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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13

SPONSOR Chasey LAST UPDATED \_\_\_\_\_ HB 458

SHORT TITLE Consolidated Environmental Review Act SB \_\_\_\_\_

ANALYST Weber

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$1,500.0	\$1,500.0	\$3,000.0	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)  
 Department of Cultural Affairs (DCA)  
 Department of Game and Fish (DGF)  
 Energy, Minerals and natural Resources Department (EMNRD)  
 State Land Office (SLO)  
 Department of Health (DOH)  
 New Mexico Environment Department (NMED)  
 Department of Transportation (DOT)  
 Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

The AGO provides the following outline of House Bill 458 (HB 458):

House Bill 458 proposes to enact the Consolidated Environmental Review Act. It requires an “environmental assessment” be conducted by a state agency for a “state-funded project” and by an applicant for a project funded by the state or for a “lease, permit, license, certificate or other entitlement” issued by the state.

The “environment” includes physical conditions that will be affected by a proposed project, including, but not limited to, land, air, water, minerals, flora, fauna, noise, vibration or objects of historic or aesthetic significance, including historic properties listed or eligible for listing on the national register of historic places or the New Mexico state register of cultural properties, and traditional cultural properties.”

If the environmental assessment determines that the activity “may have a significant effect on the environmental,” an environmental impact statement must be conducted. If the environmental assessment determines that the activity will not have a significant impact, nothing in addition must be done.

HB458 would require governmental agencies at all levels to consider 1) qualitative, technical and economic factors; 2) long-term as well as short-term benefits and costs; 3) the cumulative impacts of a proposed project; and 4) all reasonable alternatives to proposed actions affecting the environment. Moreover, HB458 proposes to consolidate, to the extent possible, regulatory processes and environmental reviews to mitigate any burden on project proponents.

To accomplish this, HB458 (Section 4) would establish a lead agency, which would be the public agency with primary responsibility for issuing recommendations or permit or license approvals for a project or proposed project. If more than one public agency is involved in preparing and evaluating environmental impact statements, environmental assessments or findings of no significant impact, HB458 proposes that only one agency would act as the lead agency. In Section 4, Subsection D, HB458 proposes how the lead agency would cooperate with all other agencies involved to support the needed interdisciplinary capability and the use of funds.

An environmental impact statement is a more detailed analysis of the effect of the proposed action on the environment.

After the environmental impact statement is done:

Each public agency shall choose the best available alternative to a proposed project that, to the maximum extent practicable, minimizes or avoids adverse environmental effects and incorporate that alternative in the conditions of a permit, license or other authorization for the proposed project issued pursuant to law.

Exempted from the provisions of the Act are: A) enforcement activities; B) emergency activities to protect public health, safety or the environment; C) purely ministerial actions; D) activities permitted by the office of the state engineer and the interstate stream commission, including water transfers or appropriations, except where they are also permitted by another public agency pursuant to law; and E) actions subject to the National Environmental Policy Act of 1969 and its implementing regulations, except that state public agencies shall review the federal agency's or agencies' final action under the National Environmental Policy Act of 1969 and may require additional information and evaluation on a project or proposed project before approving any permits, licenses or authorizations required under New Mexico law.

The Environmental Improvement Board is required to promulgate rules governing the process, which include requirements for public notice and participation.

HB 458 allows enforcement by a private individual. There is an opportunity for judicial review for a person adversely affected.

## **FISCAL IMPLICATIONS**

EMNRD notes HB458 does not include an appropriation, but would increase responsibilities and work load relating to many of the agency's primary functions and duties. This bill will significantly increase the financial resources required for EMNRD to complete projects. In addition to funds, the agency would need to request additional FTEs (planners, environmental specialists, attorneys, administrative staff, and managers) and operating funds to handle the additional rulemaking, reviews and drafting of environmental assessments and environmental impact statements, contracts, interagency coordination, public hearings and meetings, correspondence, and appeals in HB 458. The costs would be significant, substantial, and, with the exception for those for the initial rulemaking, recurring.

