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FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/07

SPONSOR Martinez LAST UPDATED _____ HB 824

SHORT TITLE Planning Consistency Act SB _____

ANALYST Propst

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

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 824 requires passage of a local comprehensive plan by ordinance; defines the various components of a comprehensive plan; and requires that various means of regulating land use such as zoning conform to the comprehensive plan by 2011.

SIGNIFICANT ISSUES

DFA reports that A community or county comprehensive plan:

- assesses issues and opportunities facing it now and in the future and decides how to prepare for them, rather than reacting and responding to each crisis as it appears;
- considers the 'big picture' and weighs many competing interests such as affordable housing, economic development, and public facilities in a proactive manner; documents citizen concerns and desires for the future; and
- provides a rational basis for adopting land use regulations such as zoning, subdivision regulations, and impact fees.

In recognition of its value to help guide development, decide where to invest infrastructure and to address issues that make a community or county work, all New Mexico counties and 90 municipalities have adopted by resolution comprehensive plans (six local governments will adopt plans by June 2007). Most plans have been adopted in the past seven years.

Zoning and other land use regulations are often disconnected from the comprehensive plan:

- regulations were often drafted before a plan was prepared and then never amended to "fit" or be consistent with the plan;
- city & county officials fail to "dust off" their comprehensive plan when they amend the land use regulations or when they approve development applications;
- the city or county hasn't prepared a comprehensive plan or it is out of date;
- the plan is so vague that it's impossible to tell what is consistent and what is not; and
- New Mexico still has the old "in accordance with a comprehensive plan" language in our planning statute, which the N.M. Court of Appeals has construed as making the plan an advisory document (*Dugger v. City of Santa Fe*, 114 NM 47 Ct.App.1992). However, if a community adopts their plan by ordinance, the court has found it has the force of law (*Atlixco Coalition v. County of Bernalillo*, 127 N.M. 549 Ct.App.1999).

Source: Consistency Fact Sheet, 1000 Friends of New Mexico, 2003

HB 824 requires the adoption, after notice and public hearing, of a comprehensive plan by ordinance, thereby making the plan a legal document. It spells out what should be covered in each plan: socio-economic information, housing, transportation, utilities and community facilities, natural resource protection, economic development, intergovernmental relations, land use, hazards mitigation, water and drought, and implementation steps. And it requires that, by 2011, the following actions must conform to the comprehensive plan: official mapping, subdivision regulation, new or amended zoning ordinances, new or amended economic development ordinances, new or amended tax increment financing districts, new or amended public improvement districts; new or amended business improvement districts; new or amended metropolitan redevelopment districts; new or amended impact fees, and transfer of development rights programs.

OTHER SUBSTANTIVE ISSUES

DFA further reports that at least twelve states have amended their planning statutes to better link the land use regulations with the comprehensive plan:

- Arizona - "all zoning and rezoning ordinances or regulations adopted ... shall be consistent with and conform to the adopted general plan" (Az.Rev.Stat.Ann. §9-462.01(F))
- California - cities and counties are required to adopt general plans and their zoning is required to be consistent with the general plan. Cal.Gov't.Code Ann. § 65350. A zoning ordinance is consistent only if it meets the following two conditions: (1) the city or county has officially adopted a general plan and (2) the various land uses authorized by the ordinance are compatible with the objectives, policies, general land use, and programs specified in the plan. (§ 65860(a))

- Delaware - the land use maps in the county comprehensive plan ..."shall have the force of law, and no development ... shall be permitted except in conformity with the land use map or map series and with county land development regulations enacted to implement the other elements of the adopted comprehensive plan." Del.Code Ann. § 2651
- Florida - Florida statutes require that "all land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent." Fla.Stat.Ann. §163.3194
- Kentucky - The Kentucky consistency requirement specifically applies to zoning map amendments and requires the planning commission or city or county legislative body to make findings to support these conclusions. Ky.Rev.Stat.Ann. §100.213
- Maine - A zoning ordinance "must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." Me.Rev.Stat.Ann. Tit.30-A, § 4352.2
- Nebraska - The county's zoning regulations "shall be consistent with the comprehensive development plan and designed for the purpose of promoting the health, safety ...and welfare of the ...inhabitants of Nebraska, including ...specific [zoning] purposes." Neb. Rev. Stat. §23-114
- New Jersey - The zoning ordinance or any amendments to it "shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements..." N.J.Stat.Ann. § 40:55D-62
- Rhode Island - Rhode Island requires all municipalities to adopt comprehensive plans with a number of required elements. The zoning enabling legislation defines a comprehensive plan as a document "to which any zoning adopted pursuant to this chapter [R.I. Gen. Laws, tit. 45, Ch. 25] shall be in compliance." R.I. Gen. Laws § 45-24-31. The zoning ordinance is required to have a statement that the zoning ordinance is consistent with the comprehensive plan. R.I. Gen. Laws § 45-24-34.
- Oregon - The state's consistency requirements require that the adopted comprehensive plan "be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans." Or.Rev.Stat. § 197.010. Such plans "shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through them."
- Washington - Development regulations must be "consistent with and implement the comprehensive plan". Wash.Rev.Code Ann. § 36.70A.040
- Wisconsin - Wisconsin revised its planning statutes in 1999 and added a consistency requirement, giving communities 10 years to become consistent. The new statute adds a series of mandatory elements and imposes a consistency requirement, not only for zoning but also for a wide variety of related governmental decisions. Wis.Stat. § 66.0295 (1999 Wis. Laws 9). H 824 is partially based on this statute.

Source: Consistency Fact Sheet, 1000 Friends of New Mexico, 2003

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