

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Lundstrom ORIGINAL DATE 02/01/11
LAST UPDATED _____ HB 84
SHORT TITLE Merge EMNRD, Environment Dept and Game & Fish SB _____
ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		>\$250.0	<(\$200.0)	~\$50.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)

Energy, Minerals and Natural Resources (EMNRD)

Department of Environment (NMED)

SUMMARY

Synopsis of Bill

House Bill 84 is described by EMNRD as follows:

The proposed legislation would amend the Executive Reorganization Act (Section 9-1-7 NMSA) to establish an Environment and Natural Resources Department (Department or ENRD) which combines the current Environment Department (NMED) and the Energy, Minerals and Natural Resources Department (EMNRD). The Game and Fish Department would become the Game and Fish Division within the new Department and the Office of Natural Resource Trustee would become a bureau within the new Department. The bill would also eliminate the State Game Commission and transfer its duties to the Game and Fish Division and the new Department. The statutes establishing EMNRD and NMED would be repealed.

Other important features of the bill follow:

HB 84 proposes to eliminate the natural resource trustee appointed by the governor and assign the Secretary of the Department as the natural resource trustee and eliminate the Coal Surface Mining Commission and absorb its duties into the Mining Commission. The

Occupational Health and Safety Review Commission is eliminated and its duties will be absorbed by the Environmental Improvement Board. The bill also proposes to eliminate the Natural Lands Protection Committee, and have the Secretary of ENRD assume the duties otherwise assigned to that committee. HB 84 also eliminates the Office of Interstate Gas Markets Technical Advisory Committee.

HB 84 redirects administrative fines and forfeitures from earmarked funds to the general fund. An example is the "inactive or abandoned non-coal mine reclamation fund" in Section 69-36-19 which currently uses Mining Act penalty funds for the cleanup of abandoned mines. Other redirected funds include penalties for violations of drinking water rules.

The legislation also proposes a sunset review of several boards and commissions including the Youth Conservation Commission in 2017, the State Parks Advisory Board in 2017, the Off Highway Motor Vehicle Advisory Board in 2013, the Tree Planting Advisory Committee in 2015, the Mining Commission in 2017, the Oil Conservation Commission in 2015 and the Mining Safety Board in 2017. These sunset reviews are done by terminating the board or commission on a date certain, but permit the board or commission to continue to operate for a year, while the members of the board argue before the legislature that the function provided by the board or commission is efficient and necessary.

FISCAL IMPLICATIONS

Based on an analogy to HB 80 analysis provided by Government Reorganization Task Force (GRTF) staff, this bill will have short term costs and long-term savings. It is unlikely that either the short-term costs or the long-term savings will be in the \$1 million range. The short-term costs are shown in the table as greater than \$250.0 and the long-term savings are shown as \$200.0

EMNRD discusses this balance.

There would be a short term negative impact to the budget since the combination of the three departments and one office into one new department would require expenditure of state funds and resources to ensure a unified operation of the new department. Long term, some savings might be realized by the elimination of some exempt positions and the careful re-organization of the existing Administrative Services programs within the new department.

The costs of combining four agencies to make one new agency are difficult to quantify. One-time expenditures may be needed to unify information technology systems, build and install signage and replace stationary, business cards, etc. to properly identify the new agency. Additionally, accounting system procedures between the three departments may need to be unified within the SHARE system as DGF, NMED and EMNRD currently use different systems for lower level accounting within each department.

In the long term, recurring savings may be realized due to incorporation of four agencies into one and the combination of Administrative Service Divisions (ASD) and the possible elimination of one or more high level management positions. Savings could be realized by the elimination of duplicative services; however, many business practices/requirements may be unique to the original departments and would need to be maintained in the new department. Also, EMNRD ASD is currently operating with a 25% vacancy rate so there is little room to cut further.

The savings from eliminating the commissions and committees listed in HB 84, such as the Coal Surface Mining Commission and the Occupational Health and Safety Review Commission, are not significant. These entities have no employees or other ongoing costs; the only costs occur when a meeting or hearing is held. Meetings of these entities are rare, so there would be limited savings in per diem and mileage for public members and for providing public notice.

NMED notes that, “The newly created agency would number over 1,000 employees. The increase in size could result in economies of scale or could result in management problems, neither of which can be quantified at this time.

