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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/09
SPONSOR Roch LAST UPDATED _____ HB 853
SHORT TITLE State Park Road Repair Responsibility SB _____
ANALYST Moser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1,200.0	\$1,200.0			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)

New Mexico Energy Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 853 amends Section 67-3-14 NMSA 1978 to clarify that the New Mexico Department of Transportation (NMDOT) has the responsibility to maintain roads within New Mexico state parks as provided within Section 67-3-19 NMSA 1978.

FISCAL IMPLICATIONS

NMDOT indicates that \$1.2 million per year would be required to maintain these roads and parking lots. SPD maintains that House Bill 853 does not re-direct any NMDOT road maintenance funds to state park projects or mandate any change in NMDOT existing spending priorities, and will not have any direct fiscal implications for the State Parks Division (SPD).

SIGNIFICANT ISSUES

There are two sections of state law that apply to NMDOT and the construction and maintenance of roads that provide access to state parks and to roads within the boundaries of New Mexico state parks. These two sections of the statutes are as follows:

- o Section 67-3-19 NMSA 1978 (enacted in 1967)

Duty to repair and maintain state park roads, bridges, and parking areas.

“It is the duty of the state transportation commission to repair and maintain the public roads and highways that provide access to state park and recreation areas and to repair and maintain all roads, bridges and parking areas within the boundaries of the state park and recreation areas that will best serve the needs of the general public.”

- o Section 67-3-14 (B) NMSA 1978 (amended in 1989)

State highway commission; powers and duties; road funds.

“B. The state transportation commission may also make rules and regulations governing the method of construction, improvement and maintenance of state highways and bridges and compel compliance with the laws, rules and regulations relating to state highways and bridges. The commission shall have no duty to maintain or supervise the maintenance of roads that are not designated state highways or bridges.” (emphasis added).

The State Parks Division (SPD) of EMNRD and NMDOT both indicate that the two sections “irreconcilably conflict” and that the last sentence of Section 67-3-14, since it was enacted more recently, takes precedence over NMSA 1978 Section 67-3-19. NMDOT has taken the position that NMDOT does not have formal responsibility to repair and maintain roads and bridges within the boundaries of state parks that are not designated state highways or bridges. NMDOT indicates that there are 221 centerline miles (442 lane miles) of State Park roads which NMDOT has not been budgeted to maintain. NMDOT estimates the cost to maintain these State Park roads at \$1.2m/yr assuming existing levels of service. This includes grading and shaping existing gravel roads and resurfacing a given portion of paved roads each year. NMDOT reports that it has routinely expended on average \$282k/yr over the past eight years on State Park roads. NMDOT indicates that it has insufficient budget to maintain these roads given the needs on Interstate, US and NM highways.

SPD provides that in 2000, the Attorney General issued an opinion that: “...the Department’s obligation to repair and maintain state park roads, bridges, and parking areas pursuant to Section 67-3-19 should be construed as a specific exception to the general statement of the scope of the Department’s maintenance duties as set forth in Section 67-3-14(B). We further conclude that the 1989 amendment to Section 67-13-14(B) should not be interpreted as an implied repeal of Section 67-3-19.” SPD argues that the Attorney General concluded that NMDOT did have affirmative responsibility for state park roads. SPD indicates that House Bill 853 would essentially confirm the Attorney General’s interpretation and clarify the statutes accordingly.

SPD argues that “House Bill 853 does not alter or interfere with NMDOT’s decision-making prerogatives, its priority ranking system or its decisions on how to allocate road funds. NMDOT has established priorities for expenditure of its road funds. In general, the priorities (from highest priority to lowest priority) are Interstates, other U.S. highways, state highways, then other secondary roads under NMDOT’s jurisdiction. State park roads generally are ranked by NMDOT in the lowest priority categories. Some roads within state parks and that access state parks have great economic significance that may be overlooked. The roads at Elephant Butte Lake State Park, for example, are critical to sustaining a state park operation that generates tens of millions of dollars annually for the economy not only for Sierra County, but also the entire state, because visitors and economic activity associated with the park occurs throughout New Mexico.”