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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/19/09  
**LAST UPDATED** 03/19/09    **HB** 520/aHENRC

**SPONSOR** Chasey

**SHORT TITLE** Consolidated Environmental Review Act    **SB** \_\_\_\_\_

**ANALYST** Aubel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Unknown	Unknown	Recurring	Fees*

\*No fund is created to receive the fees.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>“Lead Agencies”</b>		Indeterminate Substantial	Indeterminate Substantial	Indeterminate Substantial	Recurring	Fees
<b>Project Costs</b>		Indeterminate Substantial	Indeterminate Substantial	Indeterminate Substantial	Nonrecurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 New Mexico Environment Department (NMED)  
 New Mexico Department of Transportation (DOT)  
 Higher Education Department (HED)  
 Energy, Minerals and Natural Resources Department (EMNRD)  
 New Mexico Municipal League  
 Department of Game and Fish  
 Office of the State Engineer/Interstate Stream Commission (ISC)  
 General Services Department (GSD)

#### No Response From

New Mexico Finance Authority (NMFA)

## SUMMARY

### Synopsis of HENRC Amendment

The House Energy and Natural Resources Amendment to House Bill 520 deletes “state environmental laws and replaces it with “the Air Quality Control Act”.

The amendment removes environmental assessment from the list that reads that a public agency shall not approve a project, except as provided by the Consolidated Environmental Review Act without an environmental assessment, an environmental impact statement or a finding of no significant impact. An environmental assessment is required earlier in the process provided for by this bill.

The amendment also language exempting from the provisions of the Consolidated Environmental Review Act the following: road or facilities maintenance or environmental enhancement projects that receive a waiver from the NMED or EMNRD.

### Synopsis of Original Bill

House Bill 520 would enact the Consolidated Environmental Review Act. EMNRD provides the following summary of the bill:

The purpose of the bill is to establish a statewide environmental project review measure for projects funded with state funds or projects requiring a permit from a state public agency. The bill is intended to protect the environment and to require that governmental agencies consider factors and impacts of proposed projects and alternatives to proposed actions that affect the environment and then make decisions based on those considerations. Public interest and participation is promoted and encouraged in carrying out the purpose of the bill.

The bill provides the criteria for identifying the public agency with primary responsibility for issuing recommendations or permits or license approvals for a project, or for a proposed project as the lead agency for conducting environmental reviews, which are titled Environmental Assessments (EA) or Environmental Impact Statements (EIS). The bill also specifies the circumstances to determine which type of review is required, as well as the elements required to be included in the EIS.

The following activities are exempted from the Environmental Review Act:

- Enforcement activities;
- Emergency activities to protect public health, safety or the environment;
- Purely ministerial actions;
- Activities permitted by the Office of the State Engineer and the Interstate Stream Commission, including water transfers or appropriations, except where they are also permitted by another public agency; and
- Actions subject to the federal national Environmental Policy Act (NEPA) of 1969 and its implementing regulations, except that the State public agencies shall review the federal agency’s or State agencies’ final action under NEPA and may require additional information and evaluation on a project or proposed project before approving any permits, licenses or authorizations required under New Mexico law.

Each public agency is required to select the best available alternative to a proposed project.

The bill states the Environmental Improvement Board, in consultation with the Environment Department, the Energy, Minerals and Natural Resources Department (EMNRD), the Department of Health, the Department of Transportation, the Historic Preservation Division of the Cultural Affairs Department and the Governor's Office, shall adopt implementation rules by July 1, 2010. The bill also established criteria for the rules which include a fee structure, a procedure for granting variances and time limits.

The effective date is July 1, 2010.

### **FISCAL IMPLICATIONS**

Several responding agencies noted that the bill implies significant fiscal impact to operating budgets, including NMED, EMNRD, Game and Fish, ISC and GSD. EMNRD describes these costs as follows, which would apply to any agency qualifying as a "lead agency" under the bill:

HB 520 increases responsibilities and work load relating to many of EMNRD's primary functions and duties. This bill will significantly increase the financial resources required for EMNRD to complete projects. In addition to funds, the agency would need to request additional FTE's (planners, environmental specialists, attorneys, administrative staff and managers) and operating funds to handle the additional rulemaking, reviews, contracts, interagency coordination, permits, public hearings and meetings, correspondence and appeals in HB 520. The Youth Conservation Corps will also need to request additional FTE to implement the requirements in the bill. With the exception of the initial rulemaking, the costs would be significant, substantial and recurring.

The Municipal League points out another potential fiscal impact of HB 520, as follows:

This bill could result in significant delays and additional expense in approving and permitting both public and private projects. Preparation of environmental assessments or impact statements will be time consuming and expensive.