LFC notes that in addition to short- and long-term savings of per diem and mileage for the repealed boards and commission of less than \$10K, certain savings would result from eliminating the salary of the natural resource trustee support staff. The merger of DGF may save one or two management positions, but since DGF is not a cabinet level agency, the cost savings would be modest. After the transition, it might be possible to save money by reducing staff through attrition in financial services, information technology and other support services. It is unlikely that significant savings from fewer vehicles would result since forestry, state parks, natural resources, game and fish and environmental improvement field staff are required to traverse rough territory and require SUVs or trucks. Merger of NMED would result in at least two cabinet secretary or deputy positions less.

DGF has a large concern that the merger could jeopardize federal funding for the game and fish licensing match. These funds, and funds from enforcement of the state’s game and fish laws must be earmarked and sequestered in the game protection fund.

Further expanding this warning, DGF notes, “...if the funds collected by the division are not utilized and accounted for in accordance with the federal laws and State statutes, the division could lose the annual federal funding we currently receive. Additionally, if the division were to lose direct control of the properties purchased for sportsperson or wildlife management purposes, the result would be that the division could be found in diversion of federal funds. This could result in the reimbursement to the federal government of the current market value of these properties which is estimated to be in multiple millions of dollars.”

SIGNIFICANT ISSUES

EMNRD comments extensively on this proposal:

HB 84 will create a large, new department that will absorb three existing departments and on office. The new department will have 11 divisions and 11 administratively attached boards and commissions and 1,000 employees.

HB 84 will transform the Game & Fish Department into a division of ENRD and have the Division absorb the duties of the Game Commission. Currently, while Game & Fish is labeled a “department”, it is not a cabinet level agency, and the State Game Commission is administratively attached to EMNRD (NMSA 1978, Section 9-7-3.B). However, the administrative attachment does not involve any shared administrative duties and Game & Fish functions as a separate agency. HB 84 would eliminate the free-standing status of Game & Fish and allow the agencies to share administrative functions.

On the policy level, there are advantages to housing the state's wildlife management programs within a larger natural resources agency. Several surrounding states, such as Colorado and Utah, have broader natural resource agencies that include the state wildlife agencies. There is currently considerable interaction between existing EMNRD programs and Game & Fish, and such interaction would ultimately be enhanced by unified agency.

On the other hand, there are fewer advantages to merging NMED and EMNRD. There are a few areas where the departments have some overlap, such as the regulation of hard rock mining. A merger could provide benefits in that area. But in other areas, NMED serves as a regulator and the natural resource programs are the regulated entity and potential conflicts may arise (see below). In a survey of other western states, while many states combined their wildlife programs with other natural resource programs, only one state (Nevada) had even a partial combination of some environmental and natural resource programs.

The resulting integration will result in considerable short term challenges, particularly for fiscal and other administrative duties. Potentially, there could be long term savings from the sharing of administrative tasks (see Fiscal Issues).

NMED regulation of State Parks. The primary significant issue identified by the State Parks Division of EMNRD (EMNRD/SPD) is that currently, various entities within NMED provide regulatory oversight for numerous operations within EMNRD/SPD and likely within DGF. These oversight/regulatory functions include drinking water, wastewater, liquid waste disposal and above-ground petroleum storage tanks, among other functions.

Although it is possible that the new department could self-regulate with respect to these functions, the current administrative division between the two agencies provides for independent oversight by NMED of EMNRD/SPD and DGF operations. With the unification of the three departments, this administrative division would be eroded or even eliminated.

Coal Surface Mining Commission/Mining Commission. HB 84 eliminates the Coal Surface Mining Commission and has the Mining Commission absorb its duties. This is a logical combination since both commissions cover similar areas and share many members. The combined workload would not be difficult for one commission to handle. The only issue is the need to continue compliance with federal law, in particular, the Surface Mine Control and Reclamation Act (SMCRA). SMCRA does not allow any state official acting under the Surface Mining Act to have an interest in a coal mining operation. Section 171 of HB 84 adds a new subsection H to the duties of the Mining Commission which should address this issue.

