

Core Services Category: Agriculture, Energy and Natural Resources

Study Area: Consolidation

High Level Recommendation: Amend sections of NMSA 1978 to consolidate the Game and Fish Department (DGF) with the Energy, Minerals and Natural Resources Department (EMNRD)

Problem Statement:

Both agencies deal with environmental related issues and outdoor activities, including hunting fishing, forest management and state parks operation. Other divisions of EMNRD are involved with renewable energy, mine reclamation and oil and gas well permitting. The DGF is already administratively attached to EMNRD.

Background and Findings: Sections 17-1-1 through 17-7-3 NMSA 1978 charge the Department of Game and Fish (DGF) with protecting game and fish and providing these resources for public recreation. The department operates under the direction of a seven-member State Game Commission appointed by the governor and confirmed by the Senate. The department is divided into four programs: Sport Hunting and Fishing, Conservation Services, Depredation Services, and Administration.

The Energy, Minerals and Natural Resources Department (EMNRD) was created by Sections 9-5A-1 through 9-5A-7 NMSA 1978. The statute creates six divisions: Energy Conservation and Management, Forestry, State Parks, Mining and Minerals, Oil Conservation, and Administrative Services.

The following is the mission for each as stated by the agency:

The mission of the Department of Game and Fish is to provide and maintain an adequate supply of wildlife and fish within the state of New Mexico by using a flexible management system that provides for their protection, propagation, regulation, conservation, and use as public recreation and food supply.

The mission of EMNRD is to position New Mexico as a national leader in energy and natural resource areas. This includes developing reliable supplies of energy and energy-efficient technologies with a balanced approach toward conserving renewable and nonrenewable resources; protecting the environment and ensuring responsible reclamation of land and resources affected by mineral extraction; growing and managing healthy, sustainable forests; and improving the state park system that protects New Mexico's natural, cultural, and recreational resources for posterity and contributes to a sustainable economy statewide.

The Energy, Minerals and Natural Resources Department is made up of six programs including program support. All have environmental protection responsibilities and work closely with industry such as fossil fuel producers and mining interests. The state parks program also has components of recreation and customer service.

- Renewable Energy and Energy Efficiency- The purpose of the renewable energy and energy efficiency program is to develop and implement clean energy programs in order to decrease per capita energy consumption, use New Mexico's substantial renewable energy resources, minimize local, regional and global air emissions, lessen dependence on foreign oil and reduce in-state water demands associated with fossil-fueled electrical generation.-total FY11 Adjusted Op Bud, \$1.42 million; total FY 11 adjusted general fund, \$1.0 million; FTE, 15
- Healthy Forests- The purpose of the healthy forests program is to promote the health of New Mexico's forest lands by managing wildfires, mitigating urban-interface fire threats and providing stewardship of private and state forest lands and associated watersheds. - total FY11 Adjusted Op Bud, \$15.3 million; total FY 11 adjusted general fund, \$3.4 million; FTE, 69.
- State Parks- The purpose of the state parks program is to create the best recreational opportunities possible in state parks by preserving cultural and natural resources, continuously improving facilities and providing quality, fun activities and to do it all efficiently.-total FY11 Adjusted Op Bud, \$32.7 million; total FY 11 adjusted general fund, \$10.1 million; FTE, 287
- Mine Reclamation- The purpose of the mine reclamation program is to implement the state laws that regulate the operation and reclamation of hard rock and coal mining facilities and to reclaim abandoned mine sites.-total FY11 Adjusted Op Bud, \$7.1 million; total FY 11 adjusted general fund, \$0.5 million; FTE, 32
- Oil and Gas Conservation- The purpose of the oil and gas conservation program is to assure the conservation and responsible development of oil and gas resources through professional, dynamic regulation.-total FY11 Adjusted Op Bud, \$9.1 million; total FY 11 adjusted general fund, \$3.8 million; FTE, 62
- Program Support- The purpose of program support is to provide leadership, set policy and provide support for every division in achieving their goals.-total FY11 Adjusted Op Bud, \$5.3 million; total FY 11 adjusted general fund, \$2.9 million; FTE, 45

The Department of Game and Fish has four programs. Each is directly related to aspects of hunting and fishing as well as promoting practices that maximize the opportunity to participate in activities.

