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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/21

SPONSOR Chasey/Stewart/Louis LAST UPDATED 03/14/21 HB 51/aHENRC/aHSEIC

SHORT TITLE Environmental Database Act SB _____

ANALYST Wan

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			\$50.0	\$50.0	Recurring	General Fund
		\$100.0		\$100.0	Nonrecurring	General Fund
Total		\$100.0	\$50.0	\$150.0		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Regulation Commission (PRC)
- Department of Cultural Affairs (DCA)
- Department of Game and Fish (DGF)
- Energy, Minerals and Natural Resources Department (EMNRD)
- State Land Office (SLO)
- Department of Health (DOH)
- New Mexico Environment Department (NMED)
- University of New Mexico (UNM)

SUMMARY

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment adds a definition of “environmental data” to Section 2 of the bill. It strikes from Section 7 of the bill the requirement that the Historic Preservation Division of DCA provide “information about areas where development should be avoided if possible.”

The amendment also revises Section 3, Subsection D, paragraph 8 to explicitly allow agency discretion in determining which data is necessary to provide, as follows: “from each state agency, at the discretion of the state agency, links to available agency-developed data and research used in decision making that the state agency determines will assist the public in

understanding the state environmental data reported.” This language also revises the bill’s original requirement for state agencies to provide links to data that “will assist the public in understanding the state environmental data being relied on in making significant decisions.”

Finally, the amendment adds “security” as a reason a state agency may deem information to be confidential.

Synopsis of HENRC Amendment

The House Energy, Environment and Natural Resources Committee amendment removes the requirement for the environmental database to provide access to location data for oil and gas pipelines.

The amendment also adds that state agencies are not required by the bill to disclose any information that is not already provided to the agencies.

Synopsis of Original Bill

House Bill 51 would enact the Environmental Database Act to require the development, operation, and maintenance of an environmental database – a map-based, searchable website that would centralize and house the state’s environmental data. The database would include information about the state’s natural resources and land uses, as well as public health and environmental data, from the Energy, Minerals and Natural Resources Department (EMNRD), the Environment Department (NMED), the State Land Office (SLO), the Department of Health (DOH), the Department of Game and Fish (DGF), the Public Regulation Commission (PRC), and the Historic Preservation Division of the Department of Cultural Affairs (DCA).

The database would be hosted and managed by Natural Heritage New Mexico (NHNM), a division of the Museum of Southwestern Biology at the University of New Mexico (UNM). The database would build on the existing New Mexico Environmental Review Tool, used for conservation planning and review of wildlife and habitat resources, which is a partnership between DGF and NHNM. The agencies specified would be required to provide NHNM with data on the locations of active mines and oil and gas wells, utility-scale solar and wind projects on state land, areas affected by air and water pollution, the state’s surface waters, designated critical habitat for threatened and endangered species, archaeological and cultural sites, and more. The purpose of the project would be to provide the public, state agencies, and private industry with comprehensive data to inform land-use, development, and environmental management decisions.

HB51 requires agencies to provide NHNM with updated data at least annually and requires NHNM to update the database as new data is received, but at least annually.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB51 contains no appropriation. As amended, the bill does not require agencies to provide data for the environmental database that the agencies do not already have access to. This simplifies

implementation of the bill and prevents some additional operating budget impact because agencies will not need to create new processes or positions for the purpose of collecting new data.

DGF anticipates, in addition to the cost of creating and maintaining the database borne by NHNM or the state agencies involved or some combination thereof, there will be additional costs to ensure data compatibility between the agencies and the host. However, the agency did not provide a fiscal impact estimate.

EMNRD states the HSEIC amendment will allow the agency to meet its obligations under HB51 without any additional FTE or other fiscal impact.

NMED reports the agency would need 1 FTE at an annual cost of \$85 thousand to coordinate data collection and reporting activities and to administer the databases affected by the bill's requirements. The agency expects appropriations included in House Bill 2 and Senate Bill 377 to be sufficient to cover this cost, and therefore, no additional operating budget impact is projected.

UNM estimates the cost of implementing HB51 would be \$100 thousand initially and approximately \$50 thousand in recurring costs for ongoing database maintenance and modifications.

