

BDR 40-157 AB 312

EXECUTIVE AGENCY FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: April 7, 2023

Agency Submitting: State Department of Conservation and Natural Resources

Items of Revenue or Expense, or Both	Fiscal Year 2022-23	Fiscal Year 2023-24	Fiscal Year 2024-25	Effect on Future Biennia
Personnel Services (Expense)		\$117,648	\$236,096	\$472,192
In-State Travel (Expense)		\$37,760	\$37,760	\$75,520
Operating (Expense)		\$125,675	\$130,286	\$260,572
Equipment (Expense)		\$10,462		
Information Technology (Expense)		\$6,833	\$1,428	\$2,856
Total	0	\$298,378	\$405,570	\$811,140

Explanation

(Use Additional Sheets of Attachments, if required)

The Nevada Department of Conservation and Natural Resources (NDCNR) has reviewed BDR 40-157 (AB312) and determined that sections 8-17 of the bill will have a fiscal impact because it requires certain actions by the Environmental Justice Commission or an agency seeking to amend Nevada Administrative Code (NAC) under the Nevada Administrative Procedures Act (NV APA). NDCNR has many NACs in all agencies and programs within the department, with a large amount of NACs tied to the Nevada Division of Environmental Protection. This fiscal note includes two additional staff starting in January 2024 to take on the additional workload that will occur as a result of this bill. One position will be tied specifically to the Nevada Division of Environmental Protection (NDEP), as that agency amends NACs on a regular basis. The other position will cover the additional workload for all other agencies within NDCNR. The attached analysis provided by NDEP discusses the potential impact using existing staff, but existing staff would not be able to absorb the additional workload, so the two positions requested in this fiscal note would instead help absorb the impact to the department as a whole. This fiscal note includes costs specific to two new Environmental Scientist IV positions and associated operating, travel, information services, equipment, and additional lease space to house new staff due to space constraints within the current NDCNR building that houses the majority of NDCNR staff.

Name Kelly Williams

Title Administrative Services Officer IV

GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Friday, March 31, 2023

The agency's response appears reasonable.

Name Amy L. Stephenson

Title Director

Description of Fiscal Effect

AB312/BDR 40-0157

Nevada Division of Environmental Protection (NDEP)

This Act becomes effective:

- (a) On July 1, 2023 for the purpose of Sections 2-7 and 18 for:
 - a. Creating the Commission on Environmental Justice (EJ Commission),
 - b. Adopting any regulations and performing any other preparatory tasks, and
 - c. Coordinating with the NDEP and the Department of Health and Human Services (DHHS) on developing the process and metrics for use by all agencies defined in NRS 233B.031; and
- (b) At a later unidentified date, for agency¹ implementation of [sections 8-17] when permanent regulations are adopted by the EJ Commission pursuant to Section 7 and filed with the Secretary of State.

Fiscal Effect of Sections 2-7 and 18:

These Sections create the EJ Commission and require the commission to, among other duties, *“adopt regulations setting forth a process and metrics for use by an agency to evaluate whether a proposed regulation will have a disproportionate environmental impact on a historically underserved community” in this State.*

Section 18 of the Bill specifically obligates NDEP to participate with the EJ Commission and the DHHS on development of *“a process and metrics for use by an agency ... to evaluate whether a proposed regulation will have a disproportionate environmental impact on a historically underserved community in this State”*.

The NDEP will experience a fiscal impact related to Section 18, but it cannot be determined. It is anticipated that it will involve portions of high-grade FTE throughout NDEP from leadership positions, over an 18 month period until December 31, 2024, including Bureau Chiefs, Deputy Administrators, the Administrator and some program Supervisors.

Fiscal Effect of Sections 8-17:

Sections 8-17 of the Bill require certain actions by the EJ Commission or an agency seeking to amend NACs under the Nevada Administrative Procedures Act (NV APA) in NRS 233B. An analysis of actions to be taken by the agency and the agency’s anticipated regulatory involvement in interacting with the EJ Commission is included below based on Bill Sections or groups of Sections.

For estimating the fiscal effect of Sections 8-17, NDEP used experience gained from following the NV APA in development and processing of proposed Nevada Administrative Code (NAC) amendment proposals. While the Agency has experience in estimating the small business impact statement upon which this EJ requirement is crafted, components of EJ assessment for NAC petition processing are undefined. After forming, the EJ Commission is tasked with identifying: Characteristics of communities that are at heightened risk of disproportionate environmental justice impacts; available options to screen for communities at heightened risk of disproportionate environmental justice impacts; and factors that contribute to environmental inequities in this State, including, without limitation, any health risks. The current lack of definition regarding EJ presents difficulty in adequately estimating the potential fiscal effect of this Bill. Therefore, the Agency has applied professional judgement in deriving the estimates presented herein and assumptions are noted.

There is an unquantifiable fiscal effect on the cost of extending the timeline to navigate the NV APA. According to Section 8, once the agency develops the EJ Impact Statement and submits it for review to the EJ Commission, the Bill provides the Commission 45 days to review and respond to the Impact Statement.

The bottom line fiscal effect is presented in a per-petition format so that it can be used to project a total.

