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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/09
 LAST UPDATED 02/18/09 HB 273/HF1#1

SPONSOR Cote

SHORT TITLE State Trail Law Enforcement Authority SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to N/A

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Attorney General (AGO)
- Energy, Minerals and Natural Resources Department (EMNRD)
- Department of Finance and Administration (DFA)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of House Floor Amendment Number 1

House Floor Amendment Number 1 makes a language change to NMSA 1978, Section 16-2-30A by adding “contiguous to a state park” after the word trail(s).

FISCAL IMPLICATIONS

EMNRD State Parks Division (SPD) states, “None directly. Since the amendment, however, does have the effect of limit SPD law enforcement authority on state trails, it also has the effect of limiting the potential expenditure of SPD funds for law enforcement on state trails.”

SIGNIFICANT ISSUES

EMNRD indicates that restricting SPD law enforcement authority both to only those designated state trails that are contiguous with state parks makes sense from an operational and law enforcement sense. State trails contiguous with state parks are more appropriate locations for

SPD to patrol and SPD rangers will be more familiar with the terrain and law enforcement setting, therefore improving the effectiveness of law enforcement. Further, “It is important to recall that the existing statutes provide for concurrent jurisdiction on all state trails, contiguous to state parks or not, with state county and local law enforcement.”

TECHNICAL ISSUES

AGO notes that the use of “contiguous” may close a possible enforcement loophole, but it means “touching” or “next to” and is not a distance specific measurement (i.e. 100 feet from x).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD notes that, without the amendment, SPD would have law enforcement authority on any designated “state trail.”

Synopsis of Original Bill

House Bill 273 amends and enacts sections of the State Trail System Act. The revisions are numerous and varied and include: (1) Expands the police power of the director of the state parks division and designees of the secretary of the energy , minerals and natural resources department to include designated state trails; (2) Repeals a provision for “special use trails”; (3) Adds a provision that provides that state trails may be supplemented by support facilities that comply with the federal Americans with Disabilities Act of 1990; (4) Provides criteria for state trails; (5) Directs that consideration be given to minimizing adverse effects upon adjacent landowners in acquiring land or interests in land for the state trails system and that the secretary shall not use the power of eminent domain to acquire such property or interests; (6) Revises provisions for trails that permit use by motorized vehicles; (7) Revises provisions for a public hearing prior to completing a feasibility analysis for a state trail before approving or disapproving a state trail; (8) Revises the duties of the secretary with respect to state trails; (9) Creates a state Trail System Fund to carry out the purposes of the State Trails System Act.

FISCAL IMPLICATIONS

EMNRD states: “No money is appropriated to the fund at this time. No process is included to generate such funds. It is created as a mechanism to hold federal funds, gifts and possibly, future appropriations. (See Significant Issues below.)”

SIGNIFICANT ISSUES

EMNRD indicates that HB273 would amend the existing Act (Section 16-3-1 to 16-3-9 NMSA 1978) and 16-2-30 NMSA 1978, which governs the police powers of the State Parks Division (SPD) and that:

HB273 is a GR bill that is supported by EMNRD/SPD. The existing Act was originally passed in 1973, and was intended to result in a system of designated “state trails.” The Act, however, has not been used since because of provisions in the statute that limit its application and implementation. Indeed, there are actually zero “state trails” designated under the Act at present.

EMNRD further indicates that HB273 would: (1) clean-up outdated language of the statute and re-order some sections to create a better statutory structure; (2) change the “state trail” designation process and EMNRD’s implementation of the Act to make it more workable; (3) establish a state trails fund (but not generate or appropriate revenue into this fund); and (4) authorize qualified SPD employees (i.e. only certified law enforcement rangers) to enforce the law along designated state trails. The practical result of these changes would be significant improvement in the SPD’s ability to implement the Act and to construct, maintain, operate, and otherwise be an involved partner with trails in New Mexico that are important enough to be designated as “state trails.” These amendments are extremely important for the success of long-distance trail projects such as the Rio Grande Trail, a proposed multi-use trail along the river corridor.

EMNRD notes that, if the Trails System Act is to be implemented, there will be activities that are currently not taking place. For example, State Parks law enforcement authority is limited to within the boundaries of the Parks. If the authority is expanded to the designated State Trails, then the workload would expand and appropriations would be needed. That would be the case if the law was implemented as it currently exists. With the proposed amendments, the cost of implementing the Act should be significantly less than the current law imposes because some of the duties and responsibilities are decreased. Using the law enforcement example again, current law imposes all the law enforcement responsibility on the Department and not on Parks officers. There are no such Department law enforcement personnel. The amendments give Parks officers the authority to enforce laws on the State Trails and shares this within the State Police, county sheriffs and city police. HB273’s amendments to the Act fall into several main areas:

Statutory clean-up. HB273 cleans up outdated language, and moves and reorders sections for more internal consistency.

