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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/06
 SPONSOR HBIC LAST UPDATED 1/31/06 HB 188/HBICS
 SHORT TITLE Land, Wildlife & Clean Energy Act SB _____
 ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Recurring	Fund Affected
FY06	FY07		
	10,900.0	Recurring	Conservation and Clean Energy Bonding Fund
	574.0	Recurring	Oil Conservation Division of EMNRD

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Recurring	Fund Affected
FY06	FY07	FY08		
	(11,474.0)	(10,684.0)	Recurring	General Fund
	10,900.0	10,150.0	Recurring	Conservation and Clean Energy Bonding Fund
	574.0	534.0	Recurring	Oil Conservation Division of EMNRD

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Taxation and Revenue Department (TRD)
 New Mexico Finance Authority (NMFA)
 New Mexico Environment Department (NMED)
 Office of the State Engineer (OSE)
 New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

The House Business & Industry Committee substitute for House Bill 188 enacts the Land, Wild-

life and Clean Energy Act. The act:

- creates the Land, Wildlife and Clean Energy Board;
- establishes the Conservation and Clean Energy Bonding Fund;
- establishes the Land, Wildlife and Clean Energy Fund;
- provides for distributions to the Conservation and Clean Energy Bonding Fund equal to one half of the net receipts attributable to the oil and gas conservation tax;
- provides for distributions to the Oil Conservation Division of the Energy, Minerals and Natural Resources Department (EMNRD) equal to one thirty-eighth of the net receipts attributable to the oil and gas conservation tax; and
- authorizes the New Mexico Finance Authority (NMFA) to issue and sell tax-exempt Conservation Bonds and Clean Energy Bonds.

The Land, Wildlife and Clean Energy Board is administratively attached to the Energy, Minerals and Natural Resources Department (EMNRD) and consists of 14 members, including the Secretary of Energy, Minerals and Natural Resources; the Director of the New Mexico Department of Agriculture; the Director of the Department of Game and Fish; the State Engineer; and 10 public members appointed by the governor, with the advice and consent of the senate, for staggered four-year terms.

The board may fund conservation and clean energy development projects; administer the Land, Wildlife and Clean Energy Fund and make grants and loans from the fund; acquire and manage whole or partial interests in land and water; and request that the NMFA issue Conservation Bonds or Clean Energy Bonds to finance eligible projects.

“Conservation project” means preservation, rehabilitation, restoration or management activities directed at natural areas, working farms or ranches, wildlife or its habitats, outdoor recreation areas and trails, forests or watersheds or other ecologically damaged lands.

“Clean energy project” is defined as a project that increases:

- 1) energy efficiency;
- 2) the conservation of energy; or
- 3) the production of energy using biomass, geothermal, hydrogen, solar or wind power.

The act’s provisions describing projects that the board may fund emphasize protection of private ownership interests, including:

- support for the maintenance of private ownership of working farms and ranches; assistance for private landowners in conservation of land and wildlife; and a preference for leaving land and water in private ownership subject to easements that will ensure proper project management or public use while protecting private property rights.

The Land, Wildlife and Clean Energy Fund is created in the State Treasury and administered by the Energy, Minerals and Natural Resources Department. The fund shall consist of distributions made to the fund from the Conservation and Clean Energy Bonding Fund; gifts, grants and donations; other revenue credited to the fund; and income from investment of the fund. Balances in the fund at the end of a fiscal year shall not revert to the general fund.

Money in the Land, Wildlife and Clean Energy Fund is appropriated to the board to make loans or grants to, or otherwise contract with, qualified entities for conservation projects and clean

energy development projects as authorized by the act and for expenses necessary to carry out the provisions of that act.

Of the net receipts attributable to the tax imposed by the Oil and Gas Conservation Tax Act,

- one half shall be distributed to the Conservation and Clean Energy Bonding Fund; and
- one thirty-eighth shall be distributed to the Oil Conservation Division of the Energy, Minerals and Natural Resources Department to fund the inspection and enforcement activities of the division.