Labor Commitment:

Section 11 - Before conducting a workshop for a proposed regulation per the NV APA:

1. The agency shall follow the future regulations to be adopted by the EJ Commission to determine whether the proposed regulation will *“Impose a direct, indirect or cumulative environmental impact; and (b) Whether an environmental impact identified pursuant to paragraph (a) will disproportionately affect a historically underserved community.”* These terms are currently undefined and “cumulative environmental impact” is an emerging field of study nationally.
2. If an agency determines that a regulation is likely to impose an impact, the agency must:
 - a. Consult with members of the community, ensure that the community is meaningfully informed and involved in the process for developing the regulation.
 - b. Conduct or cause to be conducted an analysis of the likely impact of the proposed regulation.
 - c. Consider methods to reduce or mitigate the environmental impact.
 - d. Prepare an EJ Impact Statement

Due to the requirements of AB 312, estimates assume that the regulation is likely to impose an impact. Estimates do not include production and mailing costs for paper documents requested by members of a historically underserved community who wish to receive documents by mail.

Agency Evaluation of Potential for EJ Impact per Future Regulations:

Position	Hours per Petition	Hourly Rate – FY25 (averaged)	Total
ES III or PE	200	\$56.98	\$11,395.29
Supervisor ES IV or Supervisor PE	80	\$61.49	\$4,918.90
Chief	24	\$72.17	\$1,732.03
Total per Petition	304		\$18,046.22

Agency Travel for Outreach to Inform EJ Impact Statement Preparation:

Position	Hours per Petition	Hourly Rate (averaged)	Total
ES III or PE	26 (incl. Prep time)	\$56.98	\$1,481.39
Supervisor ES IV or Supervisor PE	18	\$61.49	\$1,106.75
Admin Assistant 2	18	\$34.12	\$614.15
Total per Petition	62		\$3,202.30

Agency EJ Impact Statement Preparation:

In order to inform the Notice of Intent to Act Upon a Regulation the Statement shall include, at a minimum: a statement of any estimated environmental impact of the regulation on historically underserved communities and on the public. These must be stated separately and in each case must include: (I) Both adverse and beneficial effects; and (II) Both immediate and long-term effects. It shall also include a statement identifying the methods used by the agency in determining the environmental impact on historically underserved communities.

Position	Hours per Petition	Hourly Rate (averaged)	Total
ES III or PE	80	\$56.98	\$4,558.12
Supervisor ES IV or Supervisor PE	20	\$61.49	\$1,229.73
Chief	5	\$72.17	\$360.84
Total per Petition	105		\$6,148.68

Travel:

Travel is expected for outreach and engagement with historically underserved communities. Based on NDEP’s experience we expect 3 people would be needed to hold an EJ focused meeting with a historically disadvantaged community. One Administrative Assistant 2 to help with proper recording, an Environmental Scientist III or a Professional Engineer (averaged into one value for “technical staff”), and a Supervising PE or a ES IV Supervisor (averaged into one value for “Supervisor”). The trip is estimated to be an overnight trip, in case an evening outreach even is needed. Estimates were generated for Las Vegas and Elko and averaged for a total Travel & Labor cost for a petition:

Destination	People	Days	Total Cost
Las Vegas (including air fare)	3	2	\$3,202.32
Northern Nevada (e.g., Elko)	3	2	\$1,321.50
Average Per Petition			\$2,261.91

Total Fiscal Effect per Petition:

Expense Element	Total Cost per Petition
Agency Evaluation of Potential for EJ Impact per Future Regulations	\$18,046.22
Agency Labor for Travel for Outreach to Inform EJ Impact Statement Preparation	\$3,202.30
Agency EJ Impact Statement Preparation	\$6,148.68
Travel Costs (e.g. per diem, airfare, etc.)	\$2,261.91
Average Per Petition	\$29,659.11

This total fiscal effect does not account for contractor assistance as contemplated by Section 11, subsection 2(b). If an agency determines that a proposed regulation is likely to impose an EJ impact, the agency shall, “*Conduct or cause to be conducted an analysis of the likely impact of the proposed regulation on the historically underserved community. Insofar as practicable, the analysis must be conducted by the employee of the agency who is most knowledgeable about the subject of the proposed regulation and its likely environmental impact on the historically underserved community or by a consultant or other independent contractor who has such knowledge and is retained by the agency.*”

Estimated Annual Fiscal Effect for NDEP:

The NDEP has processed the following numbers of NAC revision petitions over the past 5 years, averaging 5.5 per year. This approach assumes that this average number of petitions will have the potential to impact an EJ community, but also accounts for some petitions that will not require an EJ Impact Statement be prepared.

2022: 11	2021: 0	2020: 7	2019: 6	2018: 3
----------	---------	---------	---------	---------

Using a total fiscal effect of \$29,659.11 per petition applied to an average of 5.5 petitions per year, the estimated fiscal effect per year for NDEP is \$163,125

ⁱ **NRS 233B.031 “Agency” defined.** “Agency” means an agency, bureau, board, commission, department, division, officer or employee of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases.

ⁱⁱ AB 312 cross-references NRS 445A.834 for the definition of “Historically underserved community” to mean:

- 1) A census tract:
 - I) Designated as a qualified census tract by the United States Secretary of Housing and Urban Development pursuant to 26 U.S.C. § 42(d)(5)(B)(ii); or
 - II) In which, in the immediately preceding census, at least 20 percent of households were not proficient in the English language;
- 2) A community in this State with at least one public school:

-
- I) In which 75 percent or more of the enrolled pupils in the school are eligible for free or reduced-price lunches pursuant to 42 U.S.C. §§ 1751 et seq.; or
 - II) That participates in universal meal service in high poverty areas pursuant to Section 104 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296; or
- 3) A community in this State located on qualified tribal land, as defined in [NRS 370.0325](#).