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FISCAL IMPACT REPORT

ORIGINAL DATE 01/21/10

SPONSOR Egolf LAST UPDATED _____ HB 27

SHORT TITLE Recovery of Damages to Natural Resources SB _____

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	*.01			**ONRT

(Parenthesis () Indicate Revenue Decreases)

*See fiscal impact.

**Office of Natural Resources Trustee

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Natural Resources Trustee (ONRT)
 New Mexico Environment Department (NMED)
 Office of the Attorney General (AGO)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 27 amends the Natural Resources Trustee Act to authorize the Office of the Natural Resources Trustee (ONRT) to pursue claims for restoration of natural resources under state law. Currently, authority to pursue recovery is governed by federal law.

FISCAL IMPLICATIONS

Although no responding agency noted a fiscal impact, discussion does indicate that claims would be expedited under this bill. In addition, claims sought under state law, as proposed by HB27, might be more successful in seeking monetary damages where federal law is unclear.

ONRT clarifies that projects to restore damaged resources are paid for by responsible parties and not taxpayers.

SIGNIFICANT ISSUES

NMED provides the following background information:

The Trustee has responsibility for assessment of injuries to natural resources and restoration of natural resources injured due to a release or discharge. The Trustee acts on behalf of the public because no one individual "owns" a natural resource; rather, they are held in trust for the public. To meet these responsibilities, ONRT staff participate in negotiations with potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations of damaged natural resources. Where negotiations are not successful, the Trustee may seek court-ordered compensation from PRPs for natural resource damages and the costs of assessment and restoration planning. Recovery is generally made in the form of monetary damages used to conduct restoration projects.

HB 27 seeks to clarify the Natural Resource Trustee Act with regard to several issues:

- *Authority for Trustee actions to restore ground water quality -- The federal law is not clear concerning trustees' authority to recover damages and seek restoration of groundwater resources. In New Mexico, more than 90 percent of the state's citizens rely on groundwater for drinking water.*
- *Authority for actions to restore ground water polluted by contaminants commonly found in New Mexico -- For example, federal law does not allow compensation for damage to aquifers from nitrate contamination, one of the most widespread groundwater contaminants in the State.*
- *Authority for recovery or restoration of resources damaged by oil pollution if the pollution does not affect a navigable waterway. New Mexico has hundreds of sites with oil-polluted groundwater, and the State currently has no way to seek recovery for damages and restore the damaged groundwater resource.*

The AGO states two justifications for creating state law authority for natural resource damages claims:

- 1) *Under federal law, ambiguous regulatory language and narrow language in the case law have created confusion about liability for injury to groundwater. Establishing a state law cause of action will create more certainty and allow fair recovery for injuries to New Mexico's groundwater.*
- 2) *Federal law establishes an enormously cumbersome process for the resolution of natural resource damages claims. Under this federal law process, claims can take a decade to resolve. The experience in other states has shown that a streamlined state-law processes dramatically increases the efficient resolution of natural resource damages claims.*

The AGO also notes that the bill is closely modeled after the federal Comprehensive Environmental Response Compensation Act (CERCLA or "Superfund), including providing ONRT the limited authority to promulgate rules regarding "defining 'injurious substances,' defining methods for proof of injury and assessment of damages, and setting forth the procedures for pursuing claims."

ADMINISTRATIVE IMPLICATIONS

The AGO notes that as the Attorney General is charged with providing legal representation to the ONRT for cause of action for natural resource damages, which may increase workload for the agency.

OTHER SUBSTANTIVE ISSUES

DOT notes the following concern:

Depending on how broad the statement “oil of any kind” is intended, this could conceivably limit future remediation options for NMDOT. Presently, the NMED Ground Water Quality Bureau is injecting vegetable oil into groundwater as part of its bioremediation of the North Railroad Avenue Plume in Espanola, New Mexico. As written, the statement includes only those specific types of “oils” listed.

DOT suggests that the bill should qualify what is meant by “oil of any kind or in any form,” or specifically exclude certain types (vegetable oil). However, the bill currently delegates the creation of definitions of “injurious substances” to ONRT as part of the rulemaking process.

ONRT states that the bill will not “add nor detract from state environmental statutes requiring cleanup of polluted sites, permitting or enforcement of standards.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ONRT will continue to seek compensation for damages under federal law, including CERCLA and the Oil Protection Act. ONRT maintains that failure to establish a state process might delay resolution of natural resource damage cases, resulting in lost compensation to New Mexico and degradation of groundwater.

POSSIBLE QUESTIONS

1. How does this law impact recovery for petroleum-based pollution handled through the Corrective Action Fund?
2. Are there specific examples of pollution to groundwater in New Mexico that cannot be addressed through federal law?
3. Will the rulemaking process allow public and industry input?

MA/mew