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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/21  
 SPONSOR HENRC LAST UPDATED 03/09/21 HB CS/HB265/aHSEIC  
 SHORT TITLE Natural Resources & Lands Protection SB \_\_\_\_\_  
 ANALYST Hanika-Ortiz

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD (for administration)	NFI	\$34.0	\$34.0	\$68.0	Recurring	General Fund
EMNRD (to acquire lands)	NFI	Indeterminate			Recurring	Natural Lands and Heritage Conservation Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
 Indian Affairs Department (IAD)  
 State Land Office (SLO)

### SUMMARY

#### Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 265 authorizes grants to political subdivisions for unique and significant land acquisitions; requires consent on the part of the state agency or corporation to assume certain land management responsibility; inserts a new section of the Natural Lands Protection Act to establish a competitive grant award process; and no longer requires EMNRD consult with an advisory committee for some administrative functions.

#### Synopsis of Original Bill

The House Energy, Environment and Natural Resources Committee substitute for House Bill 265 proposes to amend the Natural Lands Protection Act, Sections 75-5-1 NMSA 1978, and the Natural Heritage Conservation Act, Sections 75-10-1 NMSA 1978, as follows:

Sections 1 and 2 amend the short title and Section 75-5-2 NMSA 1978 (Natural Lands Protection Act) to allow the state to acquire and protect lands in New Mexico without a private partner.

Section 3 makes technical changes to the definitions section and maintains the term “corporation” to mean a New Mexico not-for-profit corporation whose primary purpose is conservation.

Section 4 adds the director of the Outdoor Recreation Division of the Economic Development Department, the secretary of the IAD, and the secretary of the Department of Cultural Affairs (DCA), or their designees, to the Natural Lands Protection Committee; subject to availability of funding, it allows EMNRD to use money in the natural lands and heritage conservation fund to acquire lands that would be titled in the name of the state, if acquired solely by the state. This section adds projects for prioritization purposes that support wildlife habitats, improve watersheds, improve recreational access, protect culturally significant land, and are able to sequester carbon.

Section 5 adds compatible recreation as a reason to acquire land and allows the secretary of EMNRD to assign responsibility for management of such lands to another state agency, including its Forestry Division, Department of Game and Fish (DGF), Department of Cultural Affairs (DCA) or a corporation that jointly owns the land with the state.

Section 6 adds a new section, related to corporation participation requirements, to allow the state to jointly acquire land with a corporation, provided the corporation’s share is at least 10 percent. The title would be held as cotenants having undivided interests in proportion to each share and the corporation must pay to the state a sum equal to and in lieu of taxes, levies and assessments.

Sections 7 and 8 amend the short title and Section 75-10-2 NMSA 1978 (Natural Heritage Conservation Act) to redefine the “fund” to mean the natural lands and heritage conservation fund.

Section 9 requires EMNRD to collaborate with the Natural Lands Protection Committee and tasks the committee with creating a grant process and prioritizing funding for conservation projects.

Section 10 allows the newly named natural lands and heritage conservation fund to also be used by EMNRD to acquire unique and ecologically significant lands pursuant to the Natural Lands Protection Act, alongside conservation projects pursuant to the Natural Heritage Conservation Act.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

HB265/HENRCS provides land acquisition recommendations subject to availability of state funds.

In 2010, the Natural Heritage Conservation Act created the natural heritage conservation fund as

a nonreverting fund, administered by and appropriated to EMNRD, for conservation projects. The substitute repurposes that fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

HB265/HENRCS does not include funding to manage the land acquisitions. EMNRD estimates additional operating expenses for 0.5 FTE to be \$34 thousand per year on a recurring basis. EMNRD explained that making it eligible to own lands without a managing nonprofit as a co-tenant creates a workload that exceeds its current ability to administer. The Forestry Division currently holds one small property for rare plant conservation. State Parks Division's authority for land management and ownership is limited to lands that are state parks. The Forestry Division is not a land management agency on the scale of the SLO, the State Parks Division, or DGF.

EMNRD also noted the bill does not address law enforcement needs for lands made available for public access. The Forestry Division's statutory responsibility for law enforcement is limited to timber theft and fire investigations, and the State Parks Division's law enforcement authority is limited to state parks. This may create a potential liability for state-owned lands with public access.

### **SIGNIFICANT ISSUES**

SLO commented the substitute bill supports state agency work with other partners in addressing land management conservation needs that span across areas where multiple land ownerships exist.

HB265/HENRCS reorganizes the provisions related to requirements for corporation participation into a new section of the Natural Lands Protection Act. Additionally, the substitute bill restores and maintains the requirement that a corporate co-tenant shall annually pay a sum to the state and its political subdivisions equal to what it would have been paid in taxes, levies, and assessments.

The substitute allows general public visits under direct supervision of an employee or representative of the managing state agency or corporation. According to IAD, as written, this language does not assure the state's nations, tribes, and pueblos have continued access to their affected sacred and cultural sites that may be located in these acquired lands without supervision.

The substitute also eliminates the existing provision that land adjacent to the acquired land is not subjected to any regulation or restriction as a result of the acquisition.

The substitute would allow land acquisitions for recreational purposes, as long as compatible.

### **PERFORMANCE IMPLICATIONS**

EMNRD also commented the substitute does not include a provision in the Natural Land Protection Act that public access to acquired lands may be restricted to direct supervision of the state agency managing the property when the state solely owns the property. By expressly providing this authority when the property is jointly held with a corporation, but not when solely held by the state, it could be interpreted to require public access when the state solely owns the

property. Allowing recreation or public access to unique and ecologically significant lands could provide an avenue for ecological destruction and degradation from the impacts of visitation.

### **ADMINISTRATIVE IMPLICATIONS**

EMNRD noted the requirements to consult with the committee for certain administrative functions and allocations pursuant to the Natural Heritage Conservation Act adds an additional workload.

### **TECHNICAL ISSUES**

SLO commented the amendment to Section 75-10-5 does not align with the purpose of the act as stated in Section 75-10-2, Purpose:

The purpose of the Natural Heritage Conservation Act is to protect the state's natural heritage, customs and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.

As a response, SLO suggests deleting the underlined amendment to Section 75-10-5: “The fund shall be administered by the department, and money in the fund is appropriated to the department to fund conservation projects pursuant to the Natural Heritage Conservation Act and to acquire unique and ecologically significant lands pursuant to the Natural Lands Protection Act,” and consider amending the end of Section 75-10-2 to add: “and to acquire unique and ecologically significant lands pursuant to the Natural Lands Protection Act.”

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EMNRD believes the existing requirement to acquire land with a corporate partner would continue to be a barrier to future acquisition of conservation lands.

### **AMENDMENT**

IAD recommends adding a provision that allows the state's tribes unsupervised access to these sites, similar to federal and other local policies that assure Tribal access without supervision.

AHO/sb/al/rl