

Synopsis of Original Bill

House Bill 366 adds provisions to Section 70-2-6 NMSA 1978, which delineates the powers and duties of the Oil Conservation Commission and EMNRD’s Oil Conservation Division, to expressly declare the state’s exclusive jurisdiction and authority over all matters relating to oil and gas operations.

FISCAL IMPLICATIONS

While this bill does not increase revenue or costs to the state, it could prevent future reductions in revenue that could be caused by county or municipal regulations restricting oil and gas operations.

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 seem to 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. Following the first method of preemption mentioned above, HB 366 expressly states an intent to grant the state exclusive authority over oil and gas operations, including requirements regarding siting, drilling, production, processing, storage, and transportation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 199 also amends 70-2-6 to expressly preempt local regulation of oil and gas operations.

TECHNICAL ISSUES

AGO analysis noted HB 366 may unintentionally remove the New Mexico Environment Department’s (NMED) jurisdiction under the Water Quality Act and Air Quality Control Act:

“Since 1989, NMED has exercised jurisdiction over discharges to ground water and surface water from oil and gas operations “from transmission, transportation and storage facilities for oil or oil by-products after refinement (including but not limited to gasoline stations), except those within refinery premises” pursuant to a delegation from the Water Quality Control Commission (WQCC) pursuant to Section 74-6-4(F) of the WQA... HB 399’s grant of exclusive jurisdiction to

OCD and OCC over “all matters relating to oil and gas conservation, extraction, production, processing, storage and transportation” appears to conflict with NMED’s current authority...

NMED exercises jurisdiction over air quality matters relating to oil and gas operations under the Air Quality Control Act, NMSA 1978, §§ 74-2-1 to -17. To clarify, HB 399 could expressly state that it does not intend that OCD and OCC will assume jurisdiction over areas specifically provided for by law.”

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.”

JA/aml/je/aml