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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/2007
 LAST UPDATED 2/13/2007 HB 269/a HJC

SPONSOR Gonzales

SHORT TITLE Sustainable Development Testing Site Act SB _____

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 Energy, Mineral and Natural Resources Department (EMNRD)
 Department of Environment (ED)

SUMMARY

Synopsis of HJC Amendment

The amendment by the House Judiciary Committee adds a new subsection to Section 4 (Application for Testing Site Permit – Public Hearing – Decision) to read:

For each testing site permit issued, the Board of County Commissioners shall designate a non-elected member of the planning commission or a member of the planning commission's staff to monitor the activities conducted pursuant to the permit, share information with appropriate state agencies and represent the county in interpreting the terms and conditions of the permit. The designee or a successor shall serve during the life of the permit and any renewal thereof.

Synopsis of Original Bill

House Bill 269 enacts the Sustainable Development Testing Site Act. The act allows county planning commissions, after review by the Department of Environment and the Office of the State Engineer, to permit specific rural areas as “sustainable development testing sites” to which (as specified in the testing site permit) certain county codes, ordinances, rules or permits do not apply. A sustainable development testing site is an area that is:

- two acres or less in size;
- situated wholly outside the planning and platting jurisdiction of a municipality; and
- subject to a testing site permit and existing federal laws and regulations

A testing site permit will be issued only after evaluation of the permit application by the Department of Environment and the Office of the State Engineer and a public hearing. Following the hearing the planning commission will make its decision in writing. They may issue the permit if:

- the testing site or research to be conducted will not damage land, water or air adjacent to the site or will not permanently damage the area of the site;
- no existing county codes, ordinances, rules or permits, other than those identified in the permit, will be violated by the proposed research at the site;
- the applicant has complied with rules adopted pursuant of the Sustainable Testing Site Act;
- the proposed research at the site is beneficial to sustainable development;
- the site and the proposed research are otherwise beneficial to the county and to the state; and
- the applicant has provided a cash bond, an irrevocable letter of credit or any other surety, including insurance, satisfactory to the planning commission, in the amount of \$100,000, to secure payment for damage caused by the sustainable development testing site

The testing site permit shall include:

- the specific sustainable development research that may be conducted at the testing site;
- the maximum number of structures that may be constructed;
- the maximum number of individuals that may inhabit the site;
- the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions from which the permittee’s sustainable development research is exempt; and
- other restrictions as required by rules adopted pursuant to the act or as determined by the planning commission.

The permit may be issued for a term of up to five years, subject to renewal for another five years, with no renewal after the second five-year period. Land within a sustainable development testing site shall not be sold in whole or in part unless the subsequent owner obtains a testing site permit; or the owner or subsequent owner enters into an agreement with the planning commission to bring the area within the site into compliance with all county codes, ordinances, rules and permits that would be applicable to the site in the absence of a testing site permit.

A county or a planning commission:

- may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category; and

- may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

The bill also states that the permittee shall annually, no later than the anniversary date of the testing site permit, submit a report to the planning commission, the department of environment, the state engineer, the energy, minerals and natural resources department and the construction industries division of the regulation and licensing department describing the sustainable development research and summarizing the results.

FISCAL IMPLICATIONS

The New Mexico Department of Environment (ED) states that HB 269, which is an unfunded mandate, provides no source of revenue to NMED programs for administrative costs of review. The bill would require NMED program staff to review sustainable development permit applications submitted to counties. EPA funding for delegated federal programs to NMED could be jeopardized if sustainable development projects violate federal requirements.

SIGNIFICANT ISSUES

According to the Energy, Mineral and Natural Resources Department (EMNRD) House Bill 269 could provide valuable information and a mechanism to evaluate and potentially implement new sustainable development practices that are currently not allowed under existing laws, while providing protection against negative environmental impacts.

The ED notes the following significant issues:

HB 269 encourages the development and testing of unconventional technologies with the goal of improving conservation and recycling of natural resources. This bill could have the effect of transferring some of NMED's statutory mandates and authority for protecting public health and the environment to county planning commissions and require counties to make a determination that proposed projects would not violate federal laws or regulations. The bill does not exempt sustainable development projects from federal laws and regulations for which NMED has primacy over (eg. drinking water).

