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FISCAL IMPACT REPORT

SPONSOR HHGAC **ORIGINAL DATE** 02/19/09 **LAST UPDATED** 03/25/09 **HB** CS/37/aHBIC/aHFI#1/aSJC/aSFI#1/aSCC/aHCC
SHORT TITLE Subdivision Act Tribal Notification **SB** _____
ANALYST Burns

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 Indian Affairs Department (IAD)
 Stat Land Office (SLO)

SUMMARY

Synopsis of Conference Committee Amendments

The Senate and House Conference Committee amendment to House Health and Government Affairs Committee Substitute for House Bill 37 makes changes as follows:

1. The following House Floor Amendment 1 items be APPROVED:
 Nos. 1 and 3.
2. The following senate judiciary committee amendments be APPROVED:
 Nos. 2, 3 and 4.
3. The following house business and industry committee amendments be DISAPPROVED:
 Nos. 1 and 2.
4. The following House Floor Amendment 1 item be DISAPPROVED:
 No. 2.

5. The following senate judiciary committee amendment be DISAPPROVED:

No. 1.

6. Senate Floor Amendment 1 be DISAPPROVED, and that the bill be amended further as follows:

On page 10, strike lines 14 through 17 in their entirety and insert in lieu thereof: "(5) each Indian nation, tribe or pueblo with a historical, cultural or resource tie with the county that submits at least annually, via certified mail, return receipt requested, a written request for notification to the board of county commissioners, which request indicates the Indian nation, tribe or pueblo's historical, cultural or resource tie with the county, its contact information and a listing of the types of documentation required to be submitted by a subdivider to the county that may be necessary for its review to determine:".

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 to House Health and Government Affairs Committee Substitute for House Bill 37 makes changes as follows:

On page 10, line 14, before “each”, insert “contingent upon the execution of a memorandum of understanding or similar agreement between the county and an Indian, tribe or pueblo regarding the submission of opinions on preliminary plats,”.

The amendment would make tribal entities enter into an agreement with a particular county before being able to submit an opinion on a preliminary plat.

Synopsis of SJC Amendment

Senate Judiciary Committee Amendment to House Health and Government Affairs Committee Substitute for House Bill 37 makes changes as follows:

1. On page 10, line 14, after "pueblo", insert "with a historical, cultural or resource tie with the county".
2. On page 10, line 21, strike "whether" and insert in lieu thereof "how".
3. On page 12, line 13, strike "or the Indian nation, tribe or pueblo".
4. On page 12, line 16, after the period, insert "Where the Indian nation, tribe or pueblo has rendered an adverse opinion, the subdivider may submit additional information to the board of county commissioners. If a public agency disagrees with an adverse opinion rendered by an Indian nation, tribe or pueblo, that agency shall submit a response to the board of county commissioners.".

The amendment provides clarifying language which helps to detail the responsible of a tribe when submitting an opinion on a proposed subdivision.

Synopsis of HFI#1 Amendment

House Floor amendment #1 to House Health and Government Affairs Committee Substitute for House Bill 37 makes changes as follows:

1. Strike House Business and Industry Committee Amendments 1 and 2.
2. On page 10, line 15, after "provides", strike the line up to "to" and insert in lieu thereof "an annual written request via certified mail, return receipt requested,".
3. On page 15, line 7, after "mail", insert a comma and on lines 7 and 8, strike the quotation marks.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Health and Government Affairs Committee substitute for House Bill 37 makes changes as follows:

1. On page 10, line 15, strike “a” and insert in lieu thereof “an annual”.
2. On page 20, line 15, strike “standing”, and after “request”, insert “via certified mail “return receipt requested””.

The first amendment has each tribal entity submit a request annually for notification as opposed to a single request.

The second amendment will need to be corrected as there is no page 20 in HB37/HHGACS.

Synopsis of Original Bill

The House Health and Government Affairs Committee substitute for House Bill 37 would amend portions of Section 47-6 NMSA 1978, the New Mexico Subdivision Act, to provide for tribal notification in specified instances.

FISCAL IMPLICATIONS

There is no appropriation contained in HB 37/HHGACS and there appears to be no direct fiscal impact to the state. There could be fiscal implications to the entity creating the subdivision having to comply with any additional notification received from tribal entities. If a subdivision was unable to form due to adverse input given by a tribal entity the state could experience a loss in potential revenues from the formation of that subdivision.

SIGNIFICANT ISSUES

The proposed amendment to NMSA 1978 would require any tribe to provide a written standing request to each county from whom the tribe would like to receive notice of new subdivision development. Every county would then be required to request an opinion from such tribe by submitting to the tribe all preliminary plat documentation required under the existing act.

If an adverse opinion is provided by an Indian nation, tribe or pueblo, the sub-divider is given 30 days to submit additional information to the Indian nation, tribe or pueblo. The Indian nation, tribe or pueblo then has 30 days to submit additional information to change its opinion or to rebut the information provided by the sub-divider. The county commissioners shall then hold a public hearing and the sub-divider has the burden of showing that an adverse opinion is either legally or factually incorrect. Having to comply with this portion of the amendment could seriously slow down the development of new subdivisions.

ADMINISTRATIVE

Counties would incur additional administrative duties by having to inform tribal entities of the formation of new subdivisions. There would also be additional duties taken on by the county to review the input given by tribes.

OTHER SUBSTANTIVE ISSUES

According to NMED the tribal related amendments to the New Mexico Subdivision Act stem from concerns raised by Zuni Pueblo regarding the Tampico Springs subdivision development that will be located south of Gallup and northeast of Zuni Pueblo. Pueblo tribal leadership challenged the development in New Mexico District Court arguing that McKinley County violated procedures in approving the subdivision development, and that subdivision development will have an adverse impact on surface and groundwater quality, i.e. springs, and religious and cultural sites. In May of 2008, New Mexico District Court ruled in favor of the development by lifting a temporary stay. While the stay has been lifted, Zuni Pueblo's appeal to the district court on water quality concerns and road access is yet to be determined.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting these Amendments will eliminate an opportunity to provide notice and receive input from Indian nations, tribes and pueblos that may be affected by new subdivisions.

KJB/svb:mc:mt