All other agencies reported no operating budget impact was expected.

SIGNIFICANT ISSUES

PRC expressed doubts about the feasibility of providing the data required of the agency by HB51 – the locations of electric transmission lines and the locations of oil and gas pipelines. The PRC has not developed any comprehensive mapping of transmission facilities or oil and gas pipelines, and has limited authority over the location of newly developed transmission lines outside of territory governed by Indian nations, tribes, or pueblos. Furthermore, federal regulations regarding the security of critical energy infrastructure information may prevent the PRC from obtaining transmission line location data from transmission line owners or from supplying that data to the public.

HB51 requires the environmental database to include a link to DCA's database of geographic information about archaeological and cultural sites. However, while DCA's database maintains this information, access to the database is proprietary and governed by Section 18-6-11.1 NMSA 1978, which establishes standards for the release of information to qualified users only. Therefore, DCA says, the cultural database the bill refers to as "publicly available" is only "quasi-public" and may require statutory and rule changes to meet the requirements of HB51.

Section 4 of the bill, however, provides that agencies are not required to disclose any information that is confidential by state or federal law or any archaeological or cultural survey information, unless the information is already publicly available. This would seem to address DCA's concerns and preclude a change to the current policy governing the agency's data, but the agency states that not all the data they manage is confidential, and the format of their existing database prevents the separation of data that is public information from data that is not. Therefore, DCA would either have to keep all data private to comply with current law while violating HB51, or comply with HB51 in violation of current law. DCA also notes the bill's requirement for DCA to provide "information about areas where development should be avoided if possible" is vague and open to interpretation.

PERFORMANCE IMPLICATIONS

The State Forestry Division of EMNRD reports the creation of an environmental database as proposed by HB51 would provide a tool for evaluating the potential impacts of proposed projects and identify specific areas for conservation for landowners, land managers, and funding agencies. For example, the division could use the database to promote areas for conservation funding from sources such as the federal Forest Legacy Program or the state Land Conservation Investment Tax Credit Program. Additionally, the database would be helpful in evaluating the potential impacts of forest restoration projects and providing information to private landowners through stewardship plans. Finally, the Forestry Division states HB51 would contribute to the Rare Plant Conservation Strategy in the 2020 New Mexico Forest Action Plan.

According to UNM,

“This bill will further support the long-standing mission of Natural Heritage New Mexico at UNM to provide current scientific information on the conservation of New Mexico’s biota and natural resources to agencies, scientists, students, government and business leaders, land managers, and the public at a reasonable cost.”

ADMINISTRATIVE IMPLICATIONS

SLO reports that staff resources would be required to convey the requested data to the database host and to determine which surveys, data, and reports would also be necessary, but no additional FTE are needed.

While the Oil Conservation Division of EMNRD publishes data on active oil and gas wells on its website, it does not have a “master list” of all active wells and would need to consult the agency’s information technology (IT) office to determine the feasibility of doing so. Currently, no reporting mechanism exists to provide EMNRD with the locations of utility scale solar and wind projects on state land. Overall, EMNRD expressed concerns about the vagueness and impracticality of the bill’s requirement to provide access to “links to available surveys, data and reports currently used by the agency in decision making that the agency determines will assist the public in understanding the state environmental data being relied on in making significant decisions.”

One of the topics HB51 requires DOH to report on, health impact assessments, would present an administrative challenge as the agency does not currently conduct health impact assessments. DOH would need to develop new rules and processes to provide the required data.

TECHNICAL ISSUES

As described in “Significant Issues” above, the provision of HB51 related to DCA data may contradict Section 18-6-11.1 NMSA 1978.

DGF noted that the lack of a definition of “sensitive species” may lead to confusion about which species the agency is required to provide data on.

AMENDMENTS

HB51 requires EMNRD to provide the locations of utility-scale solar and wind projects on state land, which is data EMNRD does not collect or maintain. However, EMNRD suggested SLO, which manages state land leases and deals directly with wind and solar project developers, would likely be able to provide this data with greater accuracy and ease. Maps of wind and solar projects on state lands are currently posted on SLO's website.

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