- Sport Hunting and Fishing- The purpose of the sport hunting and fishing program is to provide a statewide system for hunting activities as well as self-sustaining and hatchery-supported fisheries taking into account hunter safety, quality hunts, high demand areas, guides and outfitters, quotas and assuring that local and financial interests receive consideration.-total FY11 Adjusted Op Bud, \$21.3 million; total FY 11 adjusted general fund, \$0.0; FTE, 200.5

- Conservation Services- The purpose of the conservation services program is to provide information and technical guidance to any person wishing to conserve and enhance wildlife habitat and recover indigenous species of threatened and endangered wildlife.- total FY11 Adjusted Op Bud, \$7.8 million; total FY 11 adjusted general fund, \$0.0; FTE, 40.5
- Wildlife Depredation and Nuisance Abatement- The purpose of the wildlife depredation and nuisance abatement program is to provide complaint administration and intervention processes to private landowners, leaseholders and other New Mexicans so they may be relieved of and precluded from property damage, annoyances, or risks to public safety caused by protected wildlife.-total FY11 Adjusted Op Bud, \$1.1 million; total FY 11 adjusted general fund, \$0.0; FTE, 4.
- Program Support-.The purpose of program support is to provide an adequate and flexible system of direction, oversight, accountability and support to all divisions so they may successfully attain planned outcomes for all department programs.-total FY11 Adjusted Op Bud, \$8.3 million; total FY 11 adjusted general fund, \$0.0; FTE, 60.

There appears to be the greatest opportunity for combining common interests with DGF and the Healthy Forests and State Parks programs.

Fiscal Implications:

The following shows the operating budget for the years FY08 through FY11.

	FY11		FY10		FY09		FY08	
	DGF	EMNRD	DGF	EMNRD	DGF	EMNRD	DGF	EMNRD
GF	0	21,690.1	0	24,850.8	336.8	27,388.3	333.1	25,923.5
OSF	27,175.2	17,817.7	25,353.9	22,523.0	23,912.0	15,390.4	22,759.6	16,602.1
Transfers	0	3,466.6	0	2,962.3	5.0	2,918.6	5.0	2,949.3
Federal	11,293.7	28,014.5	10,942.5	27,918.2	12,417.2	25,492.2	12,778.7	24,349.9
Total	38,468.9	70,988.9	36,656.4	78,254.3	36,671.0	71,189.5	36,876.4	69,824.8
FTE	305	510	308	535	302.5	526	301.5	524

DGF has not had an appropriation from the general fund for the past two years. Its revenues are primarily derived from sales of hunting and fishing licenses. 17-1-14 NMSA 1978 states: “The state game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, unless otherwise provided by law, and the fund, including all earned income there from, shall not be transferred to another fund. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.”

The proposed bill does not change the intent of this language that essentially earmarks these revenues for the specific purpose of furthering the protection and propagation of game and fish.

This makes financial integration of the entities difficult to impossible since DGF has no funds that can be used for the current ENMRD purposes. This is further complicated by the eligibility for federal funds qualifier that requires this protection of hunting and fishing license receipts in the manner stated in 17-1-14 NMSA 1978. This provision can be changed allowing more liberal use of the license monies but only at the risk of losing approximately \$12 million of federal grants annually. To the degree that these earmarks are maintained and the adherence of the federal requirements, this leaves the funds for EMNRD and DGF in silos with only minimal opportunity to produce savings from the general fund.

Estimated Savings (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
0	0	Recurring	General Fund

Cost to Implement (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
uncertain	uncertain		

Revenue Impacts (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
(\$12,000)	(\$12,000)	Recurring	DGF federal if hunting and fishing license receipts not earmarked as required.

