal Communication. September 2, 2008.

⁶⁰ New Mexico Legislative Finance Committee. 2005. “Fiscal Impact Report for SB 777 (Ortiz y Pino): Oil Conservation Division Appeals.” Reports sources included NM EMNRD, NM ED, and NM OSE. <http://legis.state.nm.us/Sessions/05%20regular/firs/SB0777.pdf> (Accessed January 3, 2009).

⁶¹ Senator Ortiz y Pino has received \$0 from O&G over the last four years. Representative Trujillo, however, received \$1,450 in 2004 and \$3,050 in 2006; even so, for every House bill in this report that faced a floor vote, Trujillo’s vote was industry-unfriendly.

⁶² See Figure 4 of this report.

⁶³ Interestingly, in the committee that tabled SB777, the vice chair was John Arthur Smith, the Senate Finance Committee chair during efforts to shift funding and legal team positions away from the OCD in the 2008 budget bill. In the campaign year prior to 2005, Senator Smith received \$5,650 from O&G—his largest contributor; in 2006, a non-campaign year, Senator Smith received \$9,200 from O&G, again his largest contributor. The chair of the 2005 SFC committee, Joseph Fidel, received at least \$5,350 from oil and gas in 2004—also his largest contributor. He voted *for* SM27; Smith was absent for the vote.

Low penalty amounts combined with a uniquely stringent burden of proof for OCD effectively give oil and gas extraordinary protection from civil penalties. When Fesmire was hired in 2004, Bob Gallagher said “We are very supportive of [stepping up enforcement] . . . If one of our companies is not operating within the regulations, they need to be told that and they need to be brought into compliance.”⁶⁴ Yet in 2006, after the OCD had been blocked by industry-friendly legislative activity from updating two statutory provisions limiting the agency’s ability to “step up enforcement,” Deborah Selinger (then NMOGA attorney) reaffirmed that O&G was not willing to allow OCD to remove the “knowingly and willingly” provision of the Oil and Gas Act. She also stated that the industry would continue demanding that even to *issue* additional fines, the OCD would have to demonstrate in court that the permit holders did something wrong. The industry’s position is especially notable given that the OCD already has to go to court to collect any fines and this demand would add a second round of taxpayer-funded court proceedings.⁶⁵

Budgetary battles and legal retribution

In addition to hitting blockades to updating Oil and Gas Act provisions, the OCD has been threatened with budget and staffing cuts.⁶⁶ In recent years the OCD’s budget has remained disproportionately low compared with other state agencies, even those in the EMNRD. In the OCD’s 2008 budget, for example, the legislature did not include increases for fixed costs such as fuel and utilities—the only instance in EMNRD division budgets where the legislature did not increase funding for fixed costs.⁶⁷ And according to the EMNRD, some industry officials have even taken credit publicly for the budget cuts.⁶⁸

Some attempts to cut the OCD’s budget and staff appear to have been spurred by the Divisions’ rule-making activities. Between 2006 and 2008, for example, the OCD developed and released updated rules governing how drilling waste and byproducts are disposed of at well sites. These “Pit Rules” were widely applauded by environmental groups for adding needed protection to groundwater sources. Industry officials and some legislators, however, heavily criticized the rules, with some groups even appealing them. Karin Foster, director of government affairs for the Independent Petroleum Association of New Mexico, said in 2006 that a coalition of industry groups were planning on proposing bills to limit the authority of state agencies to rewrite rules without legislative oversight.⁶⁹ Two years later, Representative Tom Taylor voiced an industry argument in a

⁶⁴ Rubel, Walter. 2004. “State's new oil conservation czar vows to embrace 'golden goose'.” *Las Cruces Sun-News*. June 9, 2004.

⁶⁵ New Mexico Resource Advisory Council. 2006. *Summary Minutes February 28-March 2, 2006: Santa Fe*. http://www.blm.gov/pgdata/etc/medialib/blm/nm/resources/rac/rac_minutes.Par.82277.File.dat/RAC_Feb_06.pdf (Accessed January 17, 2009).

