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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09

SPONSOR Sharer LAST UPDATED _____ HB _____

SHORT TITLE No Severance Tax Projects in Certain Counties SB 394

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (ENMRD)
New Mexico Environment Department (NMED)

No Response

Department of Finance and Administration (DFA)
Association of Counties

SUMMARY

Synopsis of Bill

Senate Bill 394 proposes a new section to the Severance Tax Bonding Act §7-27-1 NMSA 1978, expressly prohibiting issuance of severance tax bonds for the benefit of projects located in counties or municipalities that have enacted ordinances that have an “onerous effect” upon the “extractive industries.” The threshold established by the proposed section is that benefit is

denied where the municipality or county has enacted “zoning or other ordinances” that have been determined to increase certain, specified categories of costs associated with operations of the “extractive industries” by fifty percent or more over what it would be without “the ordinance.”

FISCAL IMPLICATIONS

Senate Bill 394 does not contain an appropriation, but according to the ENMRD, could have significant long-term effects on capital projects that are financed by Severance Tax Bonds.

SB 394 requires three commissions to conduct annual hearings in addition to their existing duties, with said hearings involving a state-wide survey and evaluation of municipal and county ordinances. This kind of annual review and hearing process is likely to involve significant preparation by not only the commissions, but also by the EMNRD’s legal staff and the staff of the Oil Conservation Division (OCD) and Mining and Minerals Division (MMD). Additional costs will be associated with this added work and the materials necessary to present the matters for hearing. The hearings themselves will also involve additional costs for court reporters and transcripts, possible witness fees, and additional time spent.

If a determination is made that the standard/threshold has been met, this legislation would require that all projects in a given municipality or county be prohibited from reaping the benefits of severance tax bonds, which could have a significant impact on those projects. However, the language establishing the standard is too unclear for consistent and fair implementation. The language is not clear regarding whether to calculate the fifty-percent-or-greater in a cumulative fashion or on an ordinance-by-ordinance basis. For instance, if a project is located in county or municipality that has a number of “zoning or other ordinances” that have been determined to have an impact on the cost of doing business for the “extractive industries,” is the designated, evaluating commission to look at each separate ordinance, individually, and make a determination as to each separately regarding whether it has the requisite impact on cost of operations? Or, are the commissions to look at the collective, cumulative effect of all such identified ordinances, and determine if they cumulatively have the requisite impact on cost of operations?

Similarly, if the commissions are to look at them on a one by one basis, is there the potential for this to lead to inaccuracies where, when viewed together, the cumulative impact of all applicable ordinances together might have a different net effect on cost of operations than if each is simply viewed alone? Without further specification regarding how the evaluation is to be conducted, what all should be considered and in what fashion, there are significant issues with regard to implementing this proposed legislation.

PERFORMANCE IMPLICATIONS

The New Mexico Environment Department states that its performance of certain statutory mandates of will be affected by Senate Bill 394. An analysis of all municipal and county ordinances will need to be evaluated one at a time to determine if it has any relation to the drilling or operating of an oil and gas well, or the permit or operation of a mining activity. Subsequent to this, Senate Bill 394 would necessitate that an economic analysis be conducted to evaluate the costs of each ordinance on oil and gas drilling and mining permitting and operational activities. The lack of an appropriation in Senate Bill 394 to fund staff or contracting for economists, lawyers, and other types of specialized experts to conduct this work will require

that NMED divert resources from permitting, inspection and enforcement activities, thereby affecting the ability of NMED to serve the public, protect public health and the environment, and meet legislatively mandated performance measures.

SIGNIFICANT ISSUES

The ENMRD provided the following general comments on Senate Bill 394.

The use of the phrase “zoning or other ordinances of the municipality or county” is very broad and vague. The proposed section requires the specified commissions to conduct an annual hearing at which each is required to identify any and all such “zoning or other ordinances.” Without any clarification or narrowing of the scope of the body of law these commissions will be required to survey, such a state-wide survey would be a huge undertaking.

