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FISCAL IMPACT REPORT

ORIGINAL DATE 1-29-2008

SPONSOR Adair LAST UPDATED _____ HB _____

SHORT TITLE Create Oil Conservation Division Committee SB 394

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with HB125

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
Attorney General (AGO)

SUMMARY

Synopsis of Bill:

Senate Bill 125 seeks to create a ten-member joint interim legislative “Oil Conservation Division Oversight Committee” (OCD) consisting of five members of the House of Representatives and five members of the Senate, appointed by the Legislative Council.

The oversight committee will examine the statutes, constitutional provisions and rules governing the Oil Conservation Division of the Energy, Minerals and Natural Resources Department; monitor and oversee the Oil Conservation Division as it administers New Mexico’s oil, gas and geothermal resources; review issues that affect the state’s oil conservation, including emissions, oil extraction and compliance with federal statutes and policies; make recommendations to the Legislature relating to the adoption of rules and for suggested legislation, if any are found to be necessary; and will receive testimony from the Secretaries of Energy, Minerals and Natural Resources; Economic Development; and Environment.

The oversight committee will function until December 15, 2011. Staff will be provided by the Legislative Council Service and there is no appropriation attached to the legislation.

SIGNIFICANT ISSUES

AGO notes that the oversight committee would be authorized to “monitor and oversee the Oil Conservation Division of the Energy, Minerals, and Natural Resources Department as it administers New Mexico’s oil, gas, and geothermal resources”. 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 indicates the directive that the committee make 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, would be an accepted legislative function. If, however, the committee is being directed to recommend 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

EMNRD suggests that this bill is very similar to HB125, which also would create a legislative committee to oversee OCD. The bills differ in detail, including the number of members on the committee (10 in HB125, 12 in SB394), party representation (proportional in HB125, equal in SB394), and selection of the chair (by the Legislative Council in HB125, by the committee in SB 394). SB394 adds the directive, not included in HB125, regarding notification to OCD if the committee believes its rules conflict with statutes. Both bills direct the committee to receive testimony from the Secretaries of EMNRD and of the Environment Department. SB394 additionally directs the committee to receive reports from staff members and from representatives of industry and the public.

AGO notes that the legislation is largely identical to HB125 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

TECHNICAL ISSUES

EMNRD states that the legislation directs the committee to “review issues that affect the state’s oil conservation, including emissions, oil extraction” Since there is no reason to suppose that the committee would be concerned with conservation and extraction of oil, as distinguished from natural gas, presumably this sentence should refer to “oil and gas.” Further, it is not clear what is meant by the term, “emissions.” That term is most frequently used in regulating air pollution, not currently regulated by OCD (except for releases of natural gas and hydrogen sulfide). It is unclear whether this is the intended meaning, or if it applies to waste disposal generally.

OTHER SUBSTANTIVE ISSUES

EMNRD suggests that time spent by OCD employees in attending meetings of the committee and responding to its requests would be time diverted from performing the agency’s delegated duties. Further, that the committee’s operations will doubtless require allocation of some funds, and, although the legislation specifically provides for the committee to prepare a budget, it does not include an appropriation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD states, “OCD would continue to perform its functions, with legislative oversight from the Legislative Finance Committee and, as appropriate, other existing legislative interim committees.”

BFW/mt