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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/10

SPONSOR     Keller     LAST UPDATED                      HB                     

SHORT TITLE     Rezoning of Certain Land Parcels     SB     17    

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ANALYST     Wilson    

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Finance & Administration (DFA)

Environment Department (ED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 17 enacts a new section within Chapter 3 Article 21 relating to zoning regulation by municipalities and counties to provide different bases for an amendment to the existing zoning of property.

The bill provides that an amendment to existing zoning of any property may be based on a preponderance of evidence that:

- (1) the existing zoning is inappropriate because there was an error when the existing zone map pattern was created;
- (2) the existing zoning is inappropriate because changed neighborhood or community conditions justify the change; or
- (3) a different zoning for the property is more advantageous to the community because it is reasonably expected to reduce vehicle miles traveled or other sources of greenhouse gas emissions, even if the change in zoning will provide a different zoning for the property than zoning of surrounding property.

The Bill defines vehicle miles traveled as “the total miles traveled by all vehicles in a specified area during a specified time.”

The Bill defines greenhouse gas as any gas that contributes to the global warming or the greenhouse effect when released into the atmosphere.

### **FISCAL IMPLICATIONS**

DFA states there is no fiscal impact to this or other government agencies. Although, a local financial impact may be realized as vehicle miles and green house emissions may be reduced.

### **SIGNIFICANT ISSUES**

ED states transportation is the third largest source of greenhouse gas emissions in New Mexico, and emissions from this sector increased 12 percent between 2000 and 2007. Zoning strategies could assist with decreasing those emissions from this sector. Decisions on implementing such zoning strategies will continue to be made by local municipalities.

The AGO notes this bill sets forth the bases for rezoning property which are currently provided in New Mexico judicial decisions and other provisions of state law. The bill will allow rezoning of a designated property if that rezoning will result in a reduction of vehicle miles traveled or other sources of greenhouse gasses. This conceivably could allow a distinct parcel of property within a residential or open space area to be rezoned to allow for commercial development if vehicle miles traveled within that area are reduced because residents of the community will not be required to drive greater distances to shop or to procure services. The bill allows for piecemeal or targeted rezoning affecting one parcel of property.

Challenges to zoning actions may be brought by landowners affected by down zoning, or whose property will be subject to a more restrictive use; and by members of the community and owners of adjacent or surrounding property pursuant to their statutory right to appeal administrative decisions of governmental bodies.

The New Mexico courts have held that rezoning by a government is a quasi-judicial action requiring the zoning authority to afford enhanced procedural protections to landowners whose properties are the subject of the zone change.

The first two bases for rezoning set forth in this bill have generally been recognized by New Mexico state courts as *restrictions* on the ability of a city or county to downzone private property. Although certain provisions of the bill appear to codify judicial interpretations of rezoning restrictions and requirements, they may be construed as expanding the authority of cities and counties to rezone property regardless of New Mexico court rulings.

The bill also establishes the burden of proof necessary for a city or county to rezone property as one based upon a “preponderance of evidence”. However, it is uncertain whether the bill will be construed to preempt the procedural protections and burden of proof in rezoning actions which have been established by the courts.

The third basis for rezoning set forth in this bill generally confers authority on a city or county to amend a zoning designation based upon a reduction in vehicle miles traveled in a specified area” or other sources of greenhouse gasses, even if the change in zoning will provide a different zoning for one parcel of property that of surrounding property. This basis for piecemeal or targeted rezoning has not been recognized by New Mexico courts. The bill will presumably allow the rezoning of designated parcels of property for commercial use, in order to allow the construction of commercial shopping centers and other facilities closer to residential areas, presumably reducing the distance residents must drive in order to shop or procure services. However, the bill does not prohibit deforestation, restrict the rezoning of open space property, or limit the property use allowed by this rezoning. The attempt to reduce greenhouse gasses by allowing rezoning of property for commercial use could impact other characteristics of that property and surrounding parcels. This authorization appears to be inconsistent with the holding in a court case, *Miller v City of Albuquerque* requiring that the conditions in a community have changed before rezoning is authorized, as opposed to authorizing rezoning in order to change the conditions of a community.

### **OTHER SUBSTANTIVE ISSUES**

AGO provided the following:

NMSA Section 3-21-5 (1978) requires that zoning regulations and restrictions conform to a comprehensive plan and be designed to positively impact the community by lessening street congestion, preventing overcrowding, avoiding undue concentration of population, etc. Because this bill could conceivably allow additional commercial development, which may not be in accordance with a comprehensive plan, it could conflict with that section.

NMSA Section 3-21-6 (1978) establishes procedures for the amendment of zoning regulations which include a public hearing and a two-thirds vote by members of the city council or county commission in order to implement a change in zoning regulations if owners of twenty percent of the property within the area affected by the zoning change, or within 100 feet of that area, protest the zoning change.

NMSA Section 3-19-8 (1978) allows an appeal from an order or determination of a planning commission; and NMSA Section 39-3-1.1 allows appeals of final decisions of local public bodies. Those provisions will authorize judicial review of rezoning decisions provided by this bill.

DW/mt