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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08

SPONSOR Adair LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Oil Conservation Division Oversight Committee SB 505

ANALYST Cox

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$26.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Energy, Minerals & Natural Resources (EMNRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 505 contemplates creating the Oil Conservation Division Oversight Committee. Thus this newly requested Committee will have an 'oversight function' relating to the New Mexico Energy, Minerals and Natural Resources Department, their Oil Conservation Division specifically.

This Bill deals carries an 'emergency' clause, and requests immediate action.

### FISCAL IMPLICATIONS

Senate Bill 505 requests an immediate appropriation of \$26,000 from the General Fund for the remainder of FY 2008 and then FY 2009 for the Legislative Council Services to form the Oil Conservation Division Oversight Committee, and fund its operations.

Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2009 shall revert to the General Fund.

## SIGNIFICANT ISSUES

### AGO notes:

Depending upon how this responsibility is interpreted and administered, involvement by the committee in the operations of that division might implicate Article III, Section 1 of the New Mexico Constitution, commonly referred to as the “Separation of Powers Clause”, since the Division is part of the Executive Branch of state government

### EMNRD notes:

The directive that the committee makes recommendations "relating to the adoption of rules" is unclear. Recommendations relating to changes in rulemaking procedures, or in the scope of OCD's rulemaking powers as provided in the statutes, is an accepted legislative function. If, however, the committee is being directed to control the adoption (or amendment) of particular rules, this could infringe upon the constitutional requirement (Article III, Section 1) for separation of powers between the legislative and executive branches. Delegation of rulemaking authority to executive agencies enables those agencies to utilize their specialized expertise in formulating detailed rules. To the extent that the legislature becomes involved in prescribing details of agency rules, it fails to utilize agency expertise and bypasses the established procedures for agency rulemaking.

This Bill states that there will be an appointment of twelve (12) commission members made by the Legislative Council services (LCS).

This Committee will be composed as follows:

- 3 – House Majority party
- 3 – House Minority Party
- 3 – Senate Majority Party
- 3 – Senate Minority party

The Committee will function until December 21, 2012.

After developing a ‘work plan and budget the Committee’s business will be to:

- Examine the Statutes, Constitutional provisions and Rules governing the Oil Conservation division of the Energy, Minerals and Natural Resources Department.
- Monitor and oversee the OCD as it administers New Mexico's oil, gas and geothermal resources and as it applies internally developed rules and regulatory oversight.
- Review issues that affect the State's oil conservation, including emissions, oil extraction and compliance with federal statutes and rules and policies created by the OCD and other State agencies.
- Notify the OCD when this Committee has determined that rules promulgated by the OCD exceed NM Statutory authority or contradict NM Statutes.
- Make recommendations to the Legislature relating to the adoption of rules or policies of the OCD and for proposed legislation, if any recommendations are found to be necessary.

This Committee is requested to regularly receive testimony from:

- the Secretaries of Energy, Minerals and Natural Resources; Economic Development; and Environment Departments;
- staff members of the OCD;
- representatives of and persons involved in oil and gas exploration;
- persons concerned with issues related to the duties of the oil conservation division; and
- other persons as appropriate

EMNRD notes:

The directive that the committee “notify the division when the committee has determined that rules promulgated by the division exceed statutory authority or contradict statutes” may also infringe upon the separation of powers provision of the Constitution. Interpretation of statutes and rules and determining the existence of any conflict between the two is the function of the judicial branch. Existing statutes and judicial precedent provide procedures for judicial review of administrative rules, including those of the OCD. Admonitions on this subject by a legislative committee would not be binding, and could conflict with binding judicial determinations.

Additionally, EMNRD states:

If the amendment is adopted and the Legislature inserts itself into the rulemaking process, the roles of the other branches are diminished and perhaps rendered meaningless. If the Legislature or a legislative committee, can reject or modify a proposed rule for whatever reason, then the process by which the agency obtains public comments on a rule and reaches a decision based on a record becomes moot. Likewise, the role of the Judicial Branch becomes confused or perhaps impossible if the Legislature changes or rejects a rule. The courts will have no record and not standard against which to judge the Legislature’s decision on the rule. Thus, the Legislature will have usurped the power of both the Executive and the Judicial Branches.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill is identical to SB 394 except: (a) it has a \$26,000 appropriation to the Council Service and (b) an emergency clause.

HB 125. This bill is largely identical to House Bill 125 except for:

	HB 125	HB 394
Committee life	2011	2012
Membership	10	12
Chair	Council service appoints	Senate Pro Tempore is temporary chair
Veto Power	Members of both bodies have to approve all actions	
Minimum membership	Must be at least 1 member from each party	
Division oversight		Reviews how Division applies its own rules
Division oversight II		Will notify Division if Division rules exceed statutory authority
Testimony	Certain cabinet secretaries	Certain cabinet secretaries & Division staff & public involved in the oil and gas matters