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FISCAL IMPACT REPORT

SPONSOR Ingle ORIGINAL DATE 3/9/15
 LAST UPDATED _____ HB _____

SHORT TITLE Limit Local Government & Zoning Commissions SB 421

ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 199, HB 188, HB 366, SB 184, SB 601

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Finance and Administration (DFA)
- New Mexico Municipal League (NMML)
- Attorney General’s Office (AGO)
- Department of Game and Fish (DGF)
- Energy, Minerals and Natural Resources Department (EMNRD)
- State Land Office (SLO)
- New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of Bill

Senate Bill 421 limits the authority of counties, municipalities, and zoning commissions by providing that state law and regulations exclusively occupy the field of regulating agricultural operations, mining activities, and oil and gas activities, preempting local authority to regulate such activities. SB 421 adopts Right to Farm Act’s definition for “agricultural operations” and the Mining Act’s definition for “mining.” The bill defines “oil and gas activities” as “activities subject to regulation pursuant to the Oil and Gas Act, including the exploration, development, production and transportation of oil and gas, and any associated remediation and reclamation activities related thereto.”

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.

Although local ordinances are subject to preemption by state law, current New Mexico law does not seem to preempt local regulation of agricultural, mining, or oil and gas activities. 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 and that there is room for concurrent regulation of mining or oil and gas by a county in areas not addressed by state law and regulation.

Senate Bill 421 attempts to preempt local regulation through the first and second methods mentioned above. The bill states that local authorities are “expressly preempted” from regulating agricultural, mining, or oil and gas activities and that state law shall “exclusively occupy the field” of regulating such activities.

New Mexico’s county and municipal governments generally have broad power to make laws to protect public health and welfare that are “not inconsistent with the laws of New Mexico.” Often, local governments use zoning and siting requirements to limit the locations where certain types of business or industry can operate without singling out any particular activities. The bill preempts local authority to adopt zoning ordinances to regulate agricultural, mining, or oil and gas activities.

However, the bill seems to leave open the possibility that local authorities could regulate the targeted activities by implementing general zoning ordinances regulating traffic, noise levels, set back requirements, and the impact on surrounding property values. Depending on how a local government drafted and implemented such zoning ordinances, it may be difficult to prove it was an attempt to specifically regulate agricultural, mining, or oil and gas activities as prohibited by SB 421. On the other hand, and as noted by AGO analysis, this bill may remove all zoning authority relating to agricultural operations, mining activities, and oil and gas activities from local authorities while there do not appear to be state entities that have such authority, leaving open the possibility that there would be no zoning authority over these activities by any level of government.

NMAC analysis states:

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. SB 421 would prohibit counties from regulating or otherwise influencing oil, gas, mining and agricultural activities within their communities and is drafted so broadly as to substantially weaken local zoning authority.

NMML analysis echoes these concerns:

Totally preempting local authority to pass ordinances regulating agriculture may have some unintended consequences. First, it would no longer be possible for local governments to set aside in their zoning ordinances areas that are exclusively confined to farming and other agriculture activities. The application of pesticides, herbicides, or other chemicals, compounds or substances to crops, weeds or soil in the connection with production of crops, livestock, animals or poultry would be completely unregulated in areas that could quite possibly be inhabited by people, including young children. The breeding, hatching, raising, producing, feeding, keeping, slaughtering or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits or similar farm animals for commercial purposes would be completely unregulated and could take place in densely populated urban areas. Farmer's markets that are limited to locally produced goods could no longer be established and operated. Sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works would be unregulated in urban areas.

RELATIONSHIP

House Bill 188 addresses penalties for violating county ordinances regulating sand and gravel mining.

Senate Bill 184 proposes a new section to the Severance Tax Bonding Act prohibiting the State Board of Finance from issuing severance tax bonds for projects that would be located within the planning and platting jurisdiction of counties or municipalities that have enacted an ordinance that results in an increase of twenty-five percent or more in the cost of drilling or operating a well or in the cost of permitting or operating a mine.

House Bill 199 prohibits counties from adopting ordinances that restrict oil and gas activities.

House Bill 366 expressly declares the state's exclusive jurisdiction and authority over all matters relating to oil and gas operations.

JA/bb/aml