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FISCAL IMPACT REPORT

SPONSOR Martinez, R ORIGINAL DATE 3/4/19
LAST UPDATED _____ HB _____
SHORT TITLE Subdivision Act Definitions SB 548
ANALYST Woods

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			No Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 216

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Energy, Minerals, and Natural Resources Department (EMNRD)

SUMMARY

Senate Bill 548 amends the New Mexico Subdivision Act (47-6-2 NMSA 1978), to exempt lands used to generate renewable energy or an easement or right of way granted for electric transmission facilities from the definition of “subdivision”.

FISCAL IMPLICATIONS

No fiscal implications.

SIGNIFICANT ISSUES

The New Mexico Subdivision Act regulates the division of land in the unincorporated areas in Counties. There are currently 13 exemptions in the Subdivision Act to allow certain divisions of land, such as family splits, to be exempted from the subdivision regulations as to infrastructure requirements, such as improved roads, sewers, etc. EMNRD notes the two new exemptions are not divisions of land but pertain to easements or rights of way for the generation of renewable energy or transmission facilities.

EMNRD also states when the New Mexico Subdivision Act was passed, and rules written in 1996, there were no renewable energy projects being sited or electric transmission facilities to move the electrons from those projects to users. SB 548 recognizes the increasing number of such projects and facilities cropping up throughout New Mexico and that the use of county subdivision rules does not foster their timely development.

Currently, if a wind firm wants to put in a ten-acre substation or a line, its title company wouldn't sign off giving title insurance without it going through the subdivision act's procedures, even for just a small piece of land.

ADMINISTRATIVE IMPLICATIONS

EMNRD worries county assessors along with individuals that are party to the easement or lease find the current need for renewable energy projects to go through the subdivision process too onerous and too complicated for getting approval.

RELATIONSHIP

HB 216 amends the County Subdivision Act to eliminate the state records administrator from any requirements for filing of any county subdivision regulation. The bill further updates agency statutory names. This bill has been signed by the Governor.

TECHNICAL ISSUES

AGO states the citation for the Renewable Energy Act is missing in proposed Section 47-6-2(M)(14). The Renewable Energy Act is found at NMSA 1978, Sections 62-16-1 to -10. The definition for "renewable energy" can be found in NMSA 1978, Section 62-16-3(E).

OTHER SUBSTANTIVE ISSUES

Passage of SB 548 would not affect the ability of counties to use their zoning powers to regulate which lands are best suited for renewable energy projects and transmission corridors. However, as many counties do not have zoning, their subdivision processes may be all they have to weigh in on a renewable energy project.

NMAG notes that because the New Mexico Subdivision Act is an enactment in derogation of the common law constituting restrictions upon the free use of property, any amendments to the Act will be strictly construed against the state in its attempt to enforce the statute.¹

CW/sb

¹ State v. Heck, 1991-NMCA-076, 12, 112 N.M. 513, 817 P.2d 247.