⁶⁶ The State of New Mexico. 2008

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Quoted in: Robinson-Avila, Kevin. 2006. “Pace of environmental regulations irks oil, gas industry.” *New Mexico Business Weekly*. October 6, 2006.

Farmington Times op-ed piece titled “Pit Rules—such a waste” (September 24, 2008), alleging that O&G will be over-regulated to the point that it ships high-paying jobs out of the state.

According to the Legislative Finance Committee’s (LFC) *2008 Post Session Review*, Senate Finance Committee (SFC) leadership also “had significant concerns over this rulemaking, including the lack of in-depth cost-benefit analyses, lack of legislative oversight, and possible General Fund impact from reduced oil revenues and used the appropriation process to voice these concerns.”^{70,71} During 2008 budget deliberations, the SFC proposed to remove four OCD attorney positions and \$303,500 in funding and place the attorneys under the Attorney General’s (AG) office. When asked about these proposed changes, Senator Smith, chair of the SFC and LFC, said that the SFC was trying to bring the situation into alignment with a “law that is on the books.”⁷² Indeed, according to 1978 NMSA §8-5-2, the AG must prosecute or defend in all cases to which the state or its employees are party. But in practice this isn’t the norm, and according to an AG office employee, the AG “certainly doesn’t have the resources to defend every state agency and every court action.” Each agency receives a special commission and “an agency’s general council takes up the slack.”⁷³

Many environmentalists and lobbyists contended that the SFC’s actions were actually retribution for the stringent “Pit Rules.” So too did the Richardson administration, which said,

The Senate Finance Committee tucked cuts into its version of the state budget that would essentially punish state agencies [OCD and NMED] that have the audacity to hold oil and gas companies accountable for protecting New Mexico’s environment. The budget cuts look like an effort to retaliate against tough but fair rules and regulations implemented by the Richardson Administration to protect the environment.

The administration summarized SFC actions with a strong admonition, saying, “Effectively, such a move would weaken the state’s ability to enforce environmental regulations and allow those who contaminate our water, pollute our air, and abuse our land to go unregulated and unpunished.”⁷⁴ Though perhaps a bit extreme, the statement’s core message appears to be accurate: cutting OCD funding and moving legal staffing would have been an abnormal move that at best would have increased inter-agency

<http://albuquerque.bizjournals.com/albuquerque/stories/2006/10/09/story12.html> (Accessed January 3, 2009).

⁷⁰ New Mexico Legislative Finance Committee (LFC). 2008. *2008 Post Session Review*. Available online at: <http://legis.state.nm.us/lcs/lfc/lfcdocs/2008%20Post%20Session%20Review%20Final.pdf>.

⁷¹ It’s important to note that the OCD held months of public hearings during which, the OCD claims, it fulfilled every legal mandate to consider the economic impact of the “Pit Rules.”

⁷² Personal communication. September 16, 2008. Common Cause recontacted Senator Smith in January 2009 to further discuss this statement and the 2008 SFC proceedings but didn’t receive a response before publication.

⁷³ Personal communication. October 14, 2008.

⁷⁴ Both quotes cited from “Budget Cuts for NMED and EMNRD” section of the following webpage: http://riogrande.sierraclub.org/campaigns/legislature_nm/legis_nm_08.htm. Accessed on October 14, 2008.

bureaucracy and at worst could have further immobilized an already overworked agency, opening the door to more unchecked industry violations. Eventually, due to the protests of the House and Executive Branch, the attorneys were reinstated, as was most (but not all) of the funding.

A collaborative effort

Budget cuts and legislative losses have coincided with other efforts to modify the OCD's authority, often in a manner beneficial to the industry. Bills such as Dan Foley's 2007 HB 569, "Oil and Gas Operator Civil Penalties," attempted to further protect the industry by mandating that the agency go to court in the operator's county of residence to *impose* as well as collect fines. Foley's bill was tabled in committee, but since its tabling, the OCD has had to fight an appeal by oil and gas in the NM State Supreme Court on the very same issue. One OCD employee said Foley's bill was an industry attempt to preempt the court case and settle the issue legislatively. It would appear that this is accurate, as the industry contends that the OCD cannot assess penalties administratively, and that to assess a penalty, the OCD must bring a civil lawsuit against an operator in the county where the operator is located.^{75,76}