ISC provides more detail on this issue of increased project cost for incorporating the environmental assessment process. Recent experience of the agency with the federal National Environmental Policy Act of 1969 (NEPA) suggests a potential cost increase of 30 percent of the total costs. The agency notes that even the simplest environmental assessment conducted pursuant to NEPA takes more than three months to complete and can cost as much as \$50 thousand. The agency states that more complicated NEPA analyses can require years; for example, the Upper Rio Grande Operations Review and Environmental Impact Statement took eight years to complete at a cost of over \$7 million.

HB 520 specifies that the EIB group develop a fee structure for each public agency to recover from applicants no more than the actual costs for implementing the act and appropriates the fees to the respective agencies to carry out the bill's provisions. However, no fund is created in the State Treasury to receive the fees. This bill provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funding sources, as earmarking reduces the ability of the legislature to establish spending priorities.

It is uncertain whether the fee schedule could be implemented given the current structure of the bill without a fund, creating a possible unfunded mandate for the lead agencies. It is also possible that it would be impractical to set fees high enough to cover the costs of the program, leaving agencies with insufficient funding that would have to be made up from other sources. Given the comments regarding the cost of the environmental reviews and operating costs that would set fees, it would appear that the projects would increase in cost by more than the 30 percent indicated by EMNRD.

## **SIGNIFICANT ISSUES**

Responding agencies agree that the intent of the bill is to develop and maintain a high-quality environment now and in the future by taking all action possible to protect, rehabilitate and enhance the environmental quality of New Mexico.

However, the primary policy issue appears to be the cost implications on implementing a comprehensive review process to protect the environment, as envisioned under HB 520. Responding agencies provided similar assessments as presented by EMNRD, as follows:

The cost of some environmental reviews could exceed the cost of the actual project. It is typical that general fund appropriations must be expended and the projects completed in one to two years, and some individual projects may require approval and funding from two or three legislative sessions or multiple bond sales. It is currently a challenge for many public entities to complete projects within the timeframe identified in most current and prior year's appropriations. This bill will add significantly to the time it takes to complete a project.

This bill could potentially result in a loss of millions of dollars in federal project funding to New Mexico. If the legislature does not appropriate enough money to prepare the required documents, and federal funds do not cover those costs, the opportunity to access federal dollars will be lost. In addition, the time required to conduct the reviews will push many projects outside of the allotted timeframes of most federal grants. These impacts could be amplified at a time when the state is positioned to potentially receive a significant amount of funds, included in various draft federal stimulus packages.

## **ADMINISTRATIVE IMPLICATIONS**

The Municipal League maintains that the act requires the assistance of experts, but the act also restricts the people or firms that may prepare these documents. For example, the bill prohibits a firm from providing such services if it has done similar work within the previous seven years.

GSD points out that there is no lower limit or minimum project level that would trigger the requirements of this act. Since GSD manages maintenance, repair and other construction projects for other agencies throughout the state, it may be required to comply for relatively minor projects.

## TECHNICAL ISSUES

DOT notes that HB 520 the following technical issues:

The bill calls for in Section 1.G, consideration of long-term costs. Long-term costs would be extremely hard to predict.

The definition of “significant environmental effects” is unclear and would be problematic.

DOT also points out that HB 520 could generate confusion for applicants due to conflicts with current federal law, as follows:

The Act has no provisions in it for impact documentation of small projects. The National Environmental Protection Agency (EPA) presents Categorical Exclusions (CEs) as documents to address small projects with no impacts. The NMDOT under the Act would have to prepare Environmental Assessments (EA)s for proposed projects that NMDOT normally prepares minor documents under NEPA and Council of Environmental Quality (CEQ) guidance.

Section 6 C. (8) and (10). Cultural resource studies are called for only on proposed projects that are determined to require an EIS. Presumably, most projects would not rise to the level of an EIS. Resource surveys are not mentioned in the EA section and therefore, the NMDOT is concerned that an applicant could successfully argue that they would only need to conduct surveys on projects deemed to require an EIS. This could weaken NMDOT current protocol of requiring surveys on all undertakings that NMDOT considers to have a potential effect to cultural resources.

Thus, HB 520 includes several inconsistencies of coverage, when compared to its federal law corollaries: HB 520’s seeming (1) inclusion of projects with some, but inherently *de minimus* impact on the environment; and (2) exclusion of cultural resource studies from environmental reviews that do not rise to the level of an EIS.

These disparities in coverage could generate confusion on the part of applicants for government permits and government agencies alike in attempting to comply with both the New Mexico and federal legal requirements.

EMNRD provides additional detail regarding the technical issue on the fees:

The bill does not specify a fund to deposit the fees collected. Section 9 of the bill includes:

*F. a fee structure for each public agency to recover from applicants no more than the actual costs for implementing the Consolidated Environmental Review Act. Those fees shall be appropriated to the respective agencies to carry out the provisions of the Consolidated Environmental Review Act.*

The language indicates fees will be charged to recover the costs for implementing the Consolidated Environmental Review Act, but it does not specify a fund from which to collect and redistribute these fees. Separate funds will be needed for each program.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The various agencies will continue to enforce environmental protection measures established in existing rules and statutes.

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