Mining and Minerals Division. Section 4 of HB 84 establishes three bureaus within the Mining and Minerals Division. Currently, the Division only has one bureau. Elevating existing programs to the bureau level would create unnecessary bureaucracy

Funds. Money that is currently accumulated in special funds is redirected to the general fund. The "inactive or abandoned non-coal mine reclamation fund" in Section 69-36-19 currently uses Mining Act penalty funds for the cleanup of abandoned mines. A recent

project was the funding by the Legislature of the abandoned uranium mine inventory project. If penalties are to be redistributed to the general fund, then the statutory provision creating the fund can be repealed (69-36-19.B). [The State Constitution Article XII, Section 4, requires that all forfeitures and all fines imposed under general laws be transferred to the current school fund. Redirecting fines in sections 173 and 187 to the general fund can be considered in this fashion, even though it is arguable if the fines are imposed under general laws. Game and Fish penalty assessments are imposed under game protection laws and collections are transferred to the game protection fund. This earmarking is probably required by federal funding rules that require all game-related funds, including license fees and fines for violation of game laws, be earmarked for game protection activities.]

HB 84 eliminates the Natural Lands Protection Committee and has the Secretary of EMNRD absorb its duties. This will streamline decision-making under the Natural Lands Protection Act but will eliminate the opportunity for members of the public, including representatives from ranching and farming communities, to have any influence in the selection of lands to be acquired by the state or be approved for a conservation easement tax credit. The Committee also has a role under the Land Conservations Incentives Act, which HB 84 failed to completely address.

Office of Interstate Gas Markets Technical Advisory Committee. HB 84 proposes to repeal NMSA 70-11-5, which establishes the Office of Interstate Gas Markets Technical Advisory Committee. Since the committee has been dormant for many years and its functions are no longer relevant, it may be appropriate to repeal the entirety of 70-11.

PERFORMANCE IMPLICATIONS

EMNRD comments:

Merging the three departments and one office into one new department will significantly impact the ability of the merged support programs in the agencies to properly function in the short run. These programs will expend considerable effort to combine the agencies effectively. If signed by the Governor, HB 84 would become effective on July 1, 2011. That would give the agencies less than two months to complete the creation of the new department.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes that the state's Surface Mining Act must remain no less effective and stringent than federal law, in particular, the Surface Mine Control and Reclamation Act (SMCRA). Any proposed changes to the Surface Mining Act must be submitted to and approved by the Department of Interior, Office of Surface Mining (OSM) and subject to public comment after publication in the Federal Register.

The statutory changes proposed in this bill will require rulemaking in order to change corresponding provisions in rule. For example, eliminating the Natural Lands Protection Committee would require that the Natural Heritage Conservation Act rules be changed to eliminate mention of the committee.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 84 conflicts with GRTF bill, HB 80, which proposes to merge EMNRD and the Department of Game & Fish but not the Environment Department.

HB 84 conflicts with HB 213 which is the GRTF bill transferring services from the Environmental Improvement Board to the Department of the Environment.

HB 88 also covers executive branch agency sunsets.

SB 106 clarifies the role of administratively attached agencies.

ALTERNATIVES

EMNRD respectfully suggests that the merger of EMNRD and DGF in HB 80 makes sense, but the conflict of functions between the regulating agency (NMED) and the regulated agencies (DGF and EMNRD) will either weaken the regulatory function or create conflict within the merged agency means that this “megamerger” may be unworkable.

EMNRD and DGF request consideration of delaying the effective date of the bill for a year to allow the agencies time to properly plan and implement the necessary changes.

OTHER SUBSTANTIVE ISSUES

DGF requests clarification of statutory construction on page 95, line 24 of the bill. “...the words “but not limited to” are deleted. The agency is concerned that this may unduly limit the ability to take management actions under the Wildlife Conservation Act.” It may be that this is simply modern statutory construction, where the word “including” implicitly allows everything in the list that follows, plus any other actions that are similar.

EMNRD notes that Section 32 of this bill eliminates per diem and mileage for Parks Advisory Board (PAB) members and sunsets the Park Advisory Board as an entity on July 1, 2017. The PAB provides a valuable role to EMNRD/SPD by advising the Division on matters of policy and statewide recreation planning. By removing the per diem and mileage payment PAB members, it will be more difficult to entice people to join the PAB. Additionally, the sunseting of the PAB will save a minimal amount of funding. In FY10, EMNRD/SPD spent \$3.4K on per diem and mileage to reimburse PAB members attending meetings.

EMNRD also points out that the bill updates some statutes for the change in agency, however, not all necessary changes to statutes have been included. “For example, additional references to the natural lands protection committee are found in the Land Conservations Incentives Act, Section 75-9-4 and in 75-10-7.” In response to this comment, it may be that the “catchall” section 212 of the bill provides comprehensive (albeit temporary) instructions in how former references should be deemed references to the new entity and EMNRD’s list of other unchanged references are not required.

