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FISCAL IMPACT REPORT

ORIGINAL DATE 01/19/11

SPONSOR Bandy LAST UPDATED _____ HB 48

SHORT TITLE Cultural Properties Review Committee Duties SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI	n/a	None

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Cultural Affairs (DCA)

SUMMARY

Synopsis of Bill

House Bill 48, prepared for the Government Restructuring Task Force, amends four sections of the Cultural Properties Act (Section 18-6-1 NMSA 1978 et seq.) to the authorize the State Historic Preservation Officer (SHPO), who is director of the Historic Preservation Division in the Department of Cultural Affairs, to make a temporary, emergency classification to list a cultural property on the New Mexico Register of Cultural Properties (State Register). The bill further authorizes the State Archaeologist and the SHPO to issue permits for archaeological investigations. The bill removes these duties and responsibilities from the Cultural Properties Review Committee (CPRC), a governor-appointed board with one statutory member (State Historian), attached administratively to the Historic Preservation Division. The bill also cleans up statutory language with a few wording changes.

Currently, the CPRC, with the concurrence of the State Archaeologist and the SHPO, issues permits for archaeological investigations, including permits to survey, excavate or make collections from archaeological sites on state land; excavation permits for archaeological sites on private land when using mechanical equipment; and permits authorizing the excavation of unmarked human burials on state or private land. In addition the CPRC currently is the sole entity with authority to make an emergency classification to list a cultural property on the New Mexico Register of Cultural Properties (State Register) on a temporary basis not to exceed one year. It does so at an open meeting and takes testimony prior to making a decision on the emergency listing.

FISCAL IMPLICATIONS

House Bill 48 makes no appropriations. No new resources would be required by DCA.

SIGNIFICANT ISSUES

The SHPO states that if enacted, this bill would reduce transparency in government decisions. The bill removes decisions currently made in an open meeting with public discussion and gives authority to a single person, the state historic preservation officer, to make an administrative decision. The change to making decisions based solely on staff review of historic preservation issues eliminates public discussion and lessens opportunity for the public to be heard prior to a decision being made.

The lack of opportunity for the public to have input in decisions could diminish support for historic preservation statewide, particularly for “emergency classifications” and to a lesser extent for archaeological permits. Emergency classifications are made when there is a definable and immediate threat of the loss or destruction of a cultural property. Even so, threats usually involve new projects and there can be conflict between the need for preservation and the need for a new project and jobs. Shifting emergency classifications to administrative decisions without a public hearing could be seen by the public as a way to limit legitimate public interest.

Similarly, issuance of archaeological permits administratively would limit the opportunity for the public, particularly Indian pueblos, tribes and nations, to provide comments on archaeological permits prior to their issuance. This change could disenfranchise these groups.

The SHPO also states a concern about the impact of removing the professional expertise of the CPRC from the excavation permit process. The CPRC is a nine-member board with one statutory member (state historian) and eight members appointed by the Governor including six individuals with demonstrated expertise in archaeology, history, architectural history, or architecture of New Mexico, one person who is a member of a New Mexico Indian Nation, tribe or pueblo, and one person who is a resident of New Mexico and represents the general public.

PERFORMANCE IMPLICATIONS

The SHPO notes that the CPRC brings broad experience in historic preservation matters and credibility to approved projects, since the CPRC members are respected as experts in their fields. For example, in the past 7 or 8 years, the Archaeological Subcommittee of the CPRC has held public meetings to take testimony on archaeological permits. Applicants for permits have an opportunity to make a presentation to the Subcommittee and answer questions or provide additional information on the work being proposed. The revisions in work can be agreed to during the meeting rather than tabling and delaying the issuance of the permit. There is widespread agreement that the sub-committee meetings have resulted in improved archaeological work and have expedited the timing of the permitting process. Sometimes the staff review process is actually expedited in order to meet upcoming CPRC meeting dates.

The benefit of this bill is that it would authorize the State Historic Preservation Officer to make decisions as soon as HPD staff has completed its review and analysis. This proposed statutory change has the potential to shorten the time to approve both archaeological permit applications and applications for emergency state-register listings. The CPRC currently meets six times per

year (every two months). The proposed change removes the need for an applicant to coordinate an archaeological project or listing with the CPRC's meeting schedule. Time required for public notice would be eliminated. The time-savings would be between a few days up to 30 days.

ADMINISTRATIVE IMPLICATIONS

Existing rules would have to be revised.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

The SHPO also notes that the definition for "registered cultural property" in Section 18-6-3C would need to be revised to delete role of the CPRC in temporary listings.

OTHER SUBSTANTIVE ISSUES

Archaeological excavation permits have been issued through a public process for over 80 years in New Mexico. In 1931 the New Mexico legislature passed the Conservation of Scientific Resources Act (House Bill 124, Tenth Legislature, Laws of New Mexico, 1931, Chapter 42, Page 81). A primary purpose of this Act was to conserve the antiquities of the state, particularly archaeological sites, for the use and benefit of the people of the state. To insure that any archaeological studies were performed by qualified institutions and for a public purpose, the Act created a Science Commission and one of its duties and responsibilities was to issue archaeological permits. Thus, the role of public commissions issuing archaeological permits has a long history in New Mexico.

ALTERNATIVES

The SHPO suggests that existing rules could be examined to see if additional efficiencies could improve the archaeological permitting process and process for emergency listings on the State Register of Cultural Properties in order to expedite processing time, while still allowing for a public process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Cultural Properties Review Committee will continue to be the entity to issue archaeological permits with the concurrence of the State Archaeologist and SHPO and to make temporary, emergency listings of cultural properties in the State Register.

JCH/svb