According to Mark Fesmire, "[i]f this interpretation of the law [were] correct, even for a minor violation, [the OCD would have to] present [its] case to the court, get the court to find the operator in violation, then go back to the court and present a second case for collection."^{77,78} Such a requirement would be time-consuming, expensive, and increase the procedural burden, limiting the OCD's capacity to administer its statutory mandates and protect the health and well-being of New Mexicans, argues the EMNRD.⁷⁹ Thus far courts have upheld the OCD's arguments regarding rules on enforcement authority in every industry appeal under Fesmire's tenure.⁸⁰

According to some, the last four years have seen an awakened OCD. Certainly they have seen updated regulations (e.g. the Pit Rules), increased enforcement efforts, and new acts (the 2007 Surface Owner's Protection Act), but not without a well-orchestrated industry-backed response. Be it through court cases, budget cuts, or legislative battles, the industry and its friendly elected officials have worked to ensure that the New Mexico government's main oil and gas regulatory agency remains governed by provisions that afford oil and gas uniquely beneficial privileges and protections.

⁷⁵ The State of New Mexico. 2008.

⁷⁶ Foley faced an enormously well-funded challenger in Dennis Kintigh during the 2008 elections and lost. O&G was Kintigh's nearly exclusive campaign backer—with over \$250,000 in recorded contributions—while Foley received approximately 10% from O&G (Which amounts to more than \$15,000 of his more than \$138,000 in total contributions and is still his largest contributor). In other years, O&G was also one of Foley's largest contributors. Interestingly, nearly all of Kintigh's funding came from Mark Murphy, companies with which he was affiliated, and his family.

⁷⁷ IPAMS. 2006. IPAMS annual meeting and summer conference. "Western States Policy Update." June 9, 2006.

⁷⁸ Aside from the additional costs in time and money, it seems debatable at best to suggest a court is better suited than state experts to determine violations of oil and gas rules that the agency itself wrote.

⁷⁹ The State of New Mexico. 2008.

⁸⁰ Time will tell on the ruling for this case. One other case is currently unfinished, awaiting an industry appeal that contends the OCD inadequately considered the economic implications of the "Pit Rules."

Conclusion

Year after year, oil and gas is one of the biggest contributors to political campaigns in New Mexico. It would be inaccurate to say that campaign contributions always directly lead to political influence, but equally inaccurate to pretend that contributions don't have an effect on state policy making. This report found multiple instances where contributions correlate to industry-friendly legislative voting and policy making.

Nothing in this report indicates obvious corruption and blatant buying of votes. This research reveals a subtler and more pervasive type of influence. More than simply being about bills and amendments, which alone function to sway policy in the industry's favor, it's about bills coupled with legal appeals and about the appropriations process removing OCD funding under the auspices of inadequate cost-benefit analysis. It's about never giving an inch and tying up as much of an agency's resources as possible.

In some cases the industry bankrolls much of, or nearly all of, a friendly candidate's campaign. In 2006, William Gray received over \$50,000 and Mike Kakuska received over \$62,200 – around 50% and 85% of the total contributed to each legislator's respective campaign. In 2008, Dennis Kintigh received over \$198,500⁸¹ from Mark Murphy, his family, or businesses and institutions affiliated with him; with other O&G contributions Kintigh's campaign total from this industry exceeded \$255,000—accounting for 95% of contributions received by Kintigh.

Since the effectiveness of a political campaign is to a very large extent dependent on the amount of contributions a candidate can raise, it's reasonable to assume that elected officials, no matter how well-intentioned, are rarely able to avoid paying special attention to the interests of large contributors. And though not all legislators are funded so dramatically by oil and gas as Kintigh or Kakuska, since 2005, legislators who voted friendly to industry on average received 2.6 times more money from oil and gas than legislators who voted industry-unfriendly.