NMED notes that the bill provides flexibility to the secretary to reorganize divisions and bureaus. The following are a summary of detailed organizational recommendations, with details available in the NMED agency bill analysis:

HB 84 establishes divisions and bureaus within the department, but allows the secretary “to establish, merge or eliminate organizational units for better efficiency or

effectiveness.” While the bill gives the department flexibility on organization structure, NMED proposes the following organizational changes to the bill:

- a. The Office of Natural Resources Trustee (ONRT) should be placed within the Water and Waste Management Division (WWMD), not the Environmental Protection Division (EPD).
- b. The Solid Waste Bureau (SWB) should be placed within the WWMD, not the Environmental Protection Division.
- c. The Petroleum Storage Tank Bureau (PSTB) should be organized with the WWMD, not the EPD.
- d. HR 84 does not provide for a Radiation Control Bureau (RCB).

NMED also notes that section 8 of HB 84 addresses the existing “comprehensive watershed restoration strategy” currently implemented by the Energy, Minerals and Natural Resources Department. Merging the three agencies central to this issue might result in some synergies.

DGF notes, as did the, “...currently, the State Game Commission affords the public with opportunities for public input into wildlife management decisions. Statute mandates a geographic distribution of Commissioners from across the state and requires that an array of interests is represented within the membership of the State Game Commission. Eliminating the Commission and focusing their authority on a Cabinet Secretary and division Director may cause concern among the public and legislature that ability to participate in and influence the rulemaking process is less open than the current process allows.”

POSSIBLE AMENDMENTS

EMNRD notes that by combining two boards into one, the mining commission would have two different rulemaking procedures under two acts (Sections 69-25A-7 and -8, and 69-36-8). The procedures are similar but not identical. The Legislature might consider repealing the rulemaking procedures in the surface mining acts and replacing with references to the procedures in the mining act.

EMNRD notes that HB 84 adds “the inspector” as a new non-voting member of the Mining Commission. The “inspector” is not defined but is presumably the State Mine Inspector. This change is a remnant of an earlier draft when the Mining Safety Board was also proposed to be merged into the Mining Commission. However, there is no particular problem in having the State Mine Inspector on the Mining Commission and the Inspector brings additional mining expertise to the Commission. A definition of “inspector” may need to be added.

EMNRD points out that in section 203, the amendments to Section 75-5-4 result in the ENRD Secretary making a recommendation of lands to be acquired under the Act without any reference as to who makes the final decision. This section should be changed to show the Secretary making the selection.

EMNRD points out that elevating the separate functions of the abandoned mine lands, mine regulatory section and the mining reclamation section to bureau status in Section 4 of the bill may not be warranted.

NMED notes that membership of the Water Quality Control Commission consists, *inter alia*, of the secretary of the newly-created Natural Resources and Environment Department. Because the WQCC needs members who have expertise in water quality issues, it would be beneficial for that position to be held by the WWMD Director rather than the Secretary since that person would be versed in ground water, surface water and hazardous waste issues. This position would parallel membership of the Director of the State Parks Division and Game and Fish Divisions within the newly-created Natural Resources and Environment Department. Consider adding the words, “or designee.”

NMED also points out that while HB 84 proposes that the secretary of the department also serve as trustee for the ONRT, it continues to require the Attorney General’s Office to provide legal representation to the office. It does not make sense for one small office within the new department to receive separate legal representation from the AGO while the rest of the department receives legal representation in-house. Further, the legal office within the new department is likely to have expertise in areas covered by ONRT and transferring legal representation to the Department counsel will likely create efficiency in state government as a whole. Therefore, the current provision requiring the ONRT to be represented by the AGO should be deleted.

DGF requests resolution of an apparent technical flaw in the bill:

There appears to be a conflict in the definition of who retains the authority to hire employees within the Game and Fish Division. In the new material (Section 10), the Secretary retains the authority however in Section 38, § 17-1-5, the Director of the Game and Fish Division retains the authority to hire all personnel within the Division. The department would suggest that the bill be modified to achieve a consistent standard throughout.

