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FISCAL IMPACT REPORT

SPONSOR Park **ORIGINAL DATE** 02/03/11
LAST UPDATED _____ **HB** 157
SHORT TITLE Create Natural Resources & Environment Dept. **SB** _____
ANALYST Graeser/Hoffmann

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)

Conflicts with HB 40, HB 80 and HB 84

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources (EMNRD)
Department of Environment (NMED)

SUMMARY

Synopsis of Bill

House Bill 157 is described by EMNRD as follows:

The proposed legislation would amend the Executive Reorganization Act (Section 9-1-7 NMSA) to establish a Natural Resources and Environment Department (Department or NRED) which combines the current Environment Department (NMED) and the Energy, Minerals and Natural Resources Department (EMNRD). The Office of Natural Resource Trustee would become part of the new Department. The statutes establishing EMNRD and NMED would be repealed.

House Bill 157 proposes to eliminate the Coal Surface Mining Commission and absorb its duties into the Mining Commission. The Occupational Health and Safety Review Commission are eliminated and its duties are absorbed by the Environmental Improvement Board.

The bill also proposes to redirect money that is currently accumulated in certain funds for specific purposes 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 funds include penalties for violations of drinking water rules.

Other important features of the bill follow:

House Bill 157 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.

FISCAL IMPLICATIONS

Based on an analogy to House Bill 80 analysis provided by Government Reorganization Task Force (GRTF) staff, this bill may 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 two 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 three 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 entities may need to be unified within the SHARE system as 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 three 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 House Bill 157, 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.

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.

SIGNIFICANT ISSUES

EMNRD comments extensively on this proposal:

House Bill 157 will create a large, new department that will absorb two existing departments and an office. The new department will have 12 divisions and 7 administratively attached boards and commissions and 1,000 employees. There are other administratively attached boards not mentioned in House Bill 157; see :TECHNICAL ISSUES.”

On the policy level, there are few advantages to merging NMED and EMNRD. While merging the Department of Game and Fish with ENMRD has some benefits as discussed in the analyses of House Bill 80 and House Bill 84, 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. 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. These oversight/regulatory functions include:

1. Drinking Water – EMNRD/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. In 2006, one of the EMNRD/SPD water systems fell out of compliance with the Safe Drinking Water Act and an Administrative Order was issued by NMED to EMNRD to come back into compliance with the Act.

2. Wastewater – EMNRD/SPD currently maintains approximately 10 groundwater 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 – EMNRD/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 – EMNRD/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. Above Ground Petroleum Storage tanks – EMNRD/SPD has multiple locations where it stores bulk fuel for Division usage as well as having several locations where concessionaires store and distribute petroleum products for sale at marinas by park visitors. NMED has regulatory oversight of these types of activities.
6. Food Service – EMNRD/SPD currently has two locations where concessionaires to EMNRD/SPD operate food service establishments. NMED is the agency that provides inspections and certifications for sanitary food service conditions.
7. Surface Water Quality – EMNRD/SPD performs work within the waters of the United States that requires concurrence from NMED surface water quality prior to the work taking place.

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 operations. With the unification of the two departments, this administrative division would be eroded or even eliminated.

Coal Surface Mining Commission/Mining Commission. House Bill 157 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 ENMRD recommends adding language similar to the Surface Mine Control and Reclamation Act that prohibits a member of the commission from having an interest in a coal mining operation.

The only issue is the conflict 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. A similar prohibition in the Surface Mining Act makes the violation a criminal offense, NMSA 1978, Section 69-25A-32. To avoid this problem, the Mining Act needs to add the limitation on membership originally provided in the Surface Mining Act for the Coal Surface Mining Commission (but now proposed to be deleted by this bill). See amendment section below. (The same provision is added in Section 171 of House Bill 84).

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. This should be workable, but the Legislature might consider repealing the rulemaking procedures in the surface mining acts and replacing with references to the procedures in the mining act.

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).

PERFORMANCE IMPLICATIONS

EMNRD comments:

Merging the two 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, House Bill 157 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 157 conflicts with House Bill 80 which proposes to merge EMNRD and the Department of Game & Fish but not the Environment Department, and House Bill 84 which proposes to merge EMNRD, the Department of Game & Fish and the Environment Department.

There is a conflict with HB 40 which also proposes to amend 69-25B-3.

House Bill 88 also covers executive branch agency sunsets.

Senate Bill 106 clarifies the role of administratively attached agencies.

ALTERNATIVES

The EMNRD recommends avoiding this merger and adopting the smaller merger of EMNRD and the Department of Game and Fish in House Bill 80.

OTHER SUBSTANTIVE ISSUES

EMNRD 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 76f

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.

TECHNICAL ISSUES

The ENMRD notes that the following administratively attached agencies were omitted:

the state parks advisory board;
the tree planting advisory committee; and
the fire planning task force.

POSSIBLE AMENDMENTS

EMNRD suggests the following amendment:

New Sections:

Section 69-36-6 NMSA 1978 (being Laws 1993, Chapter 315, Section 6, as amended) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

- (1) the director of the bureau of geology and mineral resources of the New Mexico institute of mining and technology or [~~his~~] the director's designee;
- (2) the secretary of natural resources and environment or [~~his~~] the secretary's designee;
- (3) the state engineer or [~~his~~] the state engineer's designee;
- (4) the commissioner of public lands or [~~his~~] the commissioner's designee;
- (5) the director of the department of game and fish or [~~his~~] the director's designee; and
- (6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and [~~his~~] the public member's alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom [~~he~~] the member is the alternate.

B. The [~~chairman~~] chair of the soil and water conservation commission, and the director of the agricultural experiment station of New Mexico state university or their designees shall be non-voting members of the commission.

C. The commission shall elect a [~~chairman~~] chair and other necessary officers and keep records of its

D. The commission shall convene upon the call of the [~~chairman~~] chair or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business.

However, no action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and ~~[his]~~ the public member's alternate, shall receive, or shall have received during the previous two years, more than ten percent of ~~[his]~~ that member's income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of ~~[his]~~ appointment and prior to the performance of any ~~[of his]~~ duties, file a statement of disclosure with the secretary of state stating:

- (1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;
- (2) the identity of the source of money or other valuable consideration; and
- (3) whether the money or other valuable consideration was in excess of ten percent of ~~[his]~~ the member's gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action.

H. No member, designee or alternate member of the commission shall have a direct or indirect financial interest in any underground or surface coal mining operation."

CH:LG/mew