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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/07  
 SPONSOR HAFC LAST UPDATED 3/8/07 HB CS/CS/433/aHAFC  
 SHORT TITLE Land, Wildlife & Clean Energy Act SB \_\_\_\_\_  
 ANALYST Francis

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	*NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

\*See fiscal Implications Narrative

Relates to SB309

Duplicates appropriation in SB710 (Laws 2007, Chapter 2).

#### SOURCES OF INFORMATION

LFC Files  
 Taxation and Revenue Department (TRD)

Responses Received From (For original bill)  
 Energy Minerals and Natural Resources Department (EMNRD)  
 NM Environment Department (NMED)  
 Department of Game and Fish (DGF)  
 Department of Agriculture (NMSU)  
 Office of State Engineer (OSE)  
 State Land Office (SLO)  
 New Mexico Finance Authority (DFA)

#### SUMMARY

##### Synopsis of HAFC Substitute and Amendment

The House Appropriations and Finance Committee substitute for House Bill 433 is very similar to the House Energy and Natural Resources Committee substitute except for the financing provisions. The HAFC substitute removes the Conservation and Clean Energy bonding fund and all references to it as well as the appropriation of \$10 million. The amended substitute changes

the language so that the Land, Wildlife and Clean Energy Bond Fund is subject to appropriation and projects with costs greater than \$2 million must be specifically authorized by the legislature. The Land, Wildlife and Clean Energy board must report to the legislature and governor by October 1<sup>st</sup> of each year.

H AFC substitute for House Bill 433 as amended creates the Land, Wildlife and Clean Energy (LWCE) board to oversee projects that will conserve land and water and promote clean energy in New Mexico. The LWCE will be administratively attached to the Energy, Minerals and Natural Resources Department (EMNRD).

The LWCE board will be charged with soliciting, approving and certifying projects to be funded using the following criteria:

- Potential for conserving land or wildlife or increasing clean energy development;
- Potential for leveraging other investments, public and/or private, including allowing local governments to match funding by adopting open space and agricultural protection policies;
- Impacts of the project, including benefits of avoidance of waste;
- Expertise of entity proposing projects;
- Potential for collaboration among the state and other entities, including landowners;
- Balance between conservation and clean energy development projects;

The LWCE board will be made up of fourteen members:

- EMNRD secretary or designee
- NM Department of Agriculture director or designee
- Department of Game and Fish director or designee
- State Engineer or designee
- Ten public members

The ten public members are appointed by the governor and confirmed by the senate and they each have to represent one of ten occupations, interests or activities listed:

- Wind, solar and biomass
- Energy conservation and efficiency
- Farm production (member's primary occupation)
- Municipalities and counties
- Land or natural area protection trust
- Wildlife management and conservation
- Tribal land conservation
- Community land grants and acequias
- Livestock or dairy (member's primary occupation)
- Hunting or fishing

There are additional criteria for conservation projects that include supporting private ownership of working farms and ranches, assistance to private landowners in conservation, protection of ecosystems or habitat, and improving public access for outdoor recreation-including hunting and fishing. Clean energy project proposals should show how the project increases energy efficiency or conservation and how the project uses solar, biomass, geothermal, hydrogen or wind power. The bill specifically disallows use of eminent domain or condemnation for the purposes of

acquiring land or water rights (Section 6-A). Easements and access agreements may be acquired if the owner voluntarily enters into an agreement to sell the land, water rights, or conservation easement or enter into an access agreement. There are other property protections as well including a requirement to compensate a local district if conservation project which the local district is not a partner depletes the tax base. Mineral rights and access to land for mineral severance are protected.

The LWCE board will have to report annually by October 1<sup>st</sup> to the legislature and the governor on the projects, budget, and 5-year strategy. The report also must include information on how to apply for funding and an evaluation of the social, economic and ecological impact of the program.

The use of the funds to purchase water rights is designed to protect acequia and irrigation associations as well as other water users. The LWCE board cannot buy water rights that are above market value, are insufficiently senior, have not been adjudicated by the office of the state engineer (OSE) and can be exported to a different basin.

### **FISCAL IMPLICATIONS**

HAFC proposed substitute for House Bill 433 has no appropriation or distribution so no fiscal impact. There is a \$2,014,000 appropriation in SB710 which has been passed and signed (Laws 2007, Chapter 2).

### **SIGNIFICANT ISSUES**

There are already several programs in state and federal government to address conservation and clean energy and it is unclear whether this is an additional program or it is meant to consolidate other programs. EMNRD has a program for renewable energy. The Department of Game and Fish has conservation and habitat programs. OSE manages the state water resources including conservation and adjudication. Each of these programs would be able to apply for funding from the LWCE board for projects that were not included in their annual budget. State Land Office (SLO) reports that “most if not all of the contemplated projects and acquisitions have other agencies and jurisdictions that presently operate in the same field e.g. the SLO is currently involved in clean energy projects, habitat restoration, land management rehabilitation, watershed maintenance and recreational activities. The potential for duplication of effort is significant.” OSE also feels that when the LCWE board becomes active in the water rights market, it will be directly competing with the Interstate Stream Commission for the acquisition of water rights.

NMFA reports that the method of compensation for local governments who are not partnering on a project is inadequately defined. The bill addresses the issue of compensation by requiring compensation based on the use of the land at the time of purchase. Some uses, such as agricultural, are treated differently for taxation and so determining the last use at time of purchase may pose difficulties.

NMED reports that HB433 addresses some of the recommendations made by Governor Richardson’s Climate Change Advisory Group including making New Mexico the “clean energy state” and reducing New Mexico’s greenhouse gas emissions. The substitute also follows these recommendations.

The NM Department of Agriculture reports that \$20 million of federal funds are available for matching programs for conservation that the state is not taking advantage of and there is over \$40 million in unmet conservation funding needs and another \$10 million in unmet needs for clean energy.

**PERFORMANCE IMPLICATIONS**

SLO and NMED have noted that they are not included in the membership of the board.

**ADMINISTRATIVE IMPLICATIONS**

SLO notes that the staff and the executive director will need to have significant cross-discipline skills in all of the areas contemplated by the bill.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Establishing the board and funds is part of the Executive budget recommendation.

SB 309 is an identical bill to the original but relies on a different financing method than the HENRC substitute.

**ALTERNATIVES**

To address SLO concerns, the Commissioner of Public Lands could be added to the list of board members or the board could be required to seek consultation from SLO when the land acquisition affects lands held in the public trust and may impact income to the trust.

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