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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09

SPONSOR Egolf LAST UPDATED \_\_\_\_\_ HB 471

SHORT TITLE Local Government Jurisdiction Over Oil and Gas SB \_\_\_\_\_

ANALYST Woods

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 17

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Attorney Generals Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 471 enacts a new section of the Oil and Gas Act. This new section states that the legislature recognizes the inherent authority of municipalities and counties to protect the health, safety and welfare of their residents by enacting ordinances protecting water and watersheds from oil and gas drilling and imposing reasonable bonding requirements on oil and gas drilling, production and other activities and otherwise regulating oil and gas operations within their respective zoning jurisdiction.

There is no appropriation attached to this legislation.

### SIGNIFICANT ISSUES

AGO notes that House Bill 471 recognizes authority in municipalities and counties to enact ordinances to protect water and watersheds from oil and gas drilling and to impose reasonable bonding requirements and to otherwise regulate oil and gas operations within their zoning jurisdictions. This is authority that the Oil Conservation Division also has under the Oil Conservation Act, Section 70-2-12 NMSA 1978 et. seq. Thus, there is the possibility of

conflicting regulation by the state and local governments over the same oil and gas operation and there is the possibility that multiple bonds may be required for the same purposes.<sup>1</sup>

As background, EMNRD advises that, recently, oil and gas producers have started to explore for oil and gas in areas of the State where there has been very little or no oil and gas exploration and production. Local governments in the affected areas have enacted or are enacting ordinances to regulate oil and gas operations to protect the health, safety and welfare of its citizens. HB 471 recognizes the authority of local governments to enact ordinances to regulate oil and gas operations for the protection of the citizens of the local government.

EMNRD adds that SB 17 conflicts with HB 417. SB 17 provides that all political subdivisions shall have no jurisdiction over oil and gas operations “except those specifically provided by law.” It reflects the opinion of some oil and gas producers that regulatory jurisdiction over oil and gas operations lies entirely with the Energy, Minerals and Natural Resources Department’s (EMNRD) Oil Conservation Division (OCD).

EMNRD concludes that local governments have the authority to enact ordinances under their police powers to protect the health, safety, and welfare of the public, provided that the ordinances are not inconsistent with state laws. The Oil and Gas Act gives OCD jurisdiction over oil and gas operations within the state. Presumably, under their police powers, local governments would be able to enact ordinances regulating oil and gas operations, but the ordinances would be invalid if they were not consistent with state laws. Several recently drafted county ordinances address matters which have not been addressed by OCD. If the authority of local governments to enact ordinances that regulate oil and gas operations in their locality is removed, there may be regulatory gaps.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with Senate Bill 17

### **AMENDMENTS:**

None proposed by respondents.

BW/svb

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<sup>1</sup> The AGO response carries the caveat, *This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.*