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## FISCAL IMPACT REPORT

SPONSOR: Knauer DATE TYPED: 02/20/01 HB 464  
 SHORT TITLE: Comprehensive Plan for Land Use SB \_\_\_\_\_  
 ANALYST: Padilla

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$3 million			Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 363, which establishes a transfer of development rights program. Also relates to House Bill 897, which limits a municipality’s planning and platting jurisdiction in certain circumstances.

### SOURCES OF INFORMATION

LFC Files  
 Attorney General  
 Administrative Office of the Courts (AOC)  
 Department of Finance and Administration (DFA)  
 State Land Office  
 New Mexico Municipal League

### SUMMARY

#### Synopsis of Bill

House Bill 464 amends the Municipal Code to require any city or county that prepares a comprehensive plan for land use to adopt the plan by ordinance. A city or county that adopts a comprehensive plan must ensure that its land use regulations and land use actions are consistent with the plan. The bill gives local governments until January 1, 2003 to correct any inconsistencies between the comprehensive plan and land use regulations. The bill appropriates \$3 million to DFA’s Local Government Division to provide grants to municipalities and counties to develop comprehensive plans and to revise regulations to comply with existing comprehensive plans, and for infrastructure needs relating to the comprehensive plans.

The bill does the following:

- When referring to planning, changes the terms “general,” “municipal,” and “master” to “comprehensive,” and uses the term “comprehensive plan” throughout the bill.

## House Bill 464 -- Page 2

- Adds a new section of law to establish that district courts must look for compliance with the comprehensive plan when hearing appeals of a municipality's planning decision.
- Removes the authority of municipal planning commissions to amend comprehensive plans.
- Requires municipal planning commissions to submit comprehensive plans to the governing bodies of municipalities for adoption by ordinance and allows the governing body of a municipality to amend the ordinance.
- Shifts the authority over comprehensive plans from municipal planning commissions to municipalities' governing bodies.
- Requires that, beginning January 1, 2003, any program, regulation or land use action must be consistent with the comprehensive plan.
- Requires that any existing rules that are inconsistent with the plan be modified.
- Provides that grants to municipalities and counties go through the state Community Development Council, the body that awards Community Development Block Grant funding.

The types of land use regulations and actions that must be consistent with the plan include annexations, subdivision regulations, zoning regulations, historic districts, economic development, impact fees, capital improvement plans, development agreements, neighborhood plans and sector plans.

### Significant Issues

A 1997 survey of local governments by DFA's Local Government Division found that 57 municipalities, or three-quarters of those responding, plus 22 counties, have some type of comprehensive plan. However, DFA notes that because the state lacks a common legal framework for land use and because most plans are not enforceable, land use planning is not effective. The bill creates a legal framework that every local government with a comprehensive plan would be required to use. The bill is designed to improve the consistency of local land use decisions and to better incorporate the long-range goals of a community into decision making on land use.

### **PERFORMANCE IMPLICATIONS**

Any grants made by the Local Government Division pursuant to this bill should contain performance requirements and performance measures to ensure accountability of public funds and results that relate to statewide goals.

### **FISCAL IMPLICATIONS**

The appropriation of \$3 million contained in this bill is a non-recurring expense to the general fund. The bill allows expenditure in fiscal years 2002 through 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

### **ADMINISTRATIVE IMPLICATIONS**

The Local Government Division would administer the bill's grant program to municipalities and counties. DFA did not address the question of administrative implications. It is unclear whether the

## House Bill 464 -- Page 3

Local Government Division could integrate the new work required by this bill without additional FTE or other resources.

### TECHNICAL ISSUES

The Attorney General's office points out that the amendments the bill makes to Section 3-19-11 (A) and (B) are unclear. The AG notes:

The amendments to this section . . . seem to require the planning commission and the governing body to explain and justify their decisions concerning the disapproval of a proposal for change to the comprehensive plan. The governing body retains authority to overrule the planning commission by a two-thirds vote. The current language of the statute is restricted to approvals of the planning commission by a failure to act within 65 days of the submission and express denials requiring an explanation for the express denial. The changes to this section seem to add a requirement of justification for *express approvals* of proposals for changes to the comprehensive plan.

### OTHER SUBSTANTIVE ISSUES

The New Mexico Municipal League believes that an ordinance should not be the adoption mechanism for comprehensive plans without qualifying the provisions concerning penalties. It notes that a violation of a municipal ordinance is a criminal offense and it does not believe that municipal officials should be subject to criminal penalties for inconsistent land use decisions.

The Municipal League also believes that the types of planning and land use decisions that must be consistent with comprehensive plans are too detailed. The Municipal League notes that the bill may lead to more generalized plans in order to avoid having planning decisions challenged as "inconsistent."

DFA's believes that comprehensive planning is a necessary tool of local governments to prepare for future challenges facing their communities. Planning, DFA notes, can help to ensure a community's physical, cultural and economic health and can help ensure that a community will survive rapid growth as well as decline. Many communities in the state do not have planning expertise and need technical assistance, legal assistance and regional planning assistance.

### ALTERNATIVES

In the absence of a comprehensive plan, the Local Government Division notes that according to New Mexico court rulings, a community can use a zoning ordinance if the ordinance is comprehensive in nature. Two-thirds of the communities responding to the Local Government Division survey in 1997 had some type of zoning in place. The Local Government Division believes, however, that zoning decisions should follow from a comprehensive plan.

Several respondents to the LGD survey on planning asked that the state's planning office be revived.

### AMENDMENTS

The Attorney General's office recommends clarifying the intent of changes to Section 3-19-11 (A) and (B) NMSA 1978.

**House Bill 464 -- Page 4**

The Municipal League recommends clarifying the types of penalties a municipal officer would be subject to for violations of a comprehensive plan ordinance.

LP/ar