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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/10
 SPONSOR SFC LAST UPDATED 02/16/10 HB _____
 SHORT TITLE Natural Heritage Conservation Act SB 186/SFCS/SFI#1
 ANALYST Woods

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands) *

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

* Fiscal implication provided by the Energy, Minerals and Natural Resources Department

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 State Land Office (SLO)

SUMMARY

Synopsis of SFI#1

Senate Floor Amendment Number 1 to Senate Finance Committee substitute for Senate Bill 186 deletes the following language on page 6, lines 11 and 12:

D. The department shall make its selections for funding from the committee's recommendations.

The amendment the replaces the deleted language with the following:

D. The department shall make recommendations to the legislature from the committee's recommendation for approval.

Synopsis of SFC substitute

Senate Finance Committee substitute for Senate Bill 186 seeks to create a fund to protect the state's natural heritage by supporting acquisitions of land, conservation easements and other property interests in order to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.

FISCAL IMPLICATIONS

SLO indicates that no fiscal implications are anticipated, assuming the conservation projects do not alter state law regarding access to commercial development or extraction of a mineral estate and that land adjacent to land acquired pursuant to this act is not subjected to any rules or restrictions as a result of said acquisition.

EMNRD adds that no fiscal implications are anticipated, noting that the legislation “...creates the *Natural Heritage Conservation Fund*,” however, “[it]...does not provide for specific funding or appropriations to go to the fund.”

SIGNIFICANT ISSUES

EMNRD advises that the substitute legislation removes any provision for fee acquisition of land or water interests, which was a component of the original bill. It also specifically adds “customs and culture” to the purpose statement, increases consultation with landowners as part of rule-making, adds protection of agricultural production as a purpose for conservation projects, and includes potential for economic benefits as a criterion for project evaluation. As background, EMNRD further adds:

The Act authorizes the Energy, Minerals and Natural Resources Department (EMNRD) to adopt and promulgate rules for the Act’s implementation; make grants to qualified entities for conservation projects, which include acquisition of easements or recreational access interests from willing landowners or land restoration projects; apply for and receive public or private funds for purposes of the Act; and acquire conservation and agricultural easements, or other property interests for conservation either solely or as a cotenant (Section 4.A). Qualified entities are defined as state agencies, public educational institutions, political subdivisions, or Indian tribes or pueblos. EMNRD must establish a competitive project application process and establish criteria and priorities for funding conservation projects (Section 4.B and 6.B).

In addition to acquiring conservation and agricultural easements, EMNRD may accept gifts or bequests of easements that advance the purposes of the Act. EMNRD or other qualified entities may not acquire easement or access interests by exercise of eminent domain or other condemnation process, nor can acquisition of easement or access interests subject adjacent lands to rules or restrictions as a result of the acquisition. Conservation projects shall be directed at conserving water quality and quantity, protecting agricultural production on working agricultural lands, protecting and restoring forests and watersheds, conserving wildlife habitat and maintaining natural areas, providing outdoor recreation including hunting and fishing, and preserving natural resource heritage value in conjunction with cultural and historic sites (Section 6.A). EMNRD, working with the Natural Lands Protection Committee (Committee), must develop project selection criteria that reflect purpose of the Act, consider matching financial support, consider technical qualifications of any partners, foster integration of existing conservation planning, provide benefits at the landscape and ecosystem scale, improve public access for outdoor recreation, provide potential economic benefits, and other measurements as identified. (Section 6.B) All project applications will be evaluated against established criteria, and selections will be made by EMNRD based on

Committee recommendations. (Section 6.C)

The Act provides for public-private conservation projects wherein EMNRD or another qualified entity may solely acquire conservation or agricultural easements or may do so with a conservation entity (Section 7). A conservation entity is a private nonprofit charitable corporation or trust that has authority to acquire, hold, or maintain easement interests in land. When a conservation entity is involved in joint acquisition of a conservation or agricultural easement, the conservation entity must provide for at least 10% of the project cost, will hold a proportional but undivided cotenant interest, and must provide a management plan subject to review by EMNRD and Committee. For a land restoration project involving a conservation entity, the conservation entity must provide at least 10% of the cost of the project.

EMNRD concludes that, this substitute legislation, “also creates the “Natural Heritage Conservation Fund” as a non-reverting fund in the state treasury to consist of appropriations, gifts, grants, donations, bequests, income from investment of the fund, and any other credited money. The fund is appropriated to EMNRD to fund conservation projects, with expenditures by warrants of the Secretary of Finance and Administration.”

