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FISCAL IMPACT REPORT

SPONSOR Leavell **ORIGINAL DATE** 2/20/15 **LAST UPDATED** 3/19/15 **HB** _____
SHORT TITLE Oil & Gas Rule Appeal Requirements **SB** 389/aSJC/aSFI#1
ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	EMNRD operating budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 194, SB 219

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Attorney General’s Office (AGO)
 Commissioner of Public Records (CPR)

SUMMARY

Synopsis of Senate Floor Amendment #1

The Senate struck the Senate Judiciary Committee amendment and clarified that any party of record to the proceeding before the Oil Conservation Commission or any person adversely affected by a rulemaking action has the right to appeal.

Synopsis of Senate Judiciary Committee Amendment

The Senate Judiciary Committee amended the bill to limit who may appeal rules adopted under the Oil and Gas Act. The bill had provided that “any person who is or may be affected by” a rule could appeal, and now allows appeals by “any party of record to the proceeding before the commission dissatisfied with” the rule at issue. Individuals testifying or presenting evidence at an OCC hearing are considered parties of record, and this amendment would prevent individuals who did not testify at or provide information to hearings from appealing.

Synopsis of Bill

Senate Bill 389 proposes a new section of the Oil and Gas Act, requiring a hearing by the Oil Conservation Commission (OCC) prior to adoption of new and amended rules and establishing timeframes for (a) the filing of an adopted rule with the State Records and Archives Center and (b) the appeal of a rule to the courts once the rule is filed. Rules can be appealed to the Court of Appeals within 30 days after the filing of the rule. SB 389 then provides the Court of Appeals shall only set aside rules if they are: arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with law.

FISCAL IMPLICATIONS

Although EMNRD would not immediately be impacted by enactment of SB 389, the bill would allow direct appeal of rulemaking actions to the Court of Appeals and eliminate the agency's cost of first defending such appeals in district court.

SIGNIFICANT ISSUES

According to EMNRD analysis, SB 389 fills a gap in the Oil and Gas Act which currently deals with appeals of all orders under the act but does not address the appeal of rules promulgated by the OCC. Since 1999, parties seeking to appeal a rule adopted under the Act would file a petition for a writ of certiorari with district court under Rule 1-075 NMRA. The agency states that cases have lingered for years in the district court under this process. Allowing appeals directly to the Court of Appeals, providing a 30 day period to appeal new or amended rules, and the standard of review in the bill are in accordance with other environmental and natural resource statutes.

While the bill does not set forth the procedures for public participation in a rulemaking hearing, such procedures are codified in 19.15.3 NMAC.

RELATIONSHIP

Senate Bill 194 amends the State Rules Act by clarifying procedural and substantive requirements for all state government agencies and defining the public notice requirements that an agency must follow when it comes to proposing any rulemaking activity, including expiration of and re-filing of rules.

SB 219 places an expiration of July 1, 2020 on all administrative rules, except for tax and revenue department rules.

TECHNICAL ISSUES

AGO and CPR analysis notes the language in paragraph D conflicts with the definition of "rule" in the State Rules Act and could be construed to exclude new rules from the bill's other provisions. CPR suggests deleting the paragraph.