The Conservation and Clean Energy Bonding Fund is created as a special fund within the NMFA. It shall consist of oil and gas conservation tax revenues distributed to the fund by law; legislative appropriations; and any other public or private money dedicated to the fund. Money in the fund is appropriated to the NMFA for the purpose of paying debt service on Conservation Bonds and Clean Energy Bonds and the expenses incurred in their issuance and administration.

On the last day of January and July of each year, the NMFA shall estimate the amount needed to make debt service payments on Conservation and Clean Energy Bonds, plus the amount that may be needed during the next 12 months for any required reserves, administrative expenses or obligations coming due, and distribute to the Land, Wildlife and Clean Energy Fund any balance in the Conservation and Clean Energy Bonding Fund above the estimated amounts.

The NMFA is authorized to issue and sell tax-exempt Conservation Bonds and Clean Energy Bonds, for the purpose of financing conservation or clean energy development projects, at the request of the Land, Wildlife and Clean Energy Board and when the board has certified the need for the bonds.

FISCAL IMPLICATIONS

According to the Taxation and Revenue Department (TRD), The Oil and Gas Conservation Tax is imposed on the taxable value of crude oil, natural gas, uranium, coal, geothermal energy, carbon dioxide, helium or a non-hydrocarbon gas produced in the state. Approximately 95% of the revenue is attributable to crude oil and natural gas. The rate of tax fluctuates from 0.18% to 0.19% depending on the balance in the oil and gas reclamation fund. One-eighteenth of the net revenue is distributed to the oil and gas reclamation fund when the tax rate is 0.18%; two-nineteenths when the tax rate is 0.19%; with the remainder to the general fund.

Under House Bill 188, distributions of the net revenue attributable to the Oil and Gas Conservation Tax are modified as shown in the table below.

Beneficiary	Tax Rate = 0.19%		Tax Rate = 0.18%	
	Present Law:	Proposed Law:	Present Law:	Proposed Law:
O&G Reclamation Fund	10.5%	10.5%	5.6%	5.6%
General Fund	89.5%	36.9%	94.4%	41.8%
Conservation and Clean Energy Bonding Fund	None	50%	None	50%
Oil Conservation Division	None	2.6%	None	2.6%

Based on price and production forecasts by the Consensus Revenue Estimating Group, net revenue attributable to the O&G Conservation Tax is projected to be approximately \$21,800,000 in FY 2007 and \$20,300,000 in FY 2008.

Money in the Conservation and Clean Energy Bonding Fund is appropriated to the NMFA for the purpose of paying debt service on Conservation Bonds and Clean Energy Bonds and the expenses incurred in their issuance and administration, with any unneeded funds transferred twice a year to the Land, Wildlife and Clean Energy Fund.

Money in the Land, Wildlife and Clean Energy Fund is appropriated to the board. Balances remaining in the LWCE fund at the end of a fiscal year at the end of a fiscal year shall not revert to the general fund.

Continuing Appropriations

This bill creates new funds and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

According to the Energy, Minerals and Natural Resources Department (EMNRD), unlike many other states, New Mexico has never created dedicated funding streams for conservation or clean energy projects.

In 2004 HJM 37 directed EMNRD and the Department of Game and Fish (DGF) to explore options for sustainable funding for conservation in New Mexico. The resulting December, 2004 study, “Funding Conservation for New Mexico, Providing for Future Generations,” identified annual unfunded conservation needs in New Mexico in the range of \$37 to \$48 million. The study

- identified \$20 million in non-state funds lost to New Mexico each year for conservation projects because of the unavailability of matching state funds; and
- estimated additional annual leveraging capacity of just over \$21 million in the areas of agricultural lands and open space conservation, forest and watershed restoration, habitat conservation, species conservation and outdoor recreation.

These are funds lost for the benefit of cities, counties and private landowners, not merely to state agencies. The bill authorizes the board to seek fund leveraging opportunities for both conservation and clean energy.

EMNRD notes that the Land, Wildlife and Clean Energy Act will create an extremely powerful tool for addressing some of the most important and pressing issues facing New Mexico in ways that are strategic and fiscally accountable. Conservation projects are broadly defined to allow the Land, Wildlife and Clean Energy Board to prioritize and address in a proper policy context extremely significant needs attributable to drought, as well as the need for:

- watersheds restoration;
- mitigation of catastrophic wildfire risks;
- rural jobs from the development of a biomass industry; and
- recreational opportunities and access.

