

LFC Requester:

Helen Gaussoin

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 01/24/2024

Bill No: SB173

Sponsor: Sen. S. McCutcheon II
 Sen. P. Woods

Short Title: NATURAL HERITAGE
 CONSERVATION ACT
 CHANGES

Agency Name and Code Number: 305 – New Mexico
 Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Bill (“SB”) 173 would amend the Natural Heritage Conservation Act (the “Act”), NMSA 1978, Section 75-10 (2010) to authorize the acquisition of land and other interests in land for conservation purposes, while eliminating conservation and agricultural easements. In addition, SB 173 would remove “conservation entities” from that statute, while broadening the definition of conservation project. SB 173 would amend Section 75-10-8 to prohibit the Energy Minerals and Natural Resources Department (EMNRD) from acquiring conservation or agricultural easements or easement interests, water rights, or other rights of access through eminent domain. SB 173 also proposes the repeal of Section 75-10-7 in accordance with the mentioned changes.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

As currently written, the Act protects the State’s natural heritage, customs and culture by funding (a) conservation and agricultural easements, and (b) land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management. SB 173 would remove conservation and agricultural easements from the Act. Easements are generally personal access rights, giving a person the right to use another's land for a specific purpose, such as egress and ingress; they are not possessory rights in land because the owner of an easement does not own the real estate that is subject to that easement, ownership remains with the landowner. This could potentially bar certain types of donations or acquisitions of lands for the purpose of the Act, which is to protect the land in conservation. Easements held by utilities or other entities could potentially be an avenue for wildlife travel, waterways, or nature habitats that could allow the department to satisfy the purpose of the Act. This amended language is also removed from all other sections of the Act, including prohibiting EMNRD from acquiring agricultural easements by gift, bequest, or eminent domain, as outlined in Section 75-10-8. This will reduce mechanisms EMNRD can use to obtain conservation land throughout the state and fulfilling the purpose of the Act as outlined

in Section 75-10-2.

SB 173 proposes to remove the term “Conservation Entity” from the Act. That would impact many non-profit organizations that operate to help the state acquire land for conservation purposes. SB 173 proposed removal the “Conservation Entity” term may prevent the Act from achieving its purpose of protecting the state's natural heritage, customs and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management. Section 75-10-2.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

None to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None to this office.

TECHNICAL ISSUES

None to this office.

OTHER SUBSTANTIVE ISSUES

None to this office.

ALTERNATIVES

None to this office.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.