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FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 1/19/19
 LAST UPDATED 1/28/19 HB 206

SHORT TITLE Environmental Review Act SB _____

ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$1,000.0		Recurring	General Fund

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED		>\$1,500.0	>\$1,500.0	>\$3,000.0	Recurring	General Fund
DGF		\$125.0	\$125.0	\$250.0	Recurring	Game Protection Fund
ONRT		\$327.0	\$327.0	\$654.0	Recurring	General Fund
DCA		\$150.0	\$150.0	\$300.0	Recurring	General Fund
SLO		\$750.0	\$750.0	\$1,500.0	Recurring	State Lands Maintenance Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Department of Game and Fish (DGF)
 NM Independent Community Colleges
 Department of Cultural Affairs (DCA)
 State Land Office (SLO)
 Office of the Natural Resources Trustee (ONRT)

Responses Not Received From

New Mexico Environment Department (NMED)
 General Services Department (GSD)

Energy, Minerals and Natural Resources Department (EMNRD)
Office of the State Engineer (OSE)
Department of Health (DOH)
Department of Transportation (DOT)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

House Bill 206 (HB206), the Environmental Review Act, requires a state agency to conduct an “environmental assessment” for a project if preliminary evaluation shows the project could have a significant impact on the environment. The bill requires agencies to prepare a more detailed “environmental impact statement” if the assessment shows the project is likely to have a significant environmental impact. Projects subject to review are those undertaken by public agencies (including state agencies, higher education institutions, counties, and municipalities), by an applicant for a “lease, permit, license, certificate or other entitlement” issued by the state, or proposed on state land or land subject to state jurisdiction. HB206 provides for public comment periods, rulemaking authority to implement the legislation, and judicial review.

The bill exempts a number of projects from this review process, including law enforcement activities, emergency activities to protect public health and safety and the environment (e.g. firefighting), ministerial actions like maintaining existing facilities or constructing a temporary facility, data collection and scientific study, post-fire rehabilitation activities and vegetation management activities, property acquisition, renewals or transfer of permits, adjustments to mineral leases, cutting permits for forest products less than \$3,000, remediation of hazardous waste sites, improving and maintaining public roads, installing signs or displays, issuing hunting and fishing licenses, and installation of underground utilities. Projects that are reviewed under the federal National Environmental Policy Act (NEPA) are also exempted.

FISCAL IMPLICATIONS

The bill includes appropriations totaling \$1 million, including \$250 thousand to SLO, NMED, EMNRD, and OSE. The cost of implementing this bill would depend greatly on the findings of the different levels of review. Due to the complexity of the reviews, a preliminary evaluation will not be as costly as an environmental assessment, which will not be as costly as an environmental impact statement.

In previous years (a similar bill was introduced in 2013), NMED’s Construction Programs Bureau estimated increased operating costs between \$1.5 million and \$100 million to perform environmental assessments and environmental impact statements for 100 capital outlay projects. However, the 2013 bill did not include the number of exemptions included in HB206 and this could reduce the additional costs to NMED. DGF projects it would need to create and fill one additional full-time position for an estimated \$125 thousand annually. ONRT estimates a need for an additional 3 FTE at cost of \$207 thousand annually and expects HB206 will require two environmental assessments and two environmental impact statements each year at a cost of \$120 thousand. DCA estimates additional operating costs of \$150 thousand due to HB206, noting, “It would be difficult for the State Historic Preservation Officer to satisfy the required costs and timetable to prepare these documents without additional resources. SLO estimates additional costs of \$750 thousand annually, but recommends a number of amendments aimed at alleviating the fiscal implications of HB206.

The bill provides that agencies shall include funding to carry out the review requirements in annual budget requests and secure appropriate funding from external applicants.

Under a Minnesota state law similar to HB206, three state agencies most closely involved with the environmental reviews had operating budgets totaling \$1.8 million per year for administrative costs and about 17 full time staff across three agencies in FY2010.

SIGNIFICANT ISSUES

The bill requires NMED to review all environmental assessments and environmental impact statements, and allows the agency to send analysis with changes or additions to another agency leading a project review. NMED's analysis of the 2013 bill noted the cost of preparing the environmental assessment or environmental impact statement falls on the applicant but state agencies are still required to review those documents and decide whether there is or is not a significant impact. Since the bill subjects such determinations to legal review, they must each be done with care and an eye toward legal challenge. NMED issues many permits each year and the time to perform the required reviews would be significant.

NMAG and DGF analysis note that some of the bill's provisions may conflict with DGF's existing responsibilities. While statute charges DGF with ensuring "comprehensive conservation services for hunters, anglers and nonconsumptive wildlife users" and authorizes the State Game Commission to perform all acts necessary to conduct and establish cooperative wildlife restoration projects, HB206 appears to place some of these duties into a multi-agency environmental review process.

NMAG's analysis points out that the bill may offend the principle of tribal sovereignty by attempting to place mandatory duties on tribes, nations, and pueblos by including them in the definition of "cooperating agencies." However, the All Pueblo Council of Governors supports the bill and the bill allows cooperating agencies to decline to participate.

Finally, NMAG notes some of the exemptions in the bill include vague and subjective qualifiers that may be inconsistent with the concept of exemption. The analysis recommends considering whether objective criteria can be established for the proposed exemptions.

New Mexico Wild, a proponent of the bill, provided information about laws in other states and the potential benefit of HB206:

Sixteen states, the District of Columbia, and Puerto Rico have similar laws. The review requirements in HB206 are based Minnesota's environmental assessment worksheet. In Minnesota, 97 percent of environmental reviews are completed with these worksheets, and only 3 percent of their projects require an environmental impact statement.