Additionally, the standard established by this section is impractical and not objective. Operating costs vary from operator to operator, from county to county, and from month to month. Whose operating costs are to be used in this analysis, and is it to be location specific? What if operating costs change dramatically after the determination is made, such that the 50% or more standard is no longer an issue? Moreover, the section provides no means for review of the decision.

Finally, there is always the potential that an ordinance might be enacted that causes such an increase in operating costs that is actually justified – such as the discovery of an environmental or ground water issue that needs to be addressed. This legislation would serve to punish the municipality or county for proactively addressing such issues, and could have a chilling effect on such protection efforts.

The ENMRD further provided the following comments which are specific to the MMD:

Roughly 75-80% of the mines in New Mexico are used for sand and gravel, which fall outside of the MMD’s jurisdiction. While some of these entities choose to register with MMD, they are not required to do so, and MMD cannot compel them to register or otherwise provide information regarding their operations.

Senate Bill 394 does not specifically define the term “extractive industries.” One interpretation, however, is that the “extractive industries” to whom this legislation is intended to refer are those regulated by the three specified commissions. If this is the case, the next logical conclusion is that sand and gravel mines fall outside the scope of this section, meaning that the large majority of mines in New Mexico are not to be considered for purposes of this legislation. It is suspected that this was not the intended goal of this bill, and therefore there are significant issues with regard to the language used in its practical application to the mining industry.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The ENMRD claims that Senate Bill 394 would impose an additional administrative burden on the department. As noted above in the context of MMD, there are significant administrative implications with this bill. Even for those entities actually regulated by one of the specified commissions, however, there are practical, administrative issues. First, the burden for determining what information is necessary, and then obtaining that information and data, is

placed on the agencies, not on the operators, who are the keepers of that information and data. None of the specified agencies routinely gathers or evaluates the type of economic data for operations that would be required to do the kind of analysis that is being required here. Moreover, even upon gathering said data, EMNRD is not staffed with economists or other individuals who would be appropriate to provide testimony advising the commissions regarding the impacts of various ordinances on costs of operations.

There is also the issue of accessing and obtaining the potential ordinances for review. The only way that agencies would be able to access the municipal or county ordinances is by conducting exhaustive and time consuming online searches, jurisdiction by jurisdiction, or by contacting each locale directly by telephone. All of the above is labor intensive and imposes additional obligations and responsibility on the divisions and their staff. The language also does not clearly indicate whether it is intended to apply to general-application ordinances, or only those ordinances that are specifically directed to the “extractive industries.” For example, a county might have a noise ordinance that applies to everyone. Natural gas compressor stations are known to be loud. Is the Oil Conservation Commission then required to determine if that general ordinance will make compressor stations more costly because they have to mitigate the noise?

Additionally, there are some projects receiving such bond benefits that are physically located in a single county or municipality, but which provide services to other jurisdictions as well, sometimes even on a state-wide basis. One good example of this is the University of New Mexico Hospital. Under the proposed language, if the benefits were pulled for a program such as this based upon the principal municipality or county, then ultimately anyone seeking or receiving services from that project and who is from another jurisdiction would be unfairly penalized.

Finally, NMSA 1978, §7-27-10 specifies that it is the State Board of Finance that is authorized and responsible for the issuance of severance bonds. If this is the case, then the language of this proposed legislation is inconsistent in that it requires that the commissions provide notice to “each legislator of the municipalities and counties that have been identified pursuant to” the section.

OTHER SUBSTANTIVE ISSUES

TECHNICAL ISSUES

The NMED notes that on page 3, line 10, SB 394 proposes that the Oil Conservation Commission, Mining Commission and Coal Surface Mining Commission notify each legislator of the municipalities and counties that have been identified as having onerous effects upon the extractive industries within ten days after a hearing. It is not clear when this would occur. Is this ten days after the close of testimony when the hearing is completed? Is it ten days after deliberation of the commission in reaching a decision? Or, is it ten days after a final order of the commission is issued?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Projects funded through Severance Tax bonds will continue to be distributed to all counties and municipalities without review for “ordinances that have an onerous effect upon extractive industries” and possible prohibitions on funding.