EMNRD currently supplies Youth Conservation Corps administrative services including rent for approximately \$50 thousand annually. No savings will accrue from the formal inclusion of the two departments.

Other Issues

Vesting all the power of the current Game and Fish Commission in the hands of the secretary of the new department may be problematic. While it is possible to confer these powers to the secretary, in practice it may be difficult to carry-out. The commission performs many duties that require public input with deep opinions held on both sides of many issues. Whether it is in form of a commission or some administrative arm of the secretary's office, some formal mechanism should be considered to perform this function.

Game and Fish comments on this issue:

“Currently, the State Game Commission affords the public with opportunities for public input into wildlife management decisions. Statute mandates a geographic distribution of Commissioners from across the state and requires that an array of interests is represented within

the membership of the State Game Commission. Eliminating the Commission and focusing their authority on a Cabinet Secretary and division Director may cause concern among the public and legislature that ability to participate in and influence the rulemaking process is less open than the current process allows.”

In addition, the combining or dissolution of several commissions is an area that will require detailed analysis by EMNRD and the affected industry interests. In the following, EMNRD offers several examples of areas that may require additional investigation.:

The bill proposes to repeal NMSA 70-11-5, which establishes the Office of Interstate Gas Markets Technical Advisory Committee. Since the committee has been dormant for many years and its functions are no longer relevant, this is appropriate.

Mining Safety Board. The mining safety laws contain a number of additional references to the “mining safety board” or the “board” that are not included in the bill. Section 149 of the bill proposes to repeal Section 69-8-4. This section provides the duties of the mining safety board which are being transferred to the mining commission. This section should be retained but amended (see below).

Coal Surface Mining Commission. This bill may conflict with federal law. The Surface Mining Act was promulgated to allow the state to assume primary responsibility for regulating coal mining and reclamation in New Mexico as contemplated by the federal Surface Mine Control and Reclamation Act (SMCRA)-Section 69-25A-2 NMSA 1978. The activities of the state under the Surface Mining Act must be determined by the federal government to be no less effective than the requirements of SMCRA to maintain primacy.

Section 517(g) of SMCRA requires that “No employee of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.” 30 U.S.C. 1267(g). Violation of this provision triggers criminal penalties under both federal and state law-Section 69-25A-32 NMSA 1978. Federal rules define “employee” under this section to include members of boards and commissions who perform duties under SMCRA. 30 CFR 705.5. The Surface Mining Act had addressed the conflict issue under Section 69-25A-4.(F) and adds that provisions as Section 69-36-6.H, but excludes “employee members” of the commission. This exclusion may create a conflict with federal law.

Sunset of substantive sections. Section 135 provides for the sunset of the Mining Commission and the repeal of 4 sections of the Mining Act. Section 69-36-6 is the only section that covers the establishment of the commission. 69-36-7 and 69-36-8 cover the specific rulemaking authority and procedures under the Mining Act. 69-36-9 only deals with the authority of the director of the EMNRD mining and minerals division. Only Section 69-36-6 should be repealed.

Duplicative or conflicting rulemaking procedures. By combining 3 boards into one, the mining commission now has 3 different rulemaking procedures under 3 acts (Sections 69-8-4.B-D, 69-25A-7 and -8, and 69-36-8). The procedures are similar but not identical. The rulemaking

procedures in the mining safety and surface mining acts could be repealed and replaced with references to the procedures in the mining act.

Eliminating the Natural Lands Protection Act Committee would eliminate the opportunity for members of the public, including representative from ranching and farming communities to have any influence in the selection of lands to be acquired by the state or be approved for a conservation easement tax credit.

The Surface Mining Act must remain no less effective than SMCRA. Any proposed changes to the Surface Mining Act must be submitted to and approved by the Department of Interior, Office of Surface Mining (OSM).

Implementation Plan:

Implementation will need to take place by statutory change.