Section 3. B. (1) of HB 269 requires that a copy of the application for a "sustainable development testing site permit" be forwarded to OSE and NMED and Section 3. C. requires that OSE and NMED evaluate the application prior to the hearing and comment to the county planning commission. Given that the extent of the evaluation is not entirely defined, it is not clear if NMED can comply with the requirement to provide comments to the planning commission prior to the hearing. If the Department were to have problems with the proposed testing site after the review, there is no clear authority allowing the department to disapprove of the proposal if it conflicts with certain environmental laws or purposes. There is a hearing for comments prior to granting approval by the respective county but no process for permit revocation or denial by the department if such a proposal were to conflict or be in violations with other state laws, including environmental laws.

The addition of a provision that allows county planning commissions to revoke "sustainable development testing site permits" based upon non-compliance with NMED issued permits would strengthen protection of the environment at these experimental sites.

Section 3(7) & Section 8 requires promulgation of rules and regulations with very little guidance so as to be construed as overly board when such authority attempts to adopt such rules.

Additional guidance and more specificity on the content of the regulations for such test sites would make the HB269 more palatable.

PERFORMANCE IMPLICATIONS

The EMNRD notes that under the Executive Order 2006-01 for “Energy Efficient Green Building Standards for State Buildings”, the EMNRD is charged with various responsibilities to implement green building practices for state buildings. The findings that result from the research enabled by the “Sustainable Development Testing Site Act” could lead to advancements in green building practices, including significant future reductions in fossil-fuel related energy consumption, that support both the above executive order and the renewable energy and energy conservation goals of EMNRD’s strategic plan.

The ED believes that HB 269 could allow multiple liquid-waste systems to be installed under one permit issued by county planning commissions, with no further notice to NMED. Consequently, many new liquid-waste disposal systems could be installed without being inspected by NMED and this could negatively affect the Liquid Waste performance measure and negatively impact the environment. The bill authorizes county planning commissions to determine whether projects will comply with federal laws and regulations for which NMED has primacy. If state primacy requirements are not met, performance measures for those programs could be negatively impacted and the primacy and funding granted by EPA could be jeopardized.

ADMINISTRATIVE IMPLICATIONS

If implemented, the Office of the State Engineer (OSE) will be required to review submittals for the county. The OSE expects that there will be a minimal amount of applications and therefore no significant administrative impacts can be anticipated at this time.

The EMNRD states that there would be a negligible administrative impact on EMNRD. EMNRD’s review of annual reports anticipated as a result of this bill’s enactment could be accomplished with existing staff resources. Permittees of Sustainable Development Testing Sites should keep EMNRD informed of clean energy developments; the annual report should be the vehicle for this to happen, at a minimum.

TECHNICAL ISSUES

The ED notes that Section 3. A.(8) allows for experimental technologies of wastewater systems on an experimental basis that does not appear to be consistent with the Department’s approval of experimental waste water technologies set forth in NMSA 1978, Section 9-7A-15E. Specifically, HB 269 conflicts with NMSA 1978 Section 9-7A-15.E in that all wastewater treatment and disposal technologies are required to be reviewed by the Wastewater Technical Advisory Committee. Experimental technologies that are proven under this program should be reviewed by the WTAC and placed on the NMED list of approved technologies for use in New Mexico prior to use of such experimental system. The bill may also conflict with the Liquid Waste regulations on lot size which could negatively impact the environment department. County planning commissions may not have the technical expertise to review sustainable development test site proposals for environmental or environmental health issues. The bill also requires that counties would have to make a determination that proposed projects will not violate federal laws and regulations relating to hazardous waste, drinking water and air quality. Neither the bill nor

the permit process establishes monitoring and reporting requirements to ensure that water and air are protected.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The ENMRD notes the following consequence:

Without a mechanism for research that pushes the limits of our existing codes and regulations, innovative solutions that could dramatically improve and increase sustainable development in New Mexico is curtailed or subject to research that is done in other states. HB269 may help New Mexico make all future development sustainable and take advantage of the unique climate and natural environment.

BS/nt