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FISCAL IMPACT REPORT

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| SPONSOR <u>Ortiz y Pino</u> | LAST UPDATED _____ |
| | ORIGINAL DATE <u>02/17/23</u> |
| SHORT TITLE <u>Anti-Donation Clause & Forest Land</u> | BILL NUMBER <u>Senate Memorial 49</u> |
| | ANALYST <u>Sanchez</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------------------|-------------------------|-------------------------|---------------------------|---------------------------|--|
| | \$100.0 | No fiscal impact | No fiscal impact | \$100.0 | Nonrecurring | State Forestry Division Operating Budget |
| | No fiscal impact | \$10.0 to \$25.0 | No fiscal impact | \$10.0 to \$25.0 | Nonrecurring | NMDA Operating Budget |
| Total | \$100.0 | \$10.0 to \$25.0 | No fiscal impact | \$110.0 to \$125.0 | Nonrecurring | |

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Department of Agriculture (NMDA)
Office of the Attorney General (NMAG)

No Response Received

State Land Office (SLO)
New Mexico Acequia Association (NMAA)

SUMMARY

Synopsis of Senate Memorial 49

Senate Memorial 49 (SM49) requests that the Energy, Minerals and Natural Resources Department (EMNRD) undertake the assembly of a working group to study the impacts of Article IX, Section 14 of the Constitution of the State of New Mexico, otherwise known as the anti-donation clause, as it relates to the ability of the forestry division to enter into contracts and agreements with private landowners or other private entities to carry out its mission when a public need or public benefit is indicated.

The memorial requests the working group include representatives from the State Forestry Division of EMNRD, the State Land Office, the New Mexico Department of Agriculture, the New Mexico Soil and Water Conservation Districts, the New Mexico Acequia Association, and agricultural and conservation groups.

The memorial further requests that the working group consider the effectiveness of conducting forest treatments on private land with state money to prevent wildfires, review how other states have addressed these issues and research the data needed to pass a constitutional amendment allowing exceptions to the anti-donation clause.

Finally, Senate Memorial 49 requests the working group reports its findings to the interim legislative committee dealing with water and natural resources by July 1, 2024.

FISCAL IMPLICATIONS

Analysis from the State Forestry Division explained that the agency has budget availability to conduct the study requested by SM49 in the current fiscal year (FY23).

According to the analysis from the New Mexico Department of Agriculture (NMDA):

NMDA anticipates a workload of .10 - .25 FTE for the time required to participate in the working group in the fiscal year 2024. This would cost approximately \$10.0 - \$25.0 from NMDA's operating budget.

SIGNIFICANT ISSUES

The analysis offered by the Energy, Minerals and Natural Resources Department expressed confidence about the agency's ability to conduct the study requested in SM49. The agency's analysis stated:

This study will address, as one example, the issue of the Rio Chama watershed – a critically important watershed for New Mexico's long-term water security that is almost entirely private land. The Forestry Division is unable to spend state funds that were appropriated for forest and watershed restoration statewide on these lands, despite their importance to the well-being of the state. The study will include an analysis of the likelihood of wildfire occurring on private lands with state funds within the life of the state-funded treatments and a review of how other states have addressed these issues in state law.

SM49 calls for a working group to be convened to assist with the study and report its findings and conclusions to the legislature during the next interim session. The membership of the working group identified in SM49 are also participants in the Forestry Division's state-wide Forest and Watershed Health Coordinating Group.

Analysis from the New Mexico Department of Agriculture (NMDA) explained that:

Under the Soil and Water Conservation District Act (73-20-25 to 73-20-48 NMSA 1978), NMDA supports the soil and water conservation commission (SWCC) and the forty-seven soil and water conservation districts of the state (SWCDs). The SWCC is represented on the working group.

SWCDs are not restricted by the anti-donation clause and are authorized to directly fund projects on private land. To avoid conflicts with the anti-donation clause, the forestry division of EMNRD has been able to work on private land through cooperative agreements with and grants to SWCDs. However, the forty-seven SWCDs have a wide disparity in capacity; some lack the staff and resources ...required to organize and administer forestry projects.

The anti-donation clause impacts the ability of most state agencies to implement projects on private property and/or provide direct aid to individual citizens. NMDA posits there may be a need to consider the anti-donation clause impacts to efficiency and responsiveness to citizen needs by state government.

SS/rl/ne