

EMNRD DRAFT

LFC Requester: Jonas Armstrong

AGENCY BILL ANALYSIS
2015 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X Amendment
Correction Substitute

Date Feb. 19, 2015

Bill No: SB-601

Sponsor: Sen. Ron Griggs Reviewing EMNRD
Short OIL CONSERVATION RULES Person Writing David Catanach
Title: APPLY TO ALL COUNTIES Phone: 476-3468 Email David.Catanach@state

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with columns: Appropriation (FY15, FY16), Recurring or Nonrecurring, Fund Affected. Row 1: None, None, empty.

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Table with columns: Estimated Revenue (FY16, FY17, FY18), Recurring or Nonrecurring, Fund Affected. Row 1: None, None, None, empty.

(Parenthesis ( ) Indicate Expenditure Decreases)

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Duplicates, Relates to, Conflicts with, Companion to  
**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None			

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

**Synopsis:** Senate Bill (SB) 601 would require that rules promulgated by the Oil Conservation Division (“OCD”) or the Oil Conservation Commission (“OCC”) after January 1, 2005 be applied uniformly to all counties in the state. SB 601 further requires that all rules promulgated by the OCD or OCC that do not apply uniformly to all counties within the state are null and void unless a county subject to a non-uniform rule applies to the OCD by October 31, 2015, to request “reinstatement” of a non-uniform rule in effect on July 1, 2015 that is rendered null and void by this section. Sixty days after the OCD receives a request for reinstatement from a county, the rule will “be deemed in effect”.

SB 601 specifies the procedures by which a county may seek reinstatement. SB 601 also defines several terms used in the bill, including “rule” and “pool”. Rule is defined to exclude any rules that provide for the development of a pool.

#### **FISCAL IMPLICATIONS**

None for Energy, Minerals and Natural Resources Department.

#### **SIGNIFICANT ISSUES**

SB 601 may be intended to apply to the “Special Rules” enacted by the OCC, 19.15.39 NMAC. Under the Special Rules, there are specific oil and gas development requirements for two designated areas of the State: areas of Sierra and Otero Counties, 19.15.39.8 NMAC, and areas of the Galisteo Basin (portions of Santa Fe, Sandoval and San Miguel Counties), 19.15.39.9 NMAC. These rules provide additional requirements for the approval and development of oil and gas operations in these specified areas (the rules provide legal descriptions for the areas covered).

The broad language of SB 601 results in the bill covering far more than the Special Rules discussed above. Other parts of the OCC rules apply to only designated areas of the State. Some examples are the well spacing and location rules, 19.15.15.8-10 NMAC, and financial assurance requirements, 19.15.8.9 NMAC. If SB 601 is passed in its current form, these rules could be declared void.

The definition of “rule” is very broad and goes well beyond the normal concept of a rule. It includes non-regulatory actions such as “order, standard, statement of policy”. Under the Oil and Gas Act, the OCD and OCC issue “orders” for all adjudicatory actions, Sections 70-2-23, 70-2-25 NMSA 1978. These actions generally apply to specific operations and do not apply

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statewide. Therefore, those orders issued after January 1, 2005, would be subject to being declared null and void under SB 601. See "Amendment 1" below.

SB 601 provides for the "reinstatement" of rules if a county submits a request by October 31, 2015. However, SB 601 does not provide for rules that cover multiple counties. Both Special Rules under 19.15.39 apply to land in multiple counties. See "Amendment 2" below.

SB 601 provides for the repeal and enactment of rules outside of the normal process for public notice and hearings. A particular problem is posed by the provision for reinstatement of a rule. Under Section 70-2-23 NMSA 1978, a rule can only be made (or revoked) under the Oil and Gas Act after public notice and a hearing. Further, under the State Rules Act, a rule cannot be "valid or enforceable" until it is filed with the State Records Center and published in the New Mexico Register. Section 14-4-5 NMSA 1978. The automatic reinstatement problem could be avoided if the counties are allowed to request "retention" of the rule prior to the date that the rule is declared null and void.

### **PERFORMANCE IMPLICATIONS**

None.

### **ADMINISTRATIVE IMPLICATIONS**

The OCD will need to administer the requests from the counties and update their rules to clarify which rules remain in effect.

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

None

### **TECHNICAL ISSUES**

None

### **OTHER SUBSTANTIVE ISSUES**

None

### **ALTERNATIVES**

Parties wishing to repeal rules can petition the OCC for a rule change.

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

Oil and gas rules pertaining to specific areas of the state would remain in effect.

### **AMENDMENTS**

1. Page 3, lines 8 and 9:

(4) "rule" means any rule, ~~or~~ regulation, order, ~~standard or statement of policy~~, including amendments thereto

2. Page 2, lines 7 – 24:

C. A county or counties seeking the reinstatement of a nonuniform rule pursuant to Subsection B of this section shall apply to the oil conservation division on or before October 31, 2015.

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D. An application by a county or counties pursuant to Subsection B of this section shall be in writing and shall be:

(1) signed by a majority of ~~each~~the governing body requesting that the nonuniform rule be reinstated or made effective; or

(2) accompanied by a certified copy of the minutes of a meeting of ~~each~~the governing body at which the governing body approved a request that a nonuniform rule be reinstated or made effective.

E. Sixty days after the receipt by the oil conservation division of a request for the reinstatement of a nonuniform rule or a request that a nonuniform rule be effective, the nonuniform rule shall be deemed in effect in the county or counties making the request.