The Act commits the state to addressing issues, from urban sprawl to endangered species issues, that are barriers to maintaining working farms and ranches in private ownership.

Further, according to EMNRD, the legislature has created the public policy framework that will give guidance to the Board. In addition to the Funding Conservation study noted above, two first-ever state-wide strategic plans, the Forest and Watershed Health Plan and the Non-Native Phreatophyte Watershed Management Plan, have both been adopted and are now state policy.

With regard to clean energy, EMNRD notes that New Mexico is leading the way among all states in its commitment to improving environmental quality and reducing our dependence on fossil fuels by championing renewable energy, energy efficiencies and alternative fuels.

New Mexico Environment Department (NMED) notes that the state's coal-fired power plants are major sources of air pollution, such as oxides of nitrogen, sulfur dioxide, particulates, mercury and carbon dioxide; that these air pollutants adversely impact public health, visibility, and the global climate; and that HB 188 would provide an opportunity and funding for energy conservation and clean energy projects such as those using biomass, geothermal, hydrogen, solar or wind power. According to NMED these projects could delay or obviate the need for the construction of new dirtier sources of power, such as conventional coal-fired power plants.

The Office of the State Engineer (OSE) expresses some concern that no overarching purpose is provided for the act and that the Land, Wildlife and Clean Energy Board appears to have a great deal of discretion. For example, the definitions of qualified projects provided in the bill are very broad, as are the board's duties and responsibilities. OSE further expresses concern that acquisition by the board of land and water rights may lead to litigation and landowner liability for the state. However, EMNRD points out that the act's accountability and reporting provisions are carefully designed to guide the board and to ensure accountability and opportunity for legislative oversight.

The New Mexico Department of Agriculture (NMDA) notes that the department has recently participated in discussions regarding this bill, but expresses concern that the agriculture community/industry as a whole, however, has not participated significantly in the bill's design and drafting. Since the bill does attempt to recognize the importance of agriculture and opportunities to preserve farming and ranching, it would be both prudent and beneficial to solicit substantive input from those sectors. Issues surrounding the acquisition of water rights, particularly surface water rights, are extremely important to the agriculture constituency for a number of reasons. Agricultural interests, by most estimates, hold 80-90 percent of surface water rights, and the bill's proponents would benefit from a discussion regarding the practicalities that may affect those interests regardless of the willing buyer/seller issues. It would also be prudent to survey the agriculture community regarding its preferences for conservation options.

NMDA further suggests that the Non-Native Phreatophyte Plan, finalized and signed in August 2005, and the Forest and Watershed Health Plan, finalized and signed in December 2004, delineate important conservation concepts, practices and policies that could be beneficially coordinated with this bill's purposes.

PERFORMANCE IMPLICATIONS

NMED states that, by promoting clean energy and energy efficiency programs, HB 188 can assist the Air Quality Bureau in meeting its improved visibility and improved air quality perform-

ance measures. Two Governor priority goals would be enhanced by this bill: Goal 3, to make New Mexico “The Clean Energy State” and Goal 4, to “Combat Climate Change.” Funding clean energy and energy efficiency projects will help the state meet the greenhouse gas emission reduction targets established by the Governor in Executive Order 05-033.

ADMINISTRATIVE IMPLICATIONS

According to ENMRD, the new Land, Wildlife and Clean Energy Board will need to arrange for space needs and hire personnel, including the director, legal counsel, an outreach officer for grant and loan and program review, and administrative support staff. In addition, there will be normal costs of title work, surveys and appraisals in connection with the real property and water rights transactions authorized by the act as well as substantial contract documents to be negotiated for projects, and per diem and mileage costs of the public board members. Any administrative services provided by EMNRD and the NMFA will require reimbursement by the board to avoid unfunded mandates on the agencies.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to EMNRD, conservation and clean energy projects will be funded annually on a case by case basis. General fund monies will not be leveraged through bonding for these purposes. New Mexico will continue to forfeit available non-state funds for lack of predictable state general fund revenues.

ML/yr