Many communities in New Mexico have experienced public health effects because of industrial projects being concentrated in the same neighborhoods and HB206 will improve the health of New Mexicans and protect New Mexico's land, air, water, plants, animals, and historical and cultural sites by requiring that agencies consider and mitigate potential adverse impacts before permitting projects and finalizing rule-changes. Making decisions more carefully will reduce the risk of spills, public health crises, and clean-up costs.

A health impact study in Bernalillo County found that areas of the county with the greatest concentration of environmental hazards showed a decreased life expectancy of 5.2 years. Low-income and nonwhite areas of the county have the highest concentration of environmental hazards.

A brine well used for hydraulic fracturing was permitted in the middle of Carlsbad by the state in the 1970's, and its placement in an unstable location led to the creation of an underground cavern. The cost to remediate the well is estimated at more than \$50 million which will be paid for by taxpayers.

SLO provided the following analysis:

While the Commissioner of Public Lands supports agency transparency and environmental review, there exists a notable significant issue. This bill, particularly Section 9's action forcing provision and Section 5(F)'s Environment Department review and analysis authority, risks infringing on the Commissioner of Public Land's rights in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes. Thus, the State Land Office proposes including an amendment to Section 9, also set forth in the proposed amendments attached to this agency bill analysis, which provides: "Nothing contained in this section shall alter, change, restrict or diminish the rights, powers, and duties of the commissioner of public lands in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes."

SLO suggests the following amendments:

In order to address the significant issue identified above and not overburden the State Land Office with review and notice requirements, the State Land Office proposes the following amendments:

Section 3

The definition of "applicant" should be amended to include a person applying for a lease, permit, license, certificate or other entitlement required by law from a public agency pursuant to any law enforced by the public agency.

The definition of "environmental impact statement" should be amended to mean an informational, detailed document, prepared by a public agency, or that a public agency causes to be prepared, setting forth the matters specified in Section 6 of the Environmental Review Act, that, when its preparation is required by the Environmental Review Act, is considered by a public agency prior to the public agency's approval or disapproval of a project.

Section 4

Section 4(a) should be amended to reflect that the public agency with primary responsibility for issuing a lease, permit, license, certificate or other entitlement required by law for a project shall be considered the lead agency for the purposes of preparing and evaluating environmental impact statements, environmental assessments or findings of no significant impact.

Section 5

Section 5(b) should be amended to require that, at a minimum, an environmental assessment include: (1) the location of and a map of the project; (2) a description of the project; (3) a timeline for completion of the project; (4) a description of the type of landscape or ecosystem in the project area; (5) potential mitigation for environmental impacts, including closure and reclamation plans; (6) a description of surface and ground waters; (7) any hazardous wastes associated with the project; (8) a description of protected fish, plant and wildlife species in the area; (9) an inventory of cultural property surveys and reviews completed in the area; (10) a description of potential public health impacts of the project; and (11) potential cumulative impacts of the project.

Section 5(f) should be amended to reflect that only environmental impact statements shall be reviewed by the Environment Department and that the Department send an analysis back to the lead agency within 60 days of receiving the environmental impact statement.

Section 8

Section 8(b) should be amended to reflect the following exemption: emergency activities to protect public health, safety or the environment, including firefighting and flood management.

Section 8(e) should be amended to remove the provision exempting only those post-fire rehabilitation activities not exceeding four thousand acres.

Section 8(h) should be amended to reflect the following exemption: renewals and assignments of existing permits, leases and easements where substantially no change in use occurs and continuation of the activity will not lead to significant environment degradation.

Section 8(j) should be amended to reflect the following exemption: approval and issuance of cutting permits for forest products associated with small-scale restoration activities or vegetation management activities, Christmas tree permits and small wood gathering.

Section 8(s) should be amended to remove the limitation that the activity be on public lands.

Section 8 should also be amended to include an exemption for recreational access permits.

Section 9

Section 9 should be amended to state that an agency must “select,” rather than “authorize,” the alternative to a project that, to the maximum extent practicable and in compliance with the agency’s statutory mission and duties, avoids or minimizes adverse environmental effects, or incorporate appropriate avoidance or mitigation of impacts into the conditions of the permit, license or other authorization for the project issued pursuant to law. Section 9 should also be amended to include that nothing contained in the section shall alter, change, restrict or diminish the rights, powers, and duties of the commissioner of public lands in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes.

Section 10

Section 10 should be amended to require notice and public comment only for an environmental impact statement, but not for an environmental assessment or finding of no significant impact. Section 10 should also be amended to reflect that a member of the general public may request a copy of a final environmental assessment or final environmental impact statement from a public agency.

Section 12

Section 12 should be amended to remove the provision stating that the time limits specified in this section shall apply only when the public agency is the applicant.

Section 13

Section 13 should be amended to reflect that a person having an interest that is or may be adversely affected by a project subject to the Environmental Review Act and who participated in a permitting action or appeal of a certification before any public agency may bring an appeal no more than thirty days after the public agency certifies an environmental impact statement, environmental assessment or finding of no significant impact as complete or the public agency's final permitting, funding, leasing, certification or licensing decision, which is later pursuant to the provisions of Section 39-1.1 NMSA 1978.

Section 15

This bill should be amended to remove Section 15.

Section 16

Section 16 should be amended to reflect an appropriation of \$750,000 from the state lands maintenance fund to the State Land Office for expenditure in fiscal year 2020 to reflect a minimum of five full-time-equivalent positions.

Section 17

Section 17 should be amended to reflect an effective date of July 1, 2020.