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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13

SPONSOR Herrell/Martinez LAST UPDATED 02/18/13 HB 292

SHORT TITLE Transfer of Public Land Act SB _____

ANALYST Weber

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|--|--|---------------------------------|------------------|
| FY13 | FY14 | FY15 | | |
| | (See Narrative) There may be additional revenue in future years. | (See Narrative) There may be additional revenue in future years. | Recurring | General Fund |

(Parenthesis () Indicate Revenue Decrease

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------|---------|----------------------|------------------------------|------------------|
| Total | | \$100.0 | \$100.0 | \$200.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicate to SB 404

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 General Services Department (GSD)
 Economic Development Department (EDD)
 Department of Cultural Affairs (DCA)
 Energy, Minerals and Natural Resources Department (EMNRD)
 State Land Office (SLO)
 Department of Transportation (DOT)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 292 (HB 292) is the Transfer of Public Lands Act.

The bill instructs the federal government that on or before December 31, 2015, the United States shall:

- (1) extinguish title to public lands; and
- (2) transfer title to public lands to the state.

For the purpose of this bill exempted from public land is:

- (1) lands to which title is held by a person who is not a governmental entity;
- (2) lands owned or held in trust by this state, a political subdivision of this state or an independent entity;
- (3) lands reserved for use by the state for education and internal improvements, as described in the provisions of the Enabling Act for New Mexico;
- (4) lands within the exterior boundaries as of January 1, 2013 of the following that are designated as national parks or national historical parks: (a) Carlsbad caverns national park; (b) Chaco culture national historical park; and (c) Pecos national historical park;
- (5) lands within the exterior boundaries as of January 1, 2013 of the following national monuments managed by the national park service as of January 1, 2013:
 - (a) Aztec ruins national monument; (b) Bandelier national monument; (c) Capulin volcano national monument; (d) El Malpais national monument; (e) El Morro national monument; (f) Fort Union national monument; (g) Gila cliff dwellings national monument; (h) Kasha-Katuwe tent rocks national monument; (i) Petroglyph national monument; (j) Prehistoric trackways national monument; (k) Salinas Pueblo missions national monument; and (l) White Sands national monument.
- (6) lands within the exterior boundaries as of January 1, 2013 of the following wilderness areas located in the state that, as of January 1, 2013, are designated as part of the national wilderness preservation system under the federal Wilderness Act of 1964:
 - (a) Aldo Leopold wilderness; (b) Apache kid wilderness; (c) Bandelier wilderness; (d) Bisti/De-Na-Zin wilderness; (e) Blue range wilderness; (f) Bosque del Apache wilderness; (g) Capitan mountains wilderness; (h) Carlsbad caverns wilderness; (i) Cebolla wilderness; (j) Chama river canyon wilderness; (k) Cruces basin wilderness; (l) Dome wilderness; (m) Gila wilderness; (n) Latir peak wilderness; (o) Manzano mountain wilderness; (p) Ojito wilderness; (q) Pecos wilderness; (r) Sabinoso wilderness; (s) Salt creek wilderness; (t) San Pedro parks wilderness; (u) Sandia mountain wilderness; (v) West Malpais wilderness; (w) Wheeler peak wilderness; (x) White mountain wilderness; and (y) Withington wilderness;

(7) lands with respect to which the jurisdiction is ceded to the United States as provided in Sections 19-2-6 through 19-2-9 and 19-2-11 NMSA 1978 or under Clause 17 of Section 8 of Article I of the United States constitution;

(8) real property or tangible personal property owned by the United States if the property is within the boundaries of a municipality; or

(9) lands, including water rights, belonging to an Indian nation, tribe, pueblo, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

When the state transfers title to any public lands with respect to which the state receives title under Paragraph (2) of Subsection A of this section, the state shall:

(1) retain five percent of the net proceeds the state receives from the transfer of title; and

(2) pay ninety-five percent of the net proceeds the state receives from the transfer of title to the United States

Section 5 creates the Public Lands Transfer Task Force. The task force is composed of:

(1) four members of the legislature, two from each chamber, appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate; (2) the Commissioner of Public Lands or the Commissioner's Designee; (3) the Secretary of the Energy, Minerals and Natural Resources Department or the Secretary's Designee; (4) the State Forester or the State Forester's Designee; (5) the Director of the State Parks Division of the Energy, Minerals and Natural Resources Department or the Director's Designee; (6) the Secretary of General Services Department or the Secretary's Designee; (7) the State Treasurer or the State Treasurer's Designee; (8) the Secretary of the Department of Transportation or the Secretary's Designee; (9) the Secretary of Cultural Affairs or the Secretary's Designee; (10) the Secretary of the Department of Finance and Administration or the Secretary's Designee; (11) the Secretary of Indian Affairs or the Secretary's Designee; (12) the President of the Land Grant Council or the President's Designee; and (13) the Executive Director of the New Mexico Association of Counties or the Executive Director's Designee.

The co-chairs of the task force are the Commissioner of Public lands and the Secretary of the Energy, Minerals and Natural Resources Department (EMNRD) or their Designee. The Legislative Council Service will staff the meetings and the first meeting is on or before July 1, 2013. Testimony before the task force should come from a wide variety of stakeholders.

During the 2013 interim, the task force shall prepare proposed legislation:

(1) creating a public lands commission to:

(a) administer the transfer of title of public lands to the state; and

(b) address the management of public lands and the management of multiple uses of public lands, including addressing managing open spaces, access to public lands, local planning and the sustainable yield of natural resources on public lands;

(2) establishing actions that shall be taken to secure, preserve and protect the state's rights and benefits related to the United States' duty to have extinguished title to public lands, in the event that the United States does not meet the requirements of the Transfer of Public Lands Act.

FISCAL IMPLICATIONS

The Department of Finance and Administration (DFA) notes that while potential costs are significant, the State Land Office (SLO) currently manages 13 million acres of subsurface and 9 million acres of surface lands with an annual budget of approximately \$13 million and 150 FTE. According to the National Resources Conservation Service, federal land in New Mexico totaled 26 million acres in 1997. Moreover, New Mexico currently receives 49 percent of natural resource royalties generated on federal lands. Under this proposal, the state would receive 100 percent of royalty revenues. The potential fiscal impact of these additional royalty revenues is \$400 million to \$500 million annually.

The additional impact on the EMNRD is estimated to be \$100,000 per year as a staff person would need to be hired or contracted with to support the task force and costs for travel, public notice, and meeting rooms would also be incurred. However, this would appear to be on the low side if all areas of potential impact are explored. A stringent due diligence would need to be exercised with risk management a central concern.

Subsequently in FY16 and after the potential loss of federal spending in New Mexico would amount to hundreds of millions of dollars annually for management of these lands. For example, The SLO and the EMNRD estimate approximately \$200 million in federal expenditures annually for BLM and Forest Service combined will end upon transfer to the state on or before December 31, 2015.

The EMNRD and the SLO are concerned the state will need to replace federal employees and assume operating costs for the acquired federal lands before the state begins to receive revenues from the land. In addition, the bill contains no appropriation to provide support to the taskforce entities.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes that earlier this year, both the Utah and Arizona legislatures passed bills similar to HB 292, demanding that the federal government return public lands to those states. Utah's governor signed the Utah bill into law. Arizona's governor, however, vetoed that state's proposed legislation, citing concern about the lack of certainty the legislation would create for individuals holding existing leases on federal lands. In addition, the AOC states there may be constitutional issues relating to the federal-state relationship. The SLO and the EMNRD offer similar concerns regarding legal issues with the federal government.

TECHNICAL ISSUES

The EMNRD adds that HB 292 defines public lands as all lands except those specifically exempted instead of specifically listing lands that are public lands. HB 292 fails to consider all types of ownership. For example, the exemptions do not clearly exempt lands owned by tribes in

fee or held in trust by the United States for individual tribal members. It also fails to define what is meant by “individual entity”. It is also unclear whether public lands include mineral interests, particularly those that have been severed from the surface.

MW/blm:svb