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FISCAL IMPACT REPORT

ORIGINAL DATE 02-02-10

SPONSOR O'Neill LAST UPDATED _____ HB 213

SHORT TITLE Natural Resources & Environment Dept. SB _____

ANALYST Woods

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)*

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$1,486.7)	(\$1,486.7)	(\$2,973.4)	Recurring	Not Specified

(Parenthesis () Indicate Expenditure Decreases)

* Fiscal data excerpted from the Committee on Government Efficiency, *Report to Governor Bill Richardson: Recommendations of Improving Government Efficiency*, January 14, 2010. (“The Carruthers Report”) See Fiscal Implications.

This legislation is a duplicate of SB 241.

SOURCES OF INFORMATION

LFC Files
 Committee on Government Efficiency

Responses Received From

New Mexico Environment Department (NMED)
 Department of Cultural Affairs (DCA)
 Public Education Department (PED)
 Attorney General (AGO)
 Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

House Bill 213 seeks to effect a reorganization of natural resource agencies, creating the department of natural resource and environment from the energy, minerals and natural resources, the environment, and the natural resources trustee. HB 213 also consolidates certain regulatory boards and changes the deposit of fines from certain drinking water regulations and mining act violations from special funds to the general fund for deposit into the current school fund. HB 213 further eliminates the Occupational Health and Safety Commission and the Coal Surface Mining Commission, transferring those duties to the Environmental Improvement Board and the Mining Commission, respectively.

FISCAL IMPLICATIONS

On January 14, 2010, the Committee on Government Efficiency, in their *Report to Governor Bill Richardson: Recommendations of Improving Government Efficiency*, noted the following:

Establish a Department of Natural Resources and Environment by merging Energy, Minerals, and Natural Resources, Environment, and Natural Resources Trustee functions.

- Exempt personnel cost savings, including benefits \$536,300
- Other potential savings, all sources \$950,400

It is noted that, in the introductory section of the report, the committee offered the following caveat:

The relatively short time frame, from the appointment of the committee until the report was to be issued to the Governor, allowed the Committee to evaluate and identify “the low hanging fruit” but the Committee could not undertake an in-depth analysis of an overall restructuring of New Mexico government.

EMNRD additionally notes that the costs of combining NMED, EMNRD, and the Natural Resources Trustee into one department have not been quantified. One-time expenditures of funding will need to be expended to combine offices, unify information technology systems, building signs, and replace stationary, business cards, etc., to properly identify the new agency. EMNRD adds:

Information technology systems are essential to the operation of both departments and have grown significantly in complexity over the years. Unifying these systems would be an especially complex and expensive task. Additionally, accounting system procedures between the two departments and the Natural Resources Trustee will need to be unified within the SHARE system. NMED and EMNRD currently use different systems for lower level accounting within each department.

Recurring savings may be realized due to the unification of NMED, EMNRD and the Natural Resources Trustee via the combination of Administrative Service Divisions (ASD) and the elimination of one of the cabinet secretaries along with, presumably, the Cabinet Secretary’s support staff. One ASD director position would be eliminated due to the consolidation. Savings might be realized by the elimination of duplicative services in the ASDs exist. However, the various divisions would still need the ADS’s services, so the workload would remain.

NMED offers similar comments, stating that, “While it is difficult to quantify the fiscal impact of this bill, it is anticipated that HB 213 will have some fiscal savings by combining the Administrative Services, Information Technology Divisions and the Office of General Counsel. Other efficiencies may be realized by putting some bureaus currently in the separate departments into the same division.”

Accordingly, when viewed against the backdrop of the Committee on Government Efficiency caveat, and cognizant of the fact respondents offered simply speculative comments regarding potential fiscal impact of the legislation, additional analysis is indicated that includes the active and thoughtful participation of the impacted agencies.

SIGNIFICANT ISSUES

AGO advises that the legislation affects the organizational structure through which the state implements a wide range of programs and functions, including natural resource, environment, parks, human health, occupational health and safety, mining, radiation protection, air and water quality, and functions of the natural resources trustee. There are several related bills affecting environmental programs and functions currently before the 2010 budget session. Until it is known which bills pass and which do not, it is not clear whether implementation issues may arise.

NMED notes that the Environmental Health Division, which includes the district and field offices and the radiation bureau, was not included in the reorganization in HB 213, Section 4.A. This appears to be an oversight. NMED further adds:

HB 213 Section 4.A also does not specifically identify an Information Technology Division, which was created by statute in 2005 (HB 747 - created information technology divisions within CYFD, Corrections, DOH, Environment, HSD, Labor Department, and DPS). With specific respect to the Information Technology Division within the Environment Department Act, the statute states “[t]he department shall be a cabinet department and shall include, but not limited to, an information technology division...” NMSA 1978, §9-7A-4.

For more efficiency and to further save money, eliminate the references in the new material to the specific bureaus within the new department. For example, the Environment Department is currently considering combining one small bureau into another small bureau because of a bureau chief retirement. See amendment below.

Additional savings could be realized by eliminating the wastewater technical advisory committee. This committee is completely advisory, but is paid per diem and mileage for any meeting it holds. See amendment below.

The references to the exempt division directors on pages 6-7 (lines 25 – 4) and page 8 (lines 22-25) are repetitive. One provision should be eliminated. [NMED suggests amending the legislation, as indicated below.]

As further background, EMNRD advises that, currently, various entities within NMED provide regulatory oversight for numerous operations within EMNRD particularly the State Parks Division (SPD). One result of the merger will be that the new department will be regulating itself at times. Examples of these oversight/regulatory functions include:

1. Drinking Water – SPD currently operates approximately 30 public water supply systems throughout the State of New Mexico. Each of the water supply systems is subject to NMED regulation via state implementation of the federal Safe Drinking Water Act.
2. Wastewater – SPD currently maintains approximately 10 ground water discharge permits for the operation of wastewater disposal facilities at various state parks throughout the State. These discharge permits are subject to periodic renewal and oversight by NMED field staff, including sampling and review of physical facilities associated with wastewater disposal.

3. Liquid Waste Disposal – SPD must obtain permits from NMED for the installation of liquid waste disposal units (e.g. septic tanks) for lower flow facilities. These permits, along with inspection of installation, must be reviewed by NMED personnel.
4. Water/Wastewater Operator Certification – SPD employs numerous personnel to operate and maintain water and wastewater systems within state parks. These operators are required to take an NMED-administered test and maintain certifications by attending NMED-approved trainings.
5. Food Service – SPD currently has two locations where concessionaires operate food service establishments. NMED is the agency that provides inspections and certifications for sanitary food service conditions.
6. Surface Water Quality – SPD performs work within the waters of the United States that requires concurrence from NMED surface water quality prior to the work taking place.

EMNRD adds that, “Another example is the Mining Act where the Secretary of Environment currently provides determinations of environmental compliance (NMSA 1978, Section 69-36-7.P(2)) or reviews proposed rules of the Mining Commission (Section 69-36-9.D).”

PERFORMANCE IMPLICATIONS

EMNRD suggests that performance implications are unknown; however, “If enacted, HB 213 will create a large department with an extremely broad scope. It is unclear whether a large department will improve or harm the delivery of government services or the attainment of performance goals.”

ADMINISTRATIVE IMPLICATIONS

EMNRD states, “Time and resources would be spent merging NMED, EMNRD and the Natural Resources Trustee.” NMED adds, “The Environment Department will need to adjust the combining of a few divisions which may temporarily affect administrative functions. Any disruptions should be minor.”

DUPLICATION

AGO notes that, “Other introduced bills as of 1/31/10 that amend affected program statutes are: HB 27, 78, 84, 177, 192, 208 and SB 61, 93, 115, 131, 186, 231.”

TECHNICAL ISSUES

EMNRD advises that the following statutes should be amended to change references to the “Secretary of Energy, Minerals and Natural Resources,” the “Natural Resources Department,” or the “Energy, Minerals and Natural Resources Department” to “Environment and Natural Resources”:

NMSA 1978, Section:

4-55C-4
6-21D-6.1

6-23-5
7-1-6.59

7-1-6.49
7-1-6.38

7-2A-21	16-39-	71-2-9
7-2A-18.187-2A-19	16-4-10	71-7-5
7-2-30.2	16-4-4	70-2-37
7-2-18.14	30-8-5	70-11-8
7-2A-18.19	19-10B-7	70-11-5
7-2-18.10	33-2-50	74-4A-6
7-2A-8.9	30-32-1	75-9-4
7-9-79.2	68-2-5	69-26-3
7-2A-24	60-13-10.2	69-12-3
7-2-18.24	69-11-2	69-5-16
15-3B-14	69-12-4	69-11-1
16-2-2.1	69-1-2	69-25B-4
16-2-30	69-1-6	69-26-1
16-2-11	66-13-13	74-9-43
16-2-9.1	67-12-15	69-2-1
16-2-19	68-2-3	66-3-1011
16-2-19.1	69-27-3	69-9-3
16-2-5	69-11-3	69-36-7
16-2-10	69-26-2	69-36-9
16-2-7.1	70-2-4	70-2-12
16-2-15	70-2-26	70-2-7
16-2-22	70-2-35	70-2-4
16-2-29	70-2-38	70-2-5

OTHER SUBSTANTIVE ISSUES

NMED indicates that both of the other agency consolidation bills introduced – HB 94 (Merge Aging and Human Services Departments) and HB 94 (Merge Homeland Security and Public Safety Department) -- specifically identify IT divisions within the new organizational structure of the departments. As noted above, the 2005 statute specifically created IT divisions within HSD and DPS in addition to creating the IT Division within the Environment Department. The exclusion of an IT division in HB 213 appears to be an oversight. NMED concluded, “As policy, the Governor’s office created Information Technology divisions within the largest state agencies to have more direct oversight over IT spending, purchasing, and operations that did not occur when IT was incorporated under the Administrative Services divisions of some agencies.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Continued operation of state environmental and resource programs under *status quo*.

AMENDMENTS

EMNRD reiterates its comments under “Technical Issues.” NMED suggests the following:

- Page 2, line 24, insert “information technology division”
- Pages 2-3, lines 25 – 9, delete these lines in their entirety
- Page 3, line 13, delete “, which”
- Page 3, lines 14 – 17, delete these lines in their entirety
- Pages 3-4, lines 21 – 2, delete these lines in their entirety

House Bill 213 – Page 6

Page 4, line 2, insert “the environmental health division; and”

Page 7, line 10, delete “make and”

Page 7, line 11, delete “and procedural”

Page 8, lines 22-25, delete Section 9 in its entirety

Pages 11 - 13, lines 2 - 4, delete Section 14 in its entirety

BW/mt