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FISCAL IMPACT REPORT

SPONSOR Smith **ORIGINAL DATE** 1/31/2007
LAST UPDATED 2/20/2007 **HB** _____
SHORT TITLE Night Sky Protection Act Enforcement **SB** 391/a SJC
ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Construction Industries Division of the Regulation and Licensing Department (CID)

Energy, Minerals and Natural Resources Department (EMNRD)

Municipal League (ML)

SUMMARY

Synopsis of SJC Amendment

The amendment proposed by the Senate Judiciary Committee removes language that requires enforcement of the Night Sky Protection Act through the *construction permitting and inspection processes* of the Construction Industries Division of the Regulation and Licensing Department and each state political subdivision. The bill as amended states that CID and each political subdivision shall fully enforce the provisions of the Night Sky Protection Act.

CID notes the following:

This change is believed to be an attempt to allow political subdivisions the ability to enforce the non-construction related requirements of the Night Sky Protection Act using their law enforcement resources. In other words, the amendment would remove the requirement that the act could only be enforced through a political subdivision's building department.

The amendment does not give the State the same flexibility because the bill requires the Construction Industries Division to enforce the Act and, CID has no law enforcement capability. The only enforcement capability it has is through its permitting and inspections processes.

Synopsis of Original Bill

Senate Bill 391 would require full enforcement of the Night Sky Protection Act (NMSA 1978, Sections 74-12-1 through 11) by the Construction Industries Division of the Regulation and Licensing Department and each state political subdivision through the construction permitting and inspection processes.

FISCAL IMPLICATIONS

CID states that they are not currently staffed to conduct an enforcement program for the Night Sky Protection Act on existing buildings state wide. The cost of such a program could easily exceed the cost of CID's investigations and compliance bureau, which investigates complaints against licensed and unlicensed contractors.

Fiscal Implications to the State Parks Division (SPD) of ENMRD are minimal.

SIGNIFICANT ISSUES

CID lists the following significant issues:

- The Construction Industries Licensing Act does not give CID jurisdiction over existing buildings except to the extent they are undergoing new construction (eg. remodels).
- The Construction Industries Licensing Act does not give CID jurisdiction over individuals who are not licensed or certified by CID unless they are engaged in unlicensed contracting. CID does not currently have jurisdiction to imposed disciplinary action on individuals who violate the Night Sky Protection Act.
- Under the Night Sky Protection Act, CID is required to enforce the Act's requirements on new construction of public buildings only. This is done through by permitting and through the inspection of such construction.

According to EMNRD, New Mexico's growing population and expanding urban areas bring outdoor lighting that erodes the dark sky resources. Most growth can be accommodated with minimal impact on the night skies with proper lighting.

PERFORMANCE IMPLICATIONS

SPD and EMNRD would be required to adhere to the provisions of the Act when it comes to new construction and new outdoor lighting. SPD has been in compliance for several years and would continue to implement night sky protection measures.

SPD has programs that are based on night skies to attract visitors. SB 391 could have a positive impact on all SPD performance measures.

ADMINISTRATIVE IMPLICATIONS

CID is not currently staffed to conduct and enforcement program for the Night Sky Protection Act on existing buildings statewide.

TECHNICAL ISSUES

CID states that the bill does not specify what “enforcement” means or CID’s intended role with enforcement.

OTHER SUBSTANTIVE ISSUES

According to CID, they are already enforcing the Night Sky Protection Act. CID has incorporated the Act’s requirements into its electrical code, NMAC Title 14 Chapter 10 Part 4 (See NMAC 14.10.4.10. H. (4) and requires all new construction on public buildings to comply with the Act’s requirements. Failure to comply subjects the licensee/contractor to disciplinary action including fines and/or suspension or revocation of license under the Construction Industries Act.

ENMRD notes that passage of this bill will enhance astronomy-related scientific research and enhance astronomy-related tourism generated by protected dark skies.

The Municipal League believes that municipalities should retain their local autonomy when adopting an ordinance.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ENMRD states that SPD’s capital and program investments in the parks, such as the Reach for the Stars program could be at risk if the Night Sky Protection Act is not implemented and enforced.

BS/nt