



## SIGNIFICANT ISSUES

A state law may preempt local laws in three distinct ways. First, by expressly stating its intent to preempt any local law on the matter in question. Second, if the state has “occupied the field” or issue in question by providing comprehensive regulation. Third, local laws are preempted when they conflict with state laws.

Under Sections 3-17-1 and 4-37-1 NMSA 1978, New Mexico’s county and local governments generally have broad power to make laws to protect public health and welfare that are “not inconsistent with the laws of New Mexico.” Although such ordinances are subject to preemption by state law, current New Mexico law does not preempt local regulation of oil and gas operations.

In an opinion striking down Mora County’s ordinance banning hydrocarbon extraction and prohibiting hydraulic fracturing a federal district court judge found that the local ordinance was not entirely preempted by state law. The court rejected express preemption and field preemption, and recognized that state and local regulation of oil and gas activities can be concurrent and local governments can regulate in areas left unaddressed by the Oil and Gas Act and regulations.

According to EMNRD analysis:

Courts will carefully examine any attempt to enact express preemption, so the language must be precise. To expressly preempt local laws, the “legislature must clearly state its intention to do so.” Rancho Lobo, Ltd. v. Devargas, 303 F.3d 1195, 1201 (10<sup>th</sup>. Cir. 2002). In the New Mexico Mining Act, the Legislature stated that county mining ordinances applied until the State adopted regulations under that Act. The Court of Appeals found that language to be ambiguous and refused to find express preemption of county ordinances. San Pedro Mining Corp. v. Santa Fe County, 1996-NMCA-002.

HB 199 expressly prohibits regulation of oil and gas operations by political subdivisions or other instrumentalities of the state. However, the bill makes an exception for municipalities and preserves the existing authority of agencies like the Oil Conservation Commission, EMNRD’s Oil Conservation Division, the New Mexico Environment Department (NMED), and the State Land Office to regulate some aspects of oil and gas operations.

According to NMAC analysis:

It is essential for local government to have input into matters that directly affect their communities. The New Mexico Association of Counties has a standing position to oppose legislation that preempts local autonomy. Local government is in the best position to evaluate and act in the best interests of its community. Checks and balances are in place as governmental action is subject to court review as appropriate. HB 199 would prohibit counties from regulating or otherwise influencing oil and gas operations within their communities and is drafted so broadly as to substantially weaken local zoning authority.

**RELATIONSHIP**

House Bill 366 amends 70-2-6, declaring the Oil Conservation Commission and EMNRD's Oil Conservation Division have exclusive authority to regulate oil and gas operations.

Senate Bill 421 amends sections of statute regarding municipal and county authority to expressly preempt local regulation of agricultural operations, mining activities, and oil and gas activities.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EDD analysis states, “[t]he regulation of the extractive industries by the governing bodies of 33 counties and more than 100 municipalities will create unwarranted risk and uncertainty.”

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