By consistently being one of the largest contributors to state campaigns, industry sets the tone of discussion—primarily that any regulation threatens the very foundation of the industry. Representative Tom Taylor's op-ed on the OCD's "Pit Rules" illustrates this, repeating the industry's contention that regulating oil and gas any more than it already is regulated will result in companies leaving New Mexico and never returning, costing small towns big money. The 2008 SFC leadership's concern over the pit rules and attempt to remove OCD legal team funding also mirror industry arguments.

O&G in New Mexico, however, already enjoys a uniquely beneficial regulatory environment. The New Mexico Oil and Gas Act confers more responsibility in civil penalty proceedings onto the OCD than onto any other similar agency. O&G also benefits from penalty amounts that are nearly 75 years old and significantly less than for other state industries or similar ones outside of New Mexico. Still the industry continues efforts

⁸¹ As of May 31, 2008, according to *Albuquerque Journal* article, "Roswell Oilman Fueling Campaigns to Unseat GOP Incumbents." [May 31, 2008].

to add further protection by, for example, forcing the OCD into court to even assess penalties for rules the agency itself writes.

Oil and gas is a major and at present indispensable part of this state's economy, and will be for decades to come. With O&G activities recently funding up to 21% of the General Fund,⁸² it is essential legislators continue considering the impact of regulations on the industry, and by extension, on General Fund revenues and state public schools. That said, it's clear that New Mexico's oil and gas industry wields considerable influence through its political contributions. This is apparent in legislative voting, budgetary proceedings, legal battles, and stifled agency attempts to update antiquated provisions. Though the industry deserves its fair shot at responsibly capitalizing on the resources New Mexico offers, this research indicates that concerted action is needed to protect state policy making from undue industry influence.

⁸² This figure is for 2006. NMOGA. 2009. <http://www.nmoga.org/industry-revenues.html> (Accessed January 3, 2009).

Appendix

Table 1: New Mexico Revenues from Oil and Gas Activities

	2002	2003	2004	2005	2006	2007
Oil and gas emergency school tax	\$205,121,207	\$229,638,624	\$297,070,343	\$386,785,907	\$491,657,374	\$426,780,461
Oil and gas conservation tax	\$10,363,501	\$10,888,867	\$14,931,771	\$19,514,983	\$24,819,553	\$22,318,514
Natural gas processors tax	\$20,270,225	\$21,077,023	\$13,477,994	\$24,321,786	\$27,268,027	\$34,844,116
Federal mineral leasing royalties	\$221,323,163	\$258,365,730	\$308,108,000	\$391,000,000	\$544,880,000	\$501,000,000
SLO rents, onuses, etc.	\$13,300,000	\$18,727,187	\$22,060,805	\$42,044,343	\$52,695,563	\$47,570,556
Gross receipts tax	\$25,340,000	\$36,474,526	\$42,941,465	\$55,867,203	\$124,794,894	\$103,109,029
<i>Revenue from current production</i>	<i>\$495,718,096</i>	<i>\$575,171,957</i>	<i>\$698,590,378</i>	<i>\$919,534,222</i>	<i>\$1,266,115,411</i>	<i>\$1,135,622,676</i>
Earnings on land grant permanent fund	\$242,566,590	\$259,142,844	\$274,700,492	\$339,791,000	\$343,380,000	\$348,945,144
<i>Total General Fund revenue</i>	<i>\$738,284,686</i>	<i>\$834,314,801</i>	<i>\$973,290,870</i>	<i>\$1,259,325,222</i>	<i>\$1,609,495,411</i>	<i>\$1,484,567,820</i>
Oil and gas severance tax	\$200,740,385	\$221,446,421	\$293,087,714	\$384,561,385	\$488,952,323	\$426,206,903
SLO royalties	\$197,741,000	\$218,385,341	\$236,277,777	\$312,251,910	\$405,343,063	\$390,449,484
Overall total	\$1,136,766,071	\$1,274,146,563	\$1,502,656,361	\$1,956,138,517	\$2,503,790,797	\$2,301,224,207

Source: New Mexico Energy, Minerals, and Natural Resources Department. 2006 and 2007. Annual Reports.
 Online at: <http://www.emnrd.state.nm.us/main/Publications.htm> (Accessed February 3, 2009).

