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FISCAL IMPACT REPORT

SPONSOR Gutierrez **ORIGINAL DATE** 1-30-07
LAST UPDATED 3-11-07 **HB** 445/aHAGC/aHENRC
SHORT TITLE Conservancy District Immunity Exclusion **SB** _____
ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HENRC Amendment

EMNRD notes that House Energy and Natural Resources Committee amendment to House Bill 445 amends Section 41-4-6 NMSA 1978 to add a new subsection, 41-4-6(C), that would exclude irrigation and conservancy districts from the waiver of liability under 41-4-6(A), to the extent such districts authorize any part of their property to be used as part of trails within a state park, the state trail system or a trail established and managed by a local public body. The amendment placed on the bill also requires, that in order for the district to receive this immunity, the district and the trail managing entity must enter into a written agreement, that the trail managing entity must agree to assume the operation and maintenance of that portion of the district's property used for the trail, and that the trail managing entity shall be subject to liability as provided in the Tort Claims Act.

EMNRD indicates that the amendment to Section 41-4-6 makes clear that if a district allows a portion of its property to be used for a trail, then it retains its immunity, but the entity operating or maintaining the trail (for example, the state or a local public body) could continue to be liable for any damages that arise from use of the trail, pursuant to Section 41-4-6(A). A management agreement stating that the state agency or local public body is assuming the operation and maintenance obligations is required.

EMNRD adds that HB 445a retains liability for such trails with the entity actually managing the

trail for recreation. The State Trails System Act actually already has a provision that relieves from liability (except for gross negligence) any “person or corporation” that grants a trails right-of-way to EMNRD (16-3-9 NMSA 1978), and HB 445a would grant more protection to irrigation and conservancy districts.

EMNRD concludes that HB 445a will augment EMNRD’s State Parks Division’s (SPD) performance in providing recreation to the public by facilitating development and utilization of trails in state parks and as part of the statewide trails system. Increasing the number and length of trails will have a positive impact on visitation and revenue, two SPD performance measures.

The amendment adds no appropriation to the legislation.

Synopsis of HAGC Amendment

House Agriculture and Water Resources Committee amendment to House Bill 445 reflects the following language:

1. On page 2, line 13, strike “liability” and insert in lieu thereof “immunity”.

The amendment adds no appropriation to the legislation.

Synopsis of Original Bill

House Bill 445 seeks to amend Section 41-4-6 NMSA 1978 to add a new subsection, 41-4-6(C), that would exclude irrigation and conservancy districts from the waiver of liability under 41-4-6(A), to the extent such districts authorize any part of their property to be used as part of trails within a state park, the state trail system or a trail established and managed by a local public body.

SIGNIFICANT ISSUES

EMNRD notes that trails are the number one recreation priority that New Mexico citizens identified in the 2004 State Comprehensive Outdoor Recreation Plan. Trails are popular in both urban and rural locations across the state; improve community quality-of-life; stimulate economic development and create jobs; tie into efforts to improve public health and fitness; and enhance conservation and recreation programs. Networks of canals, levees, ditches, paths and roads within irrigation and conservancy districts in New Mexico currently comprise large, informal trail systems in many portions of the state, particularly along the Rio Grande Valley. These networks have been used for generations, but are mostly not open to public access for recreation by irrigation and conservancy districts.

EMNRD states that concerns raised by irrigation and conservancy districts about potential liability associated with public access for recreation prevents districts from permitting portions of their ditch networks to be utilized in trail systems that would have extensive public benefits. Several new, popular projects, including the “Ditches to Trails” project in Bernalillo County, the “Rio Grande Trail” (an effort to stitch together a multi-use trail paralleling long stretches of the river), and efforts to create more public trails along ditch systems in Dona Ana County are currently stymied by this liability situation. Moreover, currently, irrigation and conservancy districts retain immunity for damages arising out of the operation or maintenance of works used

to divert or store water. These works include canals, ditches and drains along which trails can or could exist. If any irrigation or conservancy district were to allow a trail to be established along one of its canals, ditches or drains, then concern has been raised by districts that the district may be deemed to have lost their immunity if a district's permission to allow trail use on its property means is construed to mean it is operating a public park.

EMNRD indicates that the amendment to Section 41-4-6 makes clear that if a district allows a portion of its property to be used for a trail, then it retains its immunity, but the entity operating or maintaining the trail (for example, the state or a local public body) would continue to be liable for any damages that arise from use of the trail, pursuant to Section 41-4-6(A). HB445 therefore enhances the ability of the state and local governments to provide more trails for the citizens by providing a mechanism to irrigation and conservancy districts to allow portions of their property to be used for public trails. Enactment of HB445 would remove a major impediment to these key players participating in trails projects and would be a catalyst for getting trail networks that already exist along the Rio Grande and in other places opened to public use. HB445 would retain liability for such trails with the entity actually managing the trail for recreation. The State Trails System Act actually already has a provision that relieves from liability (except for gross negligence) any "person or corporation" that grants a trails right-of-way to Energy, Minerals and Natural Resources Department (EMNRD). (16-3-9 NMSA 1978) HB445 would grant similar protection to irrigation and conservancy districts.

PERFORMANCE IMPLICATIONS

EMNRD suggests that HB445 will augment EMNRD's State Parks Program performance in providing recreation to the public by facilitating development and utilization of a trails in state parks and as part of the statewide trails system. Increasing the number and length of trails will have a positive impact on visitation and revenue, two State Parks Division performance measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB486

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD observes that the State Trails System Act designates EMRND as the lead agency to administer trails at the state government level. Progress statewide on some major trails projects would continue to struggle because of the impediments posed by the existing liability situation for irrigation and conservancy districts.

BFW/mt