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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/07  
 SPONSOR SCONC LAST UPDATED 2/15/07 HB \_\_\_\_\_  
 SHORT TITLE Land, Wildlife & Clean Energy Act SB 309/SCONCS  
 ANALYST Francis

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$10 million	Recurring	General fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB433

### SOURCES OF INFORMATION

LFC Files  
 Taxation and Revenue Department

Responses Received From  
 Energy Minerals and Natural Resources Department (EMNRD)  
 NM Environment Department (NMED)  
 Department of Game and Fish (DGF)  
 Department of Agriculture (NMSU)  
 Office of State Engineer (OSE)  
 State Land Office (SLO)  
 New Mexico Finance Authority (NMFA)

### SUMMARY

#### Synopsis of Bill

The Senate Conservation Committee substituted Senate Bill 309. The substitute

- Removes the distribution from the oil and gas conservation tax revenues and changes language to accept appropriations
- Appropriates a recurring \$10 million to the Conservation and Clean Energy Fund from the general fund
- Sets the date for the annual report to October 1<sup>st</sup>

- Requires that projects be reviewed by NMFA and specifically authorized by law.

**On page 15, lines 3 to 5, there is a reference to the oil and gas conservation tax being transferred to the fund. This appears to be left over from the original SB309.**

#### Synopsis of Original Bill

Senate Bill 309 creates the Land, Wildlife and Clean Energy (LWCE) board to oversee projects that will conserve land and water and promote clean energy in New Mexico. The LWCE will be administratively attached to the Energy, Minerals and Natural Resources Department (EMNRD) but will be funded out of the LWCE Fund, a fund created by this bill. The bill also creates the Conservation and Clean Energy Bonding Fund (“Bonding Fund”) which receives a distribution from the oil and gas conservation tax.

The LWCE board will be charged with soliciting, approving and certifying projects to be funded using the following criteria:

- Potential for conserving land or wildlife or increasing clean energy development;
- Potential for leveraging other investments, public and/or private, including allowing local governments to match funding by adopting open space and agricultural protection policies;
- Impacts of the project, including benefits of avoidance of waste;
- Expertise of entity proposing projects;
- Potential for collaboration among the state and other entities, including landowners;
- Balance between conservation and clean energy development projects;

The LWCE board will be made up of fourteen members:

- EMNRD secretary or designee
- NM Department of Agriculture director or designee
- Department of Game and Fish director or designee
- State Engineer or designee
- Ten public members

The ten public members are appointed by the governor and confirmed by the Senate and they each have to represent one of ten occupations, interests or activities listed:

- Wind, solar and biomass
- Energy conservation and efficiency
- Farm production (member’s primary occupation)
- Municipalities and counties
- Land or natural area protection trust
- Wildlife management and conservation
- Tribal land conservation
- Community land grants and acequias
- Livestock or dairy (member’s primary occupation)
- Hunting or fishing

There are additional criteria for conservation projects that include supporting private ownership of working farms and ranches, assistance to private landowners in conservation, protection of

ecosystems or habitat, and improving public access for outdoor recreation-including hunting and fishing. Clean energy project proposals should show how the project increases energy efficiency or conservation and how the project uses solar, biomass, geothermal, hydrogen or wind power.

The bill specifically disallows use of eminent domain or condemnation for the purposes of acquiring land or water rights (Section 6-A). There are other property protections as well including a requirement to compensate a local district if a conservation project which the local district is not a partner depletes the tax base. Mineral rights and access to land for mineral severance are protected.

The LWCE board will have to report annually to the legislature and the governor on the projects, budget, and 5-year strategy. The report also must include information on how to apply for funding and an evaluation of the social, economic and ecological impact of the program.

The use of the funds to purchase water rights is designed to protect acequia and irrigation associations as well as other water users. The LWCE board cannot buy water rights that are above market value, are insufficiently senior, have not been adjudicated by the office of the state engineer (OSE) and can be exported to a different basin.