State Trail designation. HB273 would set clearer criteria for what qualifies for designation as a “state trail.” The criteria in HB273 track the criteria that are used to assess what qualifies for state park status. The basic designation process itself, however, which already requires certain findings by the secretary, a public involvement component prior to designation, and minimizes impacts on private landowners, would remain unchanged, except that it would be improved with the addition of a requirement that the secretary assess the suitability and feasibility of a proposed state trail prior to any designation. HB273 would also delete one type of state trail in the Act (“special use trails”). EMNRD believes that this trail type is poorly defined and the category is not necessary, since the other major types of state trails (e.g. scenic, recreational, and historic trails) generally cover those types of trails most likely to qualify for state trail designation and warrant state involvement. HB273 would also add “off-highway vehicle” to the list of trail activities that are included in the Act’s purpose section. Off-highway vehicle use is already included in the Act in Section 16-3-4 as an authorized use on state trails, but should be added to the main list in the Purpose section.

EMNRD requirements. One of the reasons that the Act has been little used to designate “state trails” is because it is unwieldy, cumbersome, and no longer fits with many current approaches to establishing and managing trails. For example, the Act currently requires the Secretary of EMNRD to “plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect and police the

state trails system.” This requirement puts extensive and *exclusive* responsibilities on EMNRD—such as having to “acquire” and “operate” the entire length of every trail that is designated as a “state trail.” It is also burdensome for EMNRD to be deemed to be the law enforcement entity exclusively charged with law enforcement on state trails. A better solution is for SPD employees to share jurisdiction with other law enforcement entities. This requirement is not a good fit for many trail situations (particularly long-distance trails that cross multiple jurisdictions, or for trails that actually already have a trail managing entity in place) and is not essential for the success of a designated “state trail.” Indeed, other states have “state trails” designated that are under diverse management arrangements that do not require them to be completely, 100 percent owned and managed by the lead state agency for trails. Because of the numerous “shall” requirements on the secretary of EMNRD, which are virtually impossible to meet in most circumstances, no “state trails” have ever been designated. HB273 would change some of these provisions to give the secretary a more flexible role in “state trails”. That flexibility would result in better management outcomes in terms of EMNRD’s ability to administer the Act.

State Trails Fund. HB273 would establish a state trails fund, but does not appropriate money into this account. Nor does it create a mechanism for generating funds for this account. Currently, EMNRD administers mainly federal grant funds for trails projects in New Mexico. These federal grants require a non-federal match. Establishment of a state trails fund would be helpful in that it could help direct and focus state appropriations on trails in a consistent and streamlined fashion. Also, if the state ever decided to dedicate consistent funds to the statewide trails program, the fund would be ready to receive those funds.

Management and Enforcement. HB273 would grant New Mexico’s lead trails agency (the SPD) law enforcement authority on designated state trails, including those designated state trails outside state park boundaries. Many long-distance trails cross jurisdictional boundaries and under current statute, SPD cannot effectively partner and assist with trails management in these situations. This amended law enforcement authority could be critical in some situations and projects, such as along the proposed Rio Grande Trail, where it may be important for SPD rangers to be able to patrol sections of the trail between existing state parks (e.g. between Percha and Leasburg state parks) in order to assist and supplement local law enforcement capacity.

EMNRD advises that the most important finding of the 2004 New Mexico Statewide Outdoor Comprehensive Recreation Plan was that more and better trails are the #1 outdoor recreation priorities for New Mexicans. New Mexicans want more trails where they live, work, and play. Trails are excellent recreation resources for all people of all ages; they can also stimulate economic development, help improve the quality of life in communities and promote healthy lifestyles, which fights obesity and reduces society’s health care costs. Modernizing the Act will help achieve all of these goals and help realize these enormous opportunities.

PERFORMANCE IMPLICATIONS

EMNRD suggests that enactment of the HB273 will positively affect performance measures for the SPD (such as visitation, revenue generation, and educational programs delivered) both directly and indirectly. For example, with “state trails” designated and the SPD assisting with

some of these projects, more visitors could be attracted to state parks. An example of this would be the Rio Grande Trail, which will attract more visitors to the five state parks in the lower Rio Grande Valley.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD notes, “Designation of “state trails” under the Act will remain cumbersome, if not impossible. SPD will lack authority to provide programs and assistance on sections of designated state trails that extend outside state park boundaries. Without the statutory changes in HB273, long-distance trail projects such as the proposed Rio Grande Trail will be difficult to accomplish under the leadership of the EMNRD/SPD.”

AMENDMENTS

None suggested by respondents.

BW/mc:mt