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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/06  
 SPONSOR HJC LAST UPDATED 2/15/06 HB 152/HJCS  
 SHORT TITLE Sustainable Development Testing Site Act SB \_\_\_\_\_  
 ANALYST Lewis

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See narrative.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department of (NMED)  
 Energy, Minerals and Natural Resources Department (EMNRD)  
 Office of the State Engineer (OSE)  
 Regulation and Licensing Department (RLD)

#### No Response Received From

Association of Counties (AOC)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 152 enacts the Sustainable Development Testing Site Act. The act allows county planning commissions, after review by the Department of Environment and the Office of the State Engineer, to permit specific rural areas as “sustainable development testing sites” to which (as specified in the testing site permit) certain county codes, ordinances, rules or permits do not apply.

A sustainable development testing site is an area that is:

- two acres or less in size;
- situated wholly outside the planning and platting jurisdiction of a municipality; and
- subject to a testing site permit and existing federal laws and regulations.

A testing site permit will be issued only after evaluation of the permit application by the Department of Environment and the Office of the State Engineer and a public hearing. The permit shall

include:

- 1) the specific sustainable development research that may be conducted at the testing site;
- 2) the maximum number of structures that may be constructed;
- 3) the maximum number of individuals that may inhabit the site;
- 4) the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions from which the permittee's sustainable development research is exempt; and
- 5) other restrictions as required by rules adopted pursuant to the act or as determined by the planning commission.

The permit may be issued for a term of up to five years, subject to renewal for another five years, with no renewal after the second five-year period.

Land within a sustainable development testing site shall not be sold in whole or in part unless the subsequent owner obtains a testing site permit; or the owner or subsequent owner enters into an agreement with the planning commission to bring the area within the site into compliance with all county codes, ordinances, rules and permits that would be applicable to the site in the absence of a testing site permit.

A county or a planning commission

- may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category; and
- may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

## **FISCAL IMPLICATIONS**

House Bill 152 does not include an appropriation.

The New Mexico Environment Department (NMED) argues that the Sustainable Development Testing Site Act creates an unfunded mandate in that it requires NMED to review sustainable development permit applications submitted to counties, but provides no fees to NMED.

## **SIGNIFICANT ISSUES**

According to the Energy, Minerals and Natural Resources Department (EMNRD), HB152 would provide valuable information and a mechanism to evaluate and potentially implement new sustainable development practices that are currently not allowed under existing laws, while providing protection against negative environmental and social impacts.

NMED objected that the original bill would have the effect of transferring NMED's statutory mandate and authority for protecting public health and the environment to county planning commissions. However, the HJC substitute clearly requires that all permit applications be evaluated by NMED (and by the Office of the State Engineer) and that the county planning commission shall not issue a permit unless the State Engineer and the Department of Environment have determined that the sustainable development testing site or sustainable development research proposed to be conducted at the site will not damage land, water or air adjacent to the site or will not permanently damage the area of the site.

The Construction Industries Division (CID) of the Regulation and Licensing Department (RLD)

asserts that any rules regulating test sites should be developed by the Environment Department and the State Engineer so that activities such as waste disposal, air pollution and erosion which are likely to harm the environment within or outside the site can be controlled. CID/RLD asserts that it has no statutory authority to create or enforce standards governing these activities.

RLD further asserts that it is virtually impossible to develop rules that would be applicable to experimental construction given the limitless possibilities inherent in experimentation. Additionally, RLD is concerned that under this bill construction on the test sites could be exempted entirely from building permits and inspections. In that event, because permits and inspections are the only means of enforcing building codes and standards, the new rules required by the bill would be unenforceable.

Finally, RLD argues that CID has a well established process for accepting and processing proposed amendments to the state building codes. If experimentation or research on sustainable development results in a demonstrable and viable approach to building that is not covered by the existing building codes, this process is available to those promoting the change. RLD concludes that forcing adoption of rules on sustainable development before demonstrable value has been established for a particular alternative to conventional building is neither logical nor a justifiable use of taxpayer dollars or state resources.

### **PERFORMANCE IMPLICATIONS**

EMNRD suggests that the research facilitated by the Sustainable Development Testing Site Act could lead to advancements in green building practices, including significant future reductions in fossil-fuel related energy consumption, that support both Executive Order 2006-01 for “Energy Efficient Green Building Standards for State Buildings” and the renewable energy and energy conservation goals of EMNRD’s strategic plan.

NMED worries that, by transferring its authority to the county planning commissions, HB 152 could negatively affect the liquid waste performance and other measures, and could jeopardize EPA funding.

### **ADMINISTRATIVE IMPLICATIONS**

According to the EMNRD, that department’s review of permit applications could be accomplished with existing staff resources.

NMED questions what enforcement authority would apply, and which agency would apply it, if a permittee violates the testing site permit and creates a hazard to public health or the environment. NMED expresses further concern that the bill does not provide for notification of unauthorized discharges as required by various state and federal laws and regulations.

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

According to NMED, HB 152 conflicts with NMSA 1978 Section 9-7A-15 in that all wastewater treatment and disposal technologies must be reviewed by the Wastewater Technical Advisory Committee (WTAC). NMED suggests that experimental technologies that are proven under this program should be reviewed by the WTAC and placed on the NMED list of approved technologies for use in New Mexico.

## TECHNICAL ISSUES

The Construction Industries Division (CID) of RLD raises a number of technical questions and concerns, including:

- What rights would neighboring landholders have with respect to the experimental construction and research activities that are to be permitted?
- There is no definition of “person” in the bill, and there are no qualifications placed on applicants for the proposed permits. For example, if construction is to be performed on the site, will it be performed by the permittee? Will he, she or it be required to be a validly licensed contractor?
- Once a permit is issued, a county may not revoke the permit without first conducting a public hearing. This may interfere with a county’s police power. For example, suppose criminal activity such as a methamphetamine lab were discovered on a test site. The county should be able to take immediate remedial action without conducting a hearing.
- The bill does not address responsibility for remediation of the site once the permit is terminated or expires. For example, what is to happen to residential or other structures on the site that are not code compliant?

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

EMNRD suggests that, without a mechanism for research that pushes the limits of our existing codes and regulations, innovative solutions that could dramatically improve and increase sustainable development in New Mexico are severely curtailed or dependent on research done in other states. EMNRD argues that if New Mexico wants to be a leader in the global sustainable development effort and wants to take advantage of the state’s unique climate and natural environment, HB152 will support those objectives.

However, RLD suggests simply that other less intrusive and unmanageable alternatives for fostering alternative sustainable development could and would be considered.

ML/mt