SECTION BY SECTION

Section 1: Sections 1 through 17 form the “Natural Resources and Environment Department Act”

Sections 2 through 4 establish the Natural Resources and Environment Department, “a single unified department to administer laws and exercise functions formerly administered and exercised by the energy, minerals and natural resources department, the department of environment, the department of game and fish and the natural resources trustee.” The new department consists of 11 divisions, with flexibility so that the cabinet secretary can “establish, merge or eliminate organizational units for better efficiency and effectiveness.” These divisions are as follows:

Office of Secretary

Administrative Services Division

Environmental Protection Division

Air Quality Bureau

Environmental Health Bureau

Environmental Health Bureau

Natural Resources Trustee

Petroleum Storage Tank Bureau

Solid Waste Bureau

Energy Conservation and Management Division
Forestry Division

Mining and Minerals Division
Abandoned Mine Lands Bureau
Mine Regulatory Bureau, and
Mining Reclamation Bureau

Oil Conservation Division

State Parks Division

Water and Waste Management Division
DOE Oversight Bureau
Ground Water Waste Bureau
Hazardous Waste Bureau

Water and Wastewater Infrastructure Development Division

Game and Fish Division

Section 5 provides for administratively attached boards and commissions. The environmental improvement board is retained, as are the mining commission, the natural lands protection committee, the oil conservation commission, the radiation technical advisory council, the water quality control commission, the New Mexico youth conservation corps commission, the off-highway motor vehicle advisory board, the state parks advisory board, the tree planting advisory committee and the fire planning task force.

Section 6 provides for a cabinet secretary appointed by the Governor with consent of the Senate.

Section 7 establishes conventional powers and duties for the secretary, including regulatory authority and the power to enforce regulations, orders and instruction by appropriate administrative action or actions in the courts. The regulatory authority is clearly spelled out.

Section 8 requires the department to develop a comprehensive watershed restoration strategy.

Section 9 allows the secretary to appoint 11 division directors, who are exempt employees.

Section 10 allows the secretary to establish bureaus within the agency, each of which would have a bureau chief as leader.

Section 11 establishes that the secretary shall retain final decision-making authority and responsibility for the administration of any rules, instructions or orders promulgated under the authority granted in Section 7.

Section 12 allows the secretary to create advisory committees. Members of these advisory committees are entitled to per diem and mileage.

Section 13 creates a “state alternative fuel program manger” within the energy conservation and management division.

Section 14 creates a “wastewater treatment technical advisory committee.”

Section 15 authorizes the department to cooperate with the federal government in the administration of natural resources, energy or environmental programs.

Section 16 creates an quasi-independent, but administratively attached, environmental improvement board which has authority granted under the food service sanitation act, the New Mexico Food Act, the Flour and Bread Act, the Occupational Health and Safety Act, the Environmental Improvement Act and eight other environmental regulatory acts. The board is explicitly exempt from the authority of the secretary.

Section 17 creates a quasi-independent, but administratively attached, water quality control commission which is exempt from the authority of the secretary with respect to powers and duties of the commission pursuant to the Water Quality Act.

Sections 18 through 158 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 159 removes the entitlement to per diem and mileage for the “off-highway motor vehicle advisory board.”

Section 160 provides sunset review for the off-highway motor vehicle advisory board, with the board terminated on July 1, 2013 but allowed to continue to operate for one year.

Sections 161 through 163 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 164 provides sunset review for the tree-planting advisory committee, with the committee terminated on July 1, 2015 but allowed to continue to operate for one year.

Section 165 provides sunset review for the mining safety board, with the board terminated on July 1, 2017 but allowed to continue to operate for one year.

Section 166 acknowledges transfer of duties from the repealed coal surface mining commission to the mining commission and provides conforming amendments to update the references from EMNRD, DGF or NMED.

Section 167 transfers the duties of the coal surface mining commission to the mining commission effective July 1 2011.

Sections 168 through 170 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 171 prohibits any member of the mining commission from having any direct or indirect financial interest in any underground or surface mine and provides conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 172 provides conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 173 provides that the mining act fund will continue to receive money from permit applicants, permit holders, the federal government, etc. Fines and forfeitures collected by the Department and currently deposited in the “inactive or abandoned non-coal mine reclamation fund” will be transferred to general fund to the credit of the current school fund. This is to conform to the State Constitution. Article XII, Section 4 that requires all fines collected under general laws to be credited to the benefit of the current school fund. The section also provides conforming amendments to current statute to update the references from EMNRD, DGF or NMED. Note that the language of Section 173 may need review.

Section 174 provides sunset review for the mining commission, with the commission terminated on July 1, 2017 but allowed to continue to operate for one year.