Core Services Category: Commerce and Industry

Study Area: Consolidation/Efficiency

High Level Recommendation: Repeal the appropriate sections of the Gaming Control Act (Sections 60-2E-1 through 60-2E-62 NMSA 1978) and the State Racing Commission Act (Sections 60-1-1 through 60-1-26 NMSA 1978). Combine the functions of the two agencies into the New Mexico Racing and Gaming Commission, but preserve the status of the three paid, full-time members of the Gaming Control Board.

Problem Statement: There exists an unnecessary dual agency approach to gaming and racing in New Mexico and the New Mexico Gaming Control Board and the New Mexico Racing Commission should be merged into one new regulatory agency. Not only will this save significant general fund monies but it will also provide benefits to their respective industries, as well as the state and taxpayers. Further, both agency central offices are presently located in the same building in Albuquerque. The total estimated annual savings in general fund monies associated with the consolidation of the agencies is \$369.4 thousand.

Background and Findings: The New Mexico Racing Commission regulates the pari-mutuel horseracing industry to protect the interest of the wagering public and the state in a manner which promotes economic prosperity for horsemen, horse owners and racetrack management. The commission's regulatory oversight includes both human and equine drug testing, licensing of all participants, background investigations, and enforcement of the rules and regulations of pari-mutuel horseracing. The commission oversees five racetracks and six race meets; approves race dates for live racing; and regulates simulcast facilities and signals. The commission is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are horse breeders;
2. Two members are public members; and
3. No more than three members can be from the same political party.

The New Mexico Gaming Control Board was established by the New Mexico Legislature and began operations in June 1998. It is responsible for regulating legalized gaming at New Mexico's licensed racetracks, as well as veterans' and fraternal organizations. The board also appoints a representative to monitor New Mexico's tribal gaming compacts. In 2005, the Gaming Control Board also began regulating bingo and raffle games. The board is composed of five gubernatorial-appointed members. The membership must meet the following criteria:

1. Three members are paid fulltime positions;
 - a. One must be an attorney,
 - b. One must be a certified public accountant, and
 - c. One must have a background in law enforcement;
2. One member is the chairman of the racing commission;
3. One member is a public member who must have experience in business; and

4. No more than three members can be from the same political party.

Options to Consider: The proposed New Mexico Gaming and Racing Commission will retain all jurisdictional authority currently vested in the two, now separate agencies. It will consist of seven gubernatorial-appointed members. Proposed membership must meet the following criteria:

1. All members shall be residents of New Mexico and citizens of the United States;
2. One member shall have a minimum of five years supervisory experience in a law enforcement agency;
3. One member must be a certified public accountant with at least five years experience in public accountancy;
4. One member must be an attorney licensed to practice before the state supreme court;
5. Three members shall be practical breeders of racehorses in New Mexico; and
6. One public member who has experience in business and financing.

The law enforcement, certified public accountant, and attorney members of the board shall be fulltime state officials and shall receive a salary set by the governor. The governor shall appoint a chair from the board's full-time, salaried members.

Primary Benefits To The Industry, The State and The Taxpayer:

1. Streamlined processes with particular emphasis on single background investigations
2. Common licensing procedures
3. Single board meetings
4. More rapid response to issues
5. In-house legal representation and research
6. Enhanced customer service
7. Cost savings to licensees
8. Cost Savings to the state and the taxpayer
9. Reduction of redundancy in staffing levels

Fiscal Implications: This bill may reduce administrative expenses associated with regulating horse racing and gaming. Reduction in administrative expenses would primarily result from combining the Gaming Control Board and the Racing Commission, with a subsequent reduction in per diem payments to members of those respective boards due to a reduced number of Board members and commissioners.

This bill may also reduce administrative expenses associated with licensing of racing and gaming entities. However, because the bill maintains the dual licensure structure for racing and gaming in an essentially unchanged form, any reduction in administrative licensure expenses would be minimized.