SLO suggests that recent economic conditions have shown that land trusts or “conservation entities” are not immune from becoming insolvent. Perpetuity is a critical component in meaningful and lasting conservation. Minimum qualifying criteria for a conservation entity applying under this act should be established.

PERFORMANCE IMPLICATIONS

EMNRD indicates that performance will ultimately be indicated by the nature and extent of land and water conservation projects implemented; how well those projects implement statewide conservation plans, strategies, and initiatives; and the degree to which financial resources in the Natural Heritage Conservation Fund are leveraged with financial support from other partners. Further that, while the legislation provides for annual reporting to the Governor and Legislature on the status of project applications and funded conservation projects, there are no immediate performance implications for FY11.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes the following:

This Act requires that the Natural Lands Protection Committee review and recommend projects for selection by EMNRD. The Committee is an existing committee that is established by the Natural Lands Protection Act, NMSA 1978, Section 75-5-4. The Committee also advises the EMNRD Secretary on land conservation incentives tax credit applications pursuant to the Land Conservation Incentives Act, NMSA 1978, Section 75-9-1 *et seq.* It may be possible to have meetings addressing applications under this Act and the Land Conservation Incentives Act on the same day or on consecutive days to reduce costs of public notice and per diem and mileage. Selection and approval of conservation projects will require review of applications and easement agreements with a seller or agreements with the qualified entity for approved projects.

Acquisitions of interests in conservation and agricultural easements by qualified entities will entail management responsibilities. Conservation easements require periodic

inspection and enforcement in perpetuity. If there is a public-private partnership, the private conservation entity that co-holds the conservation easement may be able to conduct the inspections.

OTHER SUBSTANTIVE ISSUES

SLO indicates that the Natural Lands Protection Committee and the Energy, Minerals and Natural Resources Department currently support conservation through tax credits granted under the Land Conservation Incentives Act (LCIA). For LCIA conservation property application appraisal reviews are conducted by a competent reviewer at the Taxation and Revenue Department. Appraisal reviews for the NHCA should be conducted in a manner similar to those for the LCIA.

EMNRD advises the following:

The FIR regarding the original SB 186 contained reference to comments by the State Land Office that conservation entities should not be allowed to apply for a land conservation tax credit under the Land Conservation Incentives Act (NMSA 1978, Section 75-9-1) and for a conservation project under the Natural Heritage Conservation Act (created in this bill), suggesting that would be “double dipping” that should be prohibited. It is critical that the Act is not misconstrued to mean that landowners cannot receive payment for a conservation easement under the NHCA and also seek a tax credit through LCIA for a qualifying donation of easement value when a project involves a “below fair market value” negotiated sale (e.g., if a landowner [including a conservation entity] is paid for 50% of the value of an easement through NHCA and donates the other 50% of the easement value, the landowner should be eligible to be considered for a tax credit for the portion donated).

No interest in land can be subject to both programs, but different interests in a parcel of land or different portions of the value of the same parcel can benefit from the different programs. For example, a landowner may sell an easement for a portion of his or her property under this bill and then donate an easement for the remainder of the property and receive a tax credit under LCIA, or receive compensation for a portion of the easement’s value and donate the remainder. The portion sold is not eligible for a tax credit. By combining these programs, a conservation easement may become practical for some landowners.

EMNRD additionally advises that a 2004 report to the New Mexico Legislature in response to HJM 37 identified unmet conservation funding needs in New Mexico of between \$37 and \$48 million annually over multiple years. The demand on agricultural lands in New Mexico for development will continue to reduce the land available for an important part of New Mexico’s culture, heritage, and economy. Many federal programs that provide funding for land and water conservation purposes require non-federal match. Currently, because New Mexico lacks a consistent source of funding for conservation projects, these federal funds are often unavailable or limited in availability for projects in New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

SLO advises, “New conservation easements and projects will continue through other funding mechanisms and the LCIA tax credits.” EMNRD adds that, not enacting the legislation,

“...leaves the state of New Mexico in a position of applying existing limited and disjunction efforts for land and water conservation. That situation will continue a pattern of not being able to provide non-federal match for available federal funding for conservation, thereby missing important leveraging opportunities.”

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