NMED expects the requirement to prepare environmental review documents for state funded projects to have a severe financial impact. In years when capital outlay is available, it is not unusual for the Legislature to provide state funding for hundreds of political subdivision projects which will be funded through NMED via its Construction Programs Bureau ("CPB"). Because state funding is provided, all of these projects will be subject to CERA's requirement for environmental review documents prepared by NMED. To illustrate, in FY11 and FY12, CPB received over 250 applications for funding in each year. While all of those will not necessarily receive state funding or become ready to proceed, many will.

Precise cost estimates for the assessments and statements are not possible but NMED staff who previously worked for federal agencies suggested a range of \$15,000 to over \$1,000,000 to prepare similar evaluations depending on the project complexity. Using this as a base, if only 100 capital outlay projects were funded through NMED, it would cost between \$1,500,000 and \$100,000,000. This is just one NMED program relating to capital outlay. NMED does not have the resources available to perform such tasks without substantial additional funding.

## **SIGNIFICANT ISSUES**

NMED comments on the care that would need to be taken along with the volume of permits the agency issues each year:

The cost of preparing the environmental assessment or environmental impact statement falls on the applicant but NMED is still required to review those documents and decide whether there is or is not a significant impact. Since HB458 subjects such determinations to legal review, they must each be done with care and an eye toward legal challenge. NMED issues many, many permits each year and the time to perform the responsibilities created by HB458 would be significant.

For example, NMED issues between 4,000 and 8,000 liquid waste permits each year. HB458 would require home builders/owners applying for liquid waste permits to prepare environmental assessments or environmental impact statements which NMED liquid waste staff would then have to review, with each decision subject to potential legal challenge. It is not correct to assume that such small installations could not have a significant impact on the environment. New Mexico allows private property owners to develop their land, even if the land contains priceless historical artifacts or other irreplaceable environmental characteristics. A liquid waste system which would excavate and destroy a portion of an ancient pueblo ruin would have a significant impact. Yet, a homeowner would not know these exist without having an archeological survey

prepared for their lot. The cost to homeowners to prepare these documents and for NMED to review them and decide the significance of the impacts could be substantial.

EMNRD echoes the comments of NMED and adds:

The cost of some environmental reviews could exceed the cost of the actual project. It is typical that general fund appropriations must be expended and the projects completed in one to two years, and some individual projects may require approval and funding from two or three legislative sessions or multiple bond sales. It is currently a challenge for many public entities to complete projects within the timeframe identified in most current and prior year's appropriations. This Act will add significantly to the time it takes to complete a project.

In SLO's vernacular, leases and rights-of-way are not permits. (SLO *does* grant certain permits, but labels them as such. These are normally for smaller, more limited, uses of state trust land than leases or easements; perhaps ironically, these permits would be covered by the bill). It is unclear whether leases and rights-of-way would be "permits" for the purpose of the bill. This needs to be clarified before SLO can determine the impact of the bill in anything more than provisional way. If the bill does apply widely to SLO, the civil litigation provisions of Sec. XII, with all the legal costs associated with defense of civil suits would follow as well.

## **TECHNICAL ISSUES**

Both NMED and EMNRD offer extensive areas that should be clarified. Examples include:

1. In Section 2, HB458 states that one of its purposes is to require consolidation of regulatory processes and environmental reviews, yet, later in the bill, it allows cooperating agencies to decline to participate if they do not have sufficient funding. This could make consolidation of reviews very difficult. Moreover, agencies may have very different regulatory processes that, by their nature will be difficult to consolidate due to their disparate time frames.
2. Subsection 6(F) seems intended to prevent contractors preparing environmental impact statements for applicants from having conflicts of interest. However, it fails to prohibit applicants promising future work to a contractor if the permit is issued to the applicant's satisfaction. Such promises could lead to significant bias on the part of contractors preparing environmental impact statements and should be prohibited to achieve effective prevention of bias from conflicts of interest.
3. The language indicates fees will be charged to recover the costs for implementing the Consolidated Environmental Review Act, but it does not specify a fund from which to collect and redistribute these fees. Separate funds will be needed for each program.

MW/blm