Estimated Savings, (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
	\$369.4	Recurring	General Fund

It is anticipated that this bill would reduce administrative expenses by combining the executive and administrative functions of racing and gaming, resulting in a decrease in executive and administrative staff. The Gaming Control Board (GCB) indicates:

This bill may increase the administrative expenses associated with performing background checks due to a significant increase in the number of background checks the Gaming Control Board would be required to maintain. This increase would only be realized if the Gaming Control Board were to subject racing applicants to the same level of background scrutiny as gaming applicants. If the Gaming Control Board were to maintain the same level of scrutiny for racing background checks as that which is currently employed, this bill would be revenue neutral.

This bill may decrease monthly rent and utilities payments if the two agencies are able to combine office space due to reductions in staff, and further, there may be some decrease in staff per diem and mileage due to combining racing and gaming audits and inspections.

SIGNIFICANT ISSUES

GCB notes that “there appear to be some inconsistencies in the terminology for various types of licensure as well as inconsistencies in the time periods for which various licenses would be valid.” Further, GCB states:

This bill eliminates the requirement that gaming machines must be operated on the “premises where live racing is conducted.” This could lead to a claim by the tribes that the bill constitutes an expansion of gaming that would nullify the revenue-sharing provisions of the state-tribal gaming compacts.

The potential of “expansion of gaming” tribal claims appears to be a valid concern.

The New Mexico Racing Commission (NMRC) raises a number of discussion issues, noting that the “statutory provisions of the commission allow for the existence of a racetrack without the addition of a casino. Thus, the focus of the two entities is not aligned, nor do they have similar purposes.” NMRC adds:

1. The purpose of the commission is significantly different from that of the Gaming Control Board. The mission of the commission is to provide regulation in an equitable manner to New Mexico’s pari-mutuel horseracing industry to protect the interest of wagering patrons and the State of New Mexico in a manner which promotes a climate

of economic prosperity for horsemen, horse owners and racetrack management. Whereas the Gaming Control Board is only concerned with the gaming aspect of racing. There is no sentiment in their intentions. Any lack of sentiment is detrimental to the racing industry and all participants. One of the primary focuses of the commission is to hear from the horsemen and the New Mexico breeders who are directly impacted by the decisions of the commission;

2. The proposed amendment risks the possibility of stifling the voice of the licensees for whom which the commission was created. As noted above, the significant number of licensees requires specified attention that may not be given by a consolidated board; and,

3. With regard to track licensees, there may be a possible conflict of interest as licensing by the two entities is intended to achieve two very different results. While the Gaming Control Board's directive is to ensure that the track licensee has sufficient funding and credibility to maintain a track, the commission's objective is to ensure that the racing aspect of the track can be properly carried out. The two separate and distinct duties cannot be carried out by the other. It would be impossible for the Gaming Control Board to comment upon the efficiency of a racetrack surface or the compounds of a prohibited substance.

NMRC adds that the composition of the Gaming Control Board may be problematic in that some commissioners hold paid positions while others are expected to volunteer; while "Section 11 60-2E-12, Section 1, page 34, eliminates practical breeders from being engaged in racing though they are intentionally on the Gaming Control Board because of their knowledge and expertise."

In speaking to the proposed merger of the two agencies the chair of the NMRC states, "While I think that merging the two boards makes a lot of sense there are some valid concerns. After serving on both boards and addressing the concerns of both racing gaming is going to be a huge task for one board. I really feel that all commissioners should be volunteers with term limits. The racing side needs someone that is certified in equine medicine. Maybe two boards would still make sense but merge all admin and staff. I would think this could save the state a lot of money. I do believe there is a solution to merge."

The executive director of the NMRC adds, "I believe the concerns outlined [in the NMRC agency comments] are valid topics of discussion for consideration in the final draft of a merger bill. We are not against the concept of merging the agencies or trying to be only negative. A lot of time and energy was spent in helping formulate the earlier version of a merger a few years ago. Some of what is reflected [in the NMRC agency comments] are the impasses that were encountered in the previous go-round that would need to be addressed.