Section 175 provides sunset review for the oil conservation commission, with the commission terminated on July 1, 2015 but allowed to continue to operate for one year.

Sections 176 through 184 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 185 assigns the responsibility for environmental management and consumer protection programs to the new Department. Section 186 expands on the theme and lists the programs including food protection, water supply, liquid waste, air quality and radiation control and collection of fees and nine other enumerated programs. The section replaces the term “radiologic technologists” with “medical imaging professionals and radiation therapists.” The section also redirects administrative fines, currently credited to the water conservation fund, to the general fund to the credit of the common school fund.

Section 187 redirects administrative fines, currently credited to the water conservation fund, to the general fund to the credit of the common school fund.

Sections 188 through 190 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 191 updates the name of the radioactive materials committee to the radioactive and hazardous materials committee.

Sections 192 through 202 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 203 acknowledges the reconstitution of the committee established by section 75-5-4 NMSA 1978 intended to assist the secretary to administer the Natural Lands Protection Act. The three public members have been deleted. Instead of an advisory committee structure, the secretary directly shall recommend lands to be acquired under the provisions of the Natural Lands Protection Act.

Section 204 provide conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 205 provides that the natural resources trustee will no longer be appointed by the Governor. Instead, the Secretary of ENRD will serve as the natural resources trustee.

Section 209 acknowledges the repeal of the natural lands protection committee and provides conforming amendments to current statute to update the references from EMNRD, DGF or NMED.

Section 210 and 211 reassign duties formerly assigned to natural lands protection committee to the Department.

Section 212 (temporary, non-compiled section) transfers all property, functions, appropriations, money, records, furniture, equipment and other property of EMNRD, NMED and the natural resources trustee will be transferred to the natural resources and environment department on July 1, 2011. Also on July 1, all property and functions, etc. of the occupational health and safety review commission and the coal surface mining commission will transfer to the new department or an administratively attached agency. On July 1, 2011, all property and functions, etc. of the Department of Game and Fish will be transferred to the Game and Fish Division of ENRD. On July 1, 2011, the functions and property of the natural lands protection committee will be transferred to ENRD.

All contractual obligations of EMNRD, NMED and the natural resources trustee shall be binding on ENRD. All contracts of the occupational health and safety review board shall be binding on EIB, contracts of the coal surface mining commission shall be binding on the mining commission, contracts of the DGF are binding on the G&F division of ENRD.

Any reference in law to EMNRD or NMED shall be deemed to refer to ENRD. Any reference in law to the natural resource trustee shall be deemed to refer to the Secretary of ENRD. Any reference in law to the Department of Game and Fish shall be deemed to refer to the Game and Fish Division of ENRD. Any reference in law to the State Game Commission shall be deemed to refer to the Game and Fish Division of ENRD. Any reference in law to the Occupational Health and Safety review commission shall be deemed to refer to EIB and any reference in law to the coal surface mining commission shall be deemed to be a reference to the mining commission.

Section 213 repeals the following:

- Energy, Minerals and Natural Resources Department Act
- Department of Environment Act
- State game commission
- Office of Interstate Natural Gas Markets
- Occupational health and safety review commission
- Coal surface mining commission
- Sunset review of the coal surface mining commission as of July 1, 2013

In addition, the section repeals a, perhaps obsolete, right. "...any person between the age of fourteen and the age of majority, who is a patient in the Carrie Tingley crippled children's hospital, may fish without a license in waters located on the property of the Carrie Tingley crippled children's hospital at Truth or Consequences. Fishing shall be done only under the supervision of the officials of the Carrie Tingley crippled children's hospital, and in conformity with seasons and bag limits established by the state game commission."

Section 214 establishes an effective date of July 1, 2011.

LG/bym

Core Services Category: Environment

Study Area: Eliminates committees, commissions and councils; moves authority from one department to another; transferring powers and duties from eliminated committees to a board or department; transfers rule-making from a commission to a department; and specifies member qualifications for commissioners.

High Level Recommendation:

The draft legislation proposes the following:

- Transfer radiation licensing functions from New Mexico Environment Department (NMED) to Department of Health (DOH). NMED retains radiation materials licensing functions.
- Transfer to NMED the rulemaking authority currently held by the Water Quality Control Commission (WQCC), and specifies that two of its public members must represent industry.
- Transfers Occupational Health and Safety Review Commission (OHSRC) functions to the Environmental Improvement Board (EIB), and eliminates that Commission.
- Transfers the Wastewater Technical Advisory Committee to NMED, and eliminates that Committee.
- Eliminates the Storage Tank Committee, Occupational Health and Safety Special Committees, and the Food Sanitation Advisory Council.

