

LFC Requester:	
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 **Amendment**
Correction **Substitute**

Date 1/31/2013
Bill No: HB 259--305

Sponsor: Rep. Emily Kane
Short Recovery of Damages for
Title: Natural Resource Injuries

Reviewing Attorney General's Office
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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 259 gives the existing Office of the Natural Resources Trustee (“ONRT”) authority under state law to pursue claims for restoration of natural resources that have been damaged by the release of injurious substances. HB 259 is modeled closely after the federal Comprehensive Environmental Response Compensation Liability Act (“CERCLA”).

There are two justifications for creating state law authority for natural resource damages claims:

- Under federal law, ambiguous regulatory language and narrow language in the case law have created confusion about liability for injury to ground water. Establishing a state law cause of action will create more certainty and allow fair recovery for injuries to New Mexico’s ground water.
- Federal law establishes a cumbersome process for the resolution of natural resource damages claims. Under this federal law process, claims can take many years to resolve. The experience in other states has shown that a streamlined state-law process can significantly increase the efficient resolution of natural resource damages claims.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

HB 259 creates a state cause of action for natural resource damages. The Attorney General is charged with providing legal representation to the ONRT in pursuit of such claims. HB 259 may increase the volume of natural resource damages claims prosecuted by the already short-staffed Attorney General’s Office.

SIGNIFICANT LEGAL ISSUES

1. HB 259 does not address whether it covers past releases or only prospective releases. Past releases may cause continuing and present injury to natural resources. Legislation is presumed to be prospective, unless it is clear that the legislation is to be applied retroactively. If the intent of the legislation is to apply to past releases and/or past releases with continuing and present injury to natural resources, then the bill should state so expressly.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

See “Fiscal Implications” above.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

See “Fiscal Implications” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None identified.

TECHNICAL ISSUES OR DRAFTING ERROR

1. In the finding quoted in the preceding paragraph, the use of the word, “those,” (line 22 of page 1 of HB 177) is unclear and seems to serve no purpose.
2. Section 4.B provides that in an action brought by the trustee under the Natural Resources Trustee Act, venue is to be in “the district court for Santa Fe County or in the district court for the county in which damages were sustained.” However, due to the possible migration of injurious substances, damages may be sustained in more than one county. Therefore, the reference to “the county” should be replaced with “a county.”
3. In Section 7.B, the provisions regarding publication of notice of proposed rulemaking, provide for notice to be published in the New Mexico Register as well as newspapers of general circulation in the area affected.
4. Section 7.E’s reference to the “transcript” of the hearing should refer to the “record” of the hearing, which would include the transcript, all exhibits, all pleadings, and all other documents and materials from the hearing.

OTHER SUBSTANTIVE LEGAL ISSUES

1. Section 2.B of HB 259 defines “natural resources” as listed resources “not owned by a private person.” The bill should make clear that holding a right to use or extract natural resources does not constitute ownership of the resource itself. For example, the holding of water rights by a private person does not constitute ownership of water.
2. Section 9, amending Section 75-7-3, lists substances the ONRT may identify as “injurious substances” by rule. This list is overly broad and duplicative. The Attorney General’s Office would be glad to work with legislative staff to refine the list.
3. Appeal of Trustee final rules is to the district court under Section 7.E. Most appeals relating to environmental statutes are to the Court of Appeals because of the complicated nature of the subject matter.

ALTERNATIVES TO ENACTING THIS BILL

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will continue to rely primarily on federal law for establishing liability for natural resource injuries and for the process by which damages for such injuries are established.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

See Significant Legal Issues, Technical Issues and Substantive Legal Issues sections.