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## FISCAL IMPACT REPORT

SPONSOR Woods/Roch ORIGINAL DATE \_\_\_\_\_  
LAST UPDATED 02/05/15 HB \_\_\_\_\_

SHORT TITLE Private Boat Dock Requirements SB 124

ANALYST Sanogo

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$100.0	\$150.0	\$150.0	\$400.0	Recurring	State Parks Division - EMNRD

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)

Energy, Minerals, and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

SB 124 would permit private, non-commercial boat docks on all lakes and reservoirs that are owned by the interstate stream commission (ISC) and jointly managed by the ISC and the state parks division (SPD) of the Energy, Minerals and Natural Resources Department (EMNRD). SB 124 requires that the applicant for a permit own property contiguous to the proposed location of the boat dock, which must comply with rules promulgated by the SPD regarding the construction and maintenance of private, noncommercial boat docks.

SB 124 provides that the annual fee charged for a boat dock permit shall not exceed \$500, and provides that an owner of a boat dock shall not be required to alter or remove the boat dock if construction of the boat dock was completed on or before January 1, 2015.

### FISCAL IMPLICATIONS

SB 124 would impose a recurring negative fiscal impact of \$150 thousand to the SPD-EMNRD operating budget.

A minimum negative fiscal impact of \$250 is expected for each private boat dock license that is issued. This reflects the difference between the current minimum license fee (\$750) and the proposed maximum fee (\$500). SB 124 would qualify a maximum of 200 properties for licenses, yielding a recurring negative fiscal impact of \$50 thousand. In order to inspect these properties and issue dock licenses, SPD will need an additional FTE and “procure an additional boat and vehicle,” at the cost of \$100 thousand per fiscal year.

## **SIGNIFICANT ISSUES**

The Office of the State Engineer (OSE) highlighted notable constitutional conflicts that SB 124 would create.

According to EMNRD, the language of SB 124 makes the bill applicable to only one specific location in the state, the Ute Lake Reservoir (ULR) of Logan, NM. This location is the only reservoir or lake “jointly managed by the commission and the division.” OSE reports that in September 2014, a group of ULR license holders filed a breach of contract lawsuit against the commission and the division, over revoked licenses in 2013. The case is currently pending in the First Judicial Court of New Mexico<sup>1</sup>. OSE writes that,

The New Mexico Supreme Court has stated, the goal of Article IV, Section 34 is to prevent the legislature from interfering with ongoing cases “which have not been concluded, finished, or determined by a final judgment.”

The agency also reports that since SB 124 would only pertain to ULR, the bill is possibly a “special law” made for individual cases, and for less than an entire class of persons or subjects, in contravention of Article IV, Section 24 of the New Mexico Constitution. OSE asserts that the legislation does not apply to the entire class of persons that it could, “i.e. all possible boat dock owners in New Mexico.”

SB 124 would also conflict with an existing private contract between licensed ULR boat dock owners and the commission, which provides that all private boat docks be removed in 2016.

AIS/aml

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<sup>1</sup> “Russell v. NM Interstate Stream Commission”, D-0101-CV-2014-0231