Repeal Section 25-1-6B NMSA 1978 to eliminate the Food Service Sanitation Advisory Council; repeal and amend appropriate sections of the Occupational Health and Safety Act; appropriately amend sections of the Medical Radiation Health and Safety Act; appropriately amend the Utility Operator Act to shift the power and duties from the Water Quality Control Commission to the Environment Department; do not amend Section 71-8-6 NMSA 1978 and do not enact new material (Section 14) to the Environmental Improvement Act; enact new material Sections 12 and 13;

Background and Findings:

- The NMED director may appoint a Food Service Sanitation Advisory Council but it appears that the agency has not done so in recent history, which would indicate that such a council may be eliminated.
- Three members comprise the Occupational Health and Safety Review Commission. The committee did not meet in 2010 and met twice in 2009. The proposed legislation would transfer the powers and duties of the commission to the Environmental Improvement Board. It eliminates the commission and the Occupational Health and Safety Special Committees.
- The Medical Imaging and Radiation Therapy Health and Safety Act is administered by the Environment Department with the Environmental Improvement Board having the power to promulgate rules and regulation. The proposed legislation transfers authority to the Department of Health, including promulgating rules.
- Powers and duties of the Utility Operator Act are transferred from the Water Quality Control Commission to NMED. The powers and duties are administrative in nature and it may make more sense for department staff to assume this role but with the hiring freeze the department already struggles to meet performance measures.
- The Wastewater and Technical Advisory Committee meets regularly, approximately six times per year for a full day, to provide standardized objective evaluation of wastewater treatment and disposal technologies, which are then listed by the department for approved use.
- The proposed legislation also eliminates the Storage Tank Committee.
- Sunset language is included for the following:
 - The Water Trust Board created by the Water Project Finance Act would sunset July 1, 2013.
 - The Environmental Improvement Board created by the Environmental Improvement Act would sunset July 1, 2014.

- The Radiation Technical Advisory Council created by the Radiation Protection Act would sunset on July 1, 2015.
- The Radioactive Waste Consultation Task Force created by the Radioactive and Hazardous Materials Act would sunset on July 1, 2013.

Fiscal Implications:

- Transferring the Medical Imaging and Radiation Therapy Health and Safety Act to the Department of Health may cost the general fund approximately \$200 thousand and add 3 FTE. NMED is currently responsible for both the licensing functions for radioactive materials and the professional licenses for radiation professionals. Because NMED’s Radiation Control Bureau licenses radioactive materials through an agreement with the Nuclear Regulatory Commission, and registers and inspects all radiation machine facilities in the state, the staff conducts inspections of both machines and licensed individuals at each medical facility at the same time. For example, when NMED sends one inspector to Lovelace Hospital, which has a radioactive materials license for nuclear medicine, brachytherapy and gamma knife, that one inspector conducts both radioactive materials license inspections, verifies licenses for the nuclear medicine technologist, inspects the radiology department X-ray machines, verifies the radiological technologist licenses, and inspects the linear accelerators and verifies the radiation therapist licenses.
- Nominal savings may be realized by the proposed elimination of boards, committees, councils, commissions and task forces. Of course some powers and duties are transferred to the Environmental Improvement Board, which may increase frequency of meetings and/or duration.
- Elimination of the Wastewater Technical Advisory Committee would reduce the opportunity for vendors and consultants to have the products and services reviewed independently in an open forum by unbiased professionals. This voluntary multi-disciplinary committee is providing services that would otherwise require an additional general fund appropriation and FTE of approximately \$70 thousand.

Estimated Savings, Option # (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
2.0	2.0	Recurring	General Fund

Cost to Implement, Option # (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected
	270.0	Recurring	General Fund

Revenue Impacts, Option # (in thousands of dollars)

FY11	FY12	Recurring or Nonrecurring	Fund Affected

Options to Consider:

- Reconsider eliminating the Radiation Technical Advisory Council. It advises the agency on both radiation matters and on the Medical Imaging and Radiation Therapy Health and Safety Act. It is a volunteer council and the expertise would be lost.
- An added workload to the Environmental Improvement Board may exhaust its volunteer members and members' expertise in new issue areas may be limited.