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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/19  
 LAST UPDATED \_\_\_\_\_

SPONSOR HENRC HB 206/HENRCS

SHORT TITLE Environmental Review Act SB \_\_\_\_\_

ANALYST Armstrong

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$1,000.0	\$1,000.0	Recurring	General Fund
\$500.0	\$500.0	Recurring	State Lands Maintenance Fund

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>NMED</b>		>\$1,415.2	>\$1,415.2	>\$2,830.4	Recurring	General Fund
<b>DGF</b>		>\$125.0	>\$125.0	>\$250.0	Recurring	Game Protection Fund
<b>ONRT</b>		\$327.0	\$327.0	\$654.0	Recurring	General Fund
<b>DCA</b>		\$150.0	\$150.0	\$300.0	Recurring	General Fund
<b>SLO</b>		\$500.0	\$500.0	\$1,000.0	Recurring	State Lands Maintenance Fund
<b>OSE</b>		>\$250.0	>\$250.0	>\$500.0	Recurring	General Fund
<b>NMFA</b>		Indeterminate			Recurring	Public Project Revolving Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

Department of Game and Fish (DGF)

NM Independent Community Colleges

Department of Cultural Affairs (DCA)

State Land Office (SLO)  
Office of the Natural Resources Trustee (ONRT)  
General Services Department (GSD)  
Energy, Minerals and Natural Resources Department (EMNRD)  
Office of the State Engineer (OSE)  
Department of Health (DOH)  
New Mexico Finance Authority (NMFA)

## **SUMMARY**

### Synopsis of Bill

The House Environment and Natural Resources Committee Substitute for House Bill 206 (HB206/HENRCS), the Environmental Review Act, requires a public agency (as defined in the bill), to perform an environmental analysis for all non-exempt projects seeking state funding. If the environmental analysis indicates the project could have a significant impact on the environment, the state agency must perform an environmental assessment of the project. The assessment must address a multitude of issues. The bill requires agencies to prepare a more detailed “environmental impact statement” if the assessment shows the project is likely to have a significant environmental impact.

The bill exempts a number of projects from this review process, including law enforcement activities, emergency activities to protect public health and safety and the environment (e.g. firefighting), ministerial actions like maintaining existing facilities or constructing a temporary facility, data collection and scientific study, post-fire rehabilitation activities and vegetation management activities, property acquisition, renewals or transfer of permits, adjustments to mineral leases, cutting permits for forest products less than \$3,000, remediation of hazardous waste sites, improving and maintaining public roads, installing signs or displays, issuing hunting and fishing licenses, and installation of underground utilities. Projects that are reviewed under the federal National Environmental Policy Act (NEPA) are also exempted.

## **FISCAL IMPLICATIONS**

The bill includes appropriations totaling \$1.5 million. This includes \$500 thousand for SLO from the state lands maintenance fund and \$1 million from the general fund, with \$250 thousand for both NMED and OSE and \$500 thousand for EMNRD. While the appropriations are for FY20, the bill requires agencies to request funding in their recurring operating budget requests to implement new duties and responsibilities. The cost of implementing this bill would depend greatly on the findings of the different levels of review. Due to the complexity of the reviews, a preliminary evaluation will not be as costly as an environmental assessment.

NMED’s analysis notes:

The Air Quality Bureau (AQB) currently has 18 FTE to process air quality permits. The AQB issued over 1,400 permits and registrations during 2018. The cost to drill an oil well is between \$5 million and \$9 million. Thus, every new oil well would be subject to an environmental assessment, and likely an environmental impact statement. If staff need to evaluate these assessments for every new well application, the workload would double for permitting staff. To accomplish this level of review, the AQB would need to double the number of FTE. An AQB permit writer makes an average of \$27.00/hour. Thus, the

annual impact to AQB to implement the proposed requirements is approximately \$1,415,232 per year, including salary and benefits. This estimate does not include potential litigation costs or costs to retain professional services to perform required analyses, which are likely to be very significant and could easily total hundreds of thousands of additional dollars per year.

DGF projects it would need to create and fill at least one additional full-time position for an estimated \$125 thousand annually. ONRT estimates a need for an additional 3 FTE at cost of \$207 thousand annually and expects the bill will require two environmental assessments and two environmental impact statements each year at a cost of \$120 thousand. DCA estimates additional operating costs of \$150 thousand, noting, “It would be difficult for the State Historic Preservation Officer to satisfy the required costs and timetable to prepare these documents without additional resources. SLO” estimates additional costs of \$500 thousand annually. NMFA notes the bill would likely require hiring of multiple new staff members, the cost of which is undeterminable at this time. OSE and GSD also noted the additional operating cost from the bill is indeterminate.

EMNRD raises concerns that it has multiple divisions that could be required to conduct environmental reviews. While the bill appropriates \$500 thousand to EMNRD, it is not clear which division would receive the funding:

The Forestry Division anticipates costs for 2 FTEs at a Forester-A position would be \$120 thousand for FY20. The State Parks Division estimates annual and recurring costs for a supervisory biologist and wildlife biologist position would be approximately \$95 thousand. These estimates are for salary and benefits only and do not include any other costs, such as for public hearings, associated with carrying out EMNRD’s duties pursuant to the Act. Additional positions may be required for the Oil Conservation Division and the Mining and Minerals Division. Additionally, the agency would need IT and administrative staff to handle the bill’s administrative requirements such as: IT equipment for new staff; paying for, preparing, and administering notice of environmental assessments and environmental impact statements; administering the comments received; responding to comments; processing requests for environmental assessments and environmental impact statements, and data entry.