**Financing.** The projects certified by LWCE will be funded by conservation or clean energy bonds administered by the NM Finance Authority (NMFA) using the bonding fund for debt service. The bonding fund will be funded by a new distribution of the oil and gas conservation tax revenue. Additional amounts in the bonding fund not needed for debt service will be distributed directly to the LWCE fund for use by the LWCE board. NMFA can secure bonds using the money in the public project revolving fund if necessary. NMFA can also purchase the bonds directly with public project revolving fund money.

## **FISCAL IMPLICATIONS**

**The SCONC substitute changed the original bill so that there is a \$10 million appropriation rather than a distribution from the oil and gas conservation tax.**

There may also be fiscal ramifications with the Public Project Revolving Fund (PPRF), a fund administered by NMFA for local government projects. According to the NMFA website, “[many of the public projects] have less proven revenue streams but do not have other viable sources of financing.” SB309 allows the PPRF to secure the bonds issued by the bonding fund which means that in times of low oil and natural gas prices, the PPRF may expend some of its capacity on LCWE projects rather than other local government projects. Allowing PPRF funds as a source may also allow the capacity of the bonding fund to be larger than can be supported by the revenue from the oil and gas conservation tax.

## **SIGNIFICANT ISSUES**

There are already several programs in state and federal government to address conservation and clean energy and it is unclear whether this is an additional program or it is meant to consolidate other programs. EMNRD has a program for renewable energy. The Department of Game and Fish has conservation and habitat programs. OSE manages the state water resources including conservation and adjudication. Each of these programs would be able to apply for funding from the LWCE board for projects that were not included in their annual budget. State Land Office

(SLO) reports that “most if not all of the contemplated projects and acquisitions have other agencies and jurisdictions that presently operate in the same field e.g. the SLO is currently involved in clean energy projects, habitat restoration, land management rehabilitation, watershed maintenance and recreational activities. The potential for duplication of effort is significant.” OSE also feels that when the LCWE board becomes active in the water rights market, it will be directly competing with the Interstate Stream Commission for the acquisition of water rights.

NMFA reports that the method of compensation for local governments who are not partnering on a project is inadequately defined. The bill addresses the issue of compensation by requiring compensation based on the use of the land at the time of purchase. Some uses, such as agricultural, are treated differently for taxation and so determining the last use at time of purchase may pose difficulties.

NMED reports that SB309 addresses some of the recommendations made by Governor Richardson’s Climate Change Advisory Group including making New Mexico the “clean energy state” and reducing New Mexico’s greenhouse gas emissions.

The NM Department of Agriculture reports that \$20 million of federal funds are available for matching programs for conservation that the state is not taking advantage of and there is over \$40 million in unmet conservation funding needs and another \$10 million in unmet needs for clean energy. SB309 would serve these goals by providing funds for projects.

#### **PERFORMANCE IMPLICATIONS**

SLO and NMED have noted that they are not included in the membership of the board.

#### **ADMINISTRATIVE IMPLICATIONS**

SLO notes that the staff and the executive director will need to have significant cross-discipline skills in all of the areas contemplated by the bill.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Establishing the board and funds is part of the Executive budget recommendation.

HB 433 is a related bill.

#### **TECHNICAL ISSUES**

NMFA reports that the use of grants will affect the capacity for bonding. “The higher the concentration of grant proceeds, the fewer loans can be made.”

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#### **ALTERNATIVES**

To address SLO concerns, the Commissioner of Public Lands could be added to the list of board members or the board could be required to seek consultation from SLO when the land

acquisition affects lands held in the public trust and may impact income to the trust.

In the first few years of the funds, the distribution from the bonding fund to the LWCE fund could be restricted to build up the principal and the balance of grants to loans could be set at half and half or some other appropriate balance to address concerns raised by NMFA.

An option to address concerns about the use of the Public Project Revolving Fund to either secure the bonds or purchase the bonds would be to remove this language from the current bill.

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