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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/10

SPONSOR     Roch     LAST UPDATED                      HJM     19    

SHORT TITLE     Repair State Park Roads, Bridges & Parking     SB                     

ANALYST     Wilson    

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1,200.0	\$1,200.0	\$3,600.0	Recurring	State Road Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)

Energy, Minerals & Natural Resources (EMNRD)

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 19 requests DOT to fill its statutory responsibility to repair and maintain public roads and highways that provide access to state park and recreation areas and repair and maintain roads, bridges, and parking areas within state parks.

### FISCAL IMPLICATIONS

DOT notes that they have routinely worked in partnership with the State Parks Division (SPD) to address road needs. This service has been provided to the SPD to address State Park routes needs throughout the state. This service has been provided to SPD given the availability of DOT funds from its highway maintenance budget. It is estimated there are over 200 centerline miles of State Park Roads which DOT has not been budgeted to maintain. The cost to maintain these State Park Roads is estimated at \$1,200,000 a year, given maintaining to existing levels of service. Repair and maintenance on State Park routes has included, but is not limited to, activities such as roadway grading, blade patching, mowing, snow and ice removal, paving, pothole patching, and sign and delineator maintenance. DOT has routinely expended on average \$218,000 a year over the past eight years on State Park Roads. DOT has insufficient budget to maintain these roads given the needs on Interstate, US and New Mexico highways.

## SIGNIFICANT ISSUES

HJM 19 requests DOT to take responsibility for the repair and maintenance of state parks roads, bridges, and parking lots within the state parks. There are conflicting statutes regarding DOT's duty to maintain state park roads, and a past Attorney General opinion purports to resolve the conflict to require DOT to maintain state park roads that are not on the state highway system.

DOT is not sufficiently funded to maintain these roads and has been providing maintenance services at reduced levels in partnership with the SPD. DOT entered into a Memorandum of Understanding with the State Parks Division for FY 2005 through 2008 in which DOT would expend up to \$500,000 a year provided funding availability. This MOU was rescinded for FY09 due to maintenance budget shortfalls.

The performance of repairs and maintenance of state park routes is accomplished through DOT's maintenance forces and by contract. DOT maintains 30,446 lane miles of roadway and 3,733 bridges throughout the state. Over the recent years, DOT has experienced an increase in lane miles which require maintenance. The increases in the maintenance operations budget have not kept pace with the increase in construction costs and the increase in lane miles to maintain. DOT analysis estimates the statewide gap in funding routine maintenance needs to be approximately \$200,000 a year.

EMNRD provided the following:

Two sections of state law that govern the DOT apply to the construction and maintenance of roads that provide access to state parks and to roads within the boundaries of New Mexico state parks. These two sections of the statutes are as follows:

- NMSA 1978, Section 67-3-19 which was enacted in 1967 states that it is the duty of the State Transportation Commission (DOT) to repair and maintain the public roads and highways that provide access to state park and recreation areas and to repair and maintain all roads, bridges and parking areas within the boundaries of the state park and recreation areas that will best serve the needs of the general public.
- NMSA 1978, Section 67-3-14(B) which was amended in 1989 states that the DOT may also make rules and regulations governing the method of construction, improvement and maintenance of state highways and bridges and compel compliance with the laws, rules and regulations relating to state highways and bridges. The DOT shall have no duty to maintain or supervise the maintenance of roads that are not designated state highways or bridges.”

In the past, DOT maintained that the two sections irreconcilably conflict and that the last sentence of NMSA 1978, Section 67-3-14, since it was enacted more recently, takes precedence over NMSA 1978 Section 67-3-19 and DOT does not have formal responsibility to repair and maintain roads and bridges within the boundaries of state parks that are not designated state highways or bridges. Since most state park roads are not so designated, DOT declined to acknowledge formal responsibility for state park roads.

This alleged conflict in the law, however, was addressed by a New Mexico Attorney General's opinion dated July 19, 2000. The Attorney General's opinion stated that: DOT's obligation to repair and maintain state park roads, bridges, and parking areas pursuant to Section 67-3-19 should be construed as a specific exception to the general statement of the scope of the DOT's maintenance duties as set forth in Section 67-3-14(B). They further concluded that the 1989 amendment to Section 67-13-14(B) should not be interpreted as an implied repeal of Section 67-3-19." Thus, the Attorney General concluded that DOT did have affirmative responsibility for state park roads.

HJM 19 would not clarify and reconcile these two sections of statute, but it would essentially confirm the Attorney General's interpretation and ask DOT to act accordingly.

HJM 19 would not alter or interfere with DOT's decision-making prerogatives, its priority ranking system or its decisions on how to allocate road funds. DOT has established priorities for expenditure of its road funds. In general, the priorities are interstates, other U.S. highways, state highways, then other secondary roads under DOT's jurisdiction. State park roads generally are ranked by DOT in the lowest priority categories. Some access roads within state parks and have great economic significance that may be overlooked. The roads at Elephant Butte Lake State Park, for example, are critical to sustaining a state park operation that generates tens of millions of dollars annually for the economy not only for Sierra County, but also the entire state, because visitors and economic activity associated with the park occurs throughout New Mexico.

#### **ADMINISTRATIVE IMPLICATIONS**

DOT will not be able to comply with the request in the joint memorial because they do not have sufficient budget to repair and maintain state park roads, bridges and parking areas.

#### **TECHNICAL ISSUES**

The joint memorial refers to the State Transportation Commission which is now the Department of Transportation.

DW/svb