OSE’s analysis states that the bill requires staff and funding to provide analysis and information to lead agencies. It is unclear how many additional staff or contractors would be required to comply.

The bill provides that agencies shall include funding to carry out the review requirements in annual budget requests and secure appropriate funding from external applicants. Under a Minnesota state law similar to HB206/HENRCS, three state agencies most closely involved with the environmental reviews had operating budgets totaling \$1.8 million per year for administrative costs and about 17 full time staff across three agencies in FY2010.

## SIGNIFICANT ISSUES

The bill requires NMED to review all environmental assessments and environmental impact statements, and allows the agency to send analysis with changes or additions to another agency leading a project review. NMED provided the following:

This bill would be fiscally burdensome to NMED. The regulatory programs already provide many requirements for permitting and corrective action activities that are provided in the Act. NMED already provides regulatory oversight of evaluating impacts to human health and the environment through its existing regulatory programs (air quality, water quality, hazardous waste and solid waste). The cost of preparing the environmental assessment or environmental impact statement, as required in Section 5 of HB 206, should fall on the applicant, and state agencies should not be required to prepare the documents and decide whether there is a significant environmental impact. It should be the duty for the applicant to meet all environmental requirements when applying for state funding or a permit. The applicant should provide information and environmental analyses for the project it seeks. The state agencies should then review the information provided in the assessments to determine if such impacts to the environment would necessitate modification or disapproval of the project.

DGF analysis noted the bill could put the department in numerous cooperating agency or lead agency roles that could tax staff capacity. This almost certainly will reduce the department's ability to carry out its statutory mandates and accomplish some its goals. If the act is implemented, and the department is required to produce environmental impact statements, there would be a need for additional personnel to prepare the complex documents required in the act. Additionally, if wildlife population management decisions and regulations are included as needing environmental review, a significant workload for the department would be created and staff capacity to perform current activities would be reduced.

NMAG's analysis points out that the bill may offend the principle of tribal sovereignty by attempting to place mandatory duties on tribes, nations, and pueblos by including them in the definition of "cooperating agencies." However, the All Pueblo Council of Governors supports the bill and the bill allows cooperating agencies to decline to participate.

Finally, NMAG notes some of the exemptions in the bill include vague and subjective qualifiers that may be inconsistent with the concept of exemption. The analysis recommends considering whether objective criteria can be established for the proposed exemptions.

New Mexico Wild, a proponent of the bill, provided information about laws in other states and the potential benefit of HB206:

Sixteen states, the District of Columbia, and Puerto Rico have similar laws. The review requirements in HB206 are based Minnesota's environmental assessment worksheet. In Minnesota, 97 percent of environmental reviews are completed with these worksheets, and only 3 percent of their projects require an environmental impact statement.

Many communities in New Mexico have experienced public health effects because of industrial projects being concentrated in the same neighborhoods and HB206 will improve the health of New Mexicans and protect New Mexico's land, air, water, plants, animals, and historical and cultural sites by requiring that agencies consider and mitigate

potential adverse impacts before permitting projects and finalizing rule-changes. Making decisions more carefully will reduce the risk of spills, public health crises, and clean-up costs.

A health impact study in Bernalillo County found that areas of the county with the greatest concentration of environmental hazards showed a decreased life expectancy of 5.2 years. Low-income and nonwhite areas of the county have the highest concentration of environmental hazards.

A brine well used for hydraulic fracturing was permitted in the middle of Carlsbad by the state in the 1970's, and its placement in an unstable location led to the creation of an underground cavern. The cost to remediate the well is estimated at more than \$50 million which will be paid for by taxpayers.

SLO provided the following analysis:

While the Commissioner of Public Lands supports agency transparency and environmental review, there exists a notable significant issue. This bill, particularly Section 9's action forcing provision and Section 5(F)'s Environment Department review and analysis authority, risks infringing on the Commissioner of Public Land's rights in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes.

To the extent that the State Land Office is a lead agency that is required to collect funds from an applicant to cover the costs of undertaking environmental reviews, this would be a new kind of activity with potential complications noted in "Other Substantive Issues," below. Currently, State Land Office operations are funded through an appropriation from the State Lands Maintenance Fund, which consists of state trust land rentals and administrative fees. The additional, environmental review-specific funding would be new to the State Land Office and would require additional accounting processes separate from those currently used.

## **ADMINISTRATIVE ISSUES**

GSD's Facilities Management Division (FMD) notes:

All FMD construction projects that involve more than an acre of land are already subject to the EPA's Storm Water Pollution Prevention Plan (SWPPP) requirements. These requirements include plans to mitigate any excess water from leaving the project site and polluting nearby streams or waste systems. This EIS and its mitigation plan duplicate the SWPPP. All hazardous waste materials from the construction must be handled properly as a requirement of the construction contract. This is already a requirement so it is a duplication. The construction project design has already accounted for any known protected wildlife such as prairie dogs in Santa Fe. If there is known historical significance, the construction project already has included monitoring of